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The President

Education and Sharing Day, U.S.A., 2008

By the President of the United States of America

A Proclamation

A hopeful society helps ensure that its citizens develop the character, knowledge, and skills they need to succeed. On Education and Sharing Day, we underscore our dedication to encouraging our Nation's youth to build a solid foundation for a lifetime of accomplishment.

Education and Sharing Day pays tribute to the unique efforts of Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe. The Rebbe helped create numerous education and outreach centers, which continue to provide social service programs and humanitarian aid at home and around the globe.

On this day and throughout the year, we encourage our children to set high goals, make the right choices, and put character first. By instilling respect, responsibility, civic duty, compassion, and honesty in our youth, we can help more of our citizens realize the great promise of America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 16, 2008, as Education and Sharing Day, U.S.A. I call upon government officials, educators, volunteers, and all the people of the United States to reach out to young people and work to create a better, brighter, and more hopeful future for all.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.



Rules and Regulations

Federal Register

Vol. 73, No. 76

Friday, April 18, 2008

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

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1201, 1210, and 1215

Final Regulatory Changes Regarding Department of Homeland Security Personnel System

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: As the Merit Systems Protection Board (MSPB or “the Board”) explained in its notice of Interim Regulatory Changes Regarding Department of Homeland Security Personnel System, *Federal Register*, 72 FR 56883, October 5, 2007, it is revising its regulations to clarify the procedures applicable to MSPB processing and adjudication of cases arising under the Department of Homeland Security’s new human resources management system established pursuant to the Homeland Security Act of 2002. As is discussed below, these revisions to the Board’s regulations are necessary to reconcile the Board’s regulations and procedures with final regulations published by the Department of Homeland Security (DHS) and the Office of Personnel Management (OPM) on February 1, 2005.

DATES: This rule is effective on April 18, 2008.

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

SUPPLEMENTARY INFORMATION: (*Regarding Issuance of the Interim Regulatory Changes*): On November 25, 2002, the President signed into law H.R. 5005, the Homeland Security Act of 2002 (Pub. L. 107-296), which established DHS and authorized the DHS Secretary and OPM Director to jointly establish a new

human resources management system within DHS. Pursuant to this grant of authority, on February 20, 2004, DHS and OPM published proposed regulations (69 FR 8030) for this new human resources system. Thereafter, on February 1, 2005, DHS and OPM published final regulations (70 FR 5272) implementing the new DHS personnel system.

Afterwards, the National Treasury Employees Union, American Federation of Government Employees, National Federation of Federal Employees, National Association of Agriculture Employees, and Metal Trades Department of the AFL-CIO, which collectively represent approximately 50,000 DHS bargaining unit employees, challenged portions of the regulations governing labor-management relations, adverse actions, and the appeals process. One of the provisions of the DHS regulations that was challenged is 5 CFR 9701.706(k)(6), which changes the standard by which the Board may mitigate penalties imposed by DHS. Pursuant to that provision, an arbitrator, adjudicating official or the Board may not modify such a penalty unless it is so disproportionate to the basis for the action as to be wholly without justification. The U.S. District Court for the District of Columbia enjoined the mitigation provision. *NTEU v. Chertoff*, 385 F.Supp.2d 1, 32-33 (D.D.C.), *modification denied by*, 394 F.Supp.2d 137 (D.D.C. 2005). A panel of the U.S. Court of Appeals for the D.C. Circuit reversed on this issue, holding that the question of the mitigation standard’s legality was not ripe for judicial review. *NTEU v. Chertoff*, 452 F.3d 839, 855 (D.C. Cir. 2006). Therefore, the MSPB’s regulations include that mitigation standard.

Subparts F and G of the final DHS/OPM regulations concern adverse actions and appeals and will have a significant effect on the way the MSPB processes and adjudicates appeals of adverse actions by DHS employees. In addition to limiting the types of cases that may be appealed to the Board, the final DHS/OPM regulations make many changes in how the Board will process and adjudicate appeals by DHS employees, including:

Shortened filing deadlines;

Streamlined and limited discovery procedures;

New settlement procedures;

Limitations on the right to a hearing; Summary judgment and limitation of issues;

Time limits within which the Board must issue decisions;

Procedures for Board review of a decision of the DHS Mandatory Removal Panel (MRP); and,

Changes in certain standards of review.

In order to accommodate these substantive and procedural changes with the least possible confusion and delay, the Board determined to publish interim amendments to its regulations. Specifically, these changes involve amendments to 5 CFR parts 1201 and the promulgation of new regulations applicable only to procedures for appeals, petitions for review, and requests for review of MRP decisions brought by DHS employees. These new DHS-specific regulations were published in a revised 5 CFR part 1210. The regulations previously found in 5 CFR part 1210 were moved, redesignated as 5 CFR part 1215, and are otherwise not changed.

A brief summary of the changes contained in the interim amendments and the final amendments contained herein is as follows:

1201.3(a)(19) and (20) are amended and 1201.3(a)(21) is added to reflect the Board’s jurisdiction over certain actions taken by DHS (an unrelated housekeeping change is also made to 1201.3(a)(20));

1201.3(b)(3) is amended to reflect the Board’s jurisdiction over certain actions taken by DHS and to make clear that 5 CFR parts 1201, 1208 and 1209 apply to proceedings brought under 5 CFR part 1210, except as otherwise provided therein;

1201.11 is amended to state that the regulations of subpart B of 5 CFR part 1201 apply to appellate proceedings covered by part 1210 unless other specific provisions are made in that part;

1201.14(i) is amended to indicate that the Board’s rules applicable to electronic signatures by e-filers apply to any regulation in part 1210 that requires a signature;

1201.21 is renumbered and amended to delete an outdated reference to Appendix 1. A new section (1201.21(b)) addresses notice of appeal rights when DHS issues a decision notice to an employee on a matter that is appealable to the Board.

1201.22(b)(2) is amended to indicate that additional time limits applicable to certain appeals by DHS employees are contained in part 1210.

The debt management regulations formerly in part 1210 are moved and redesignated as part 1215. As is discussed in greater detail below, new regulations regarding appeals by DHS employees are added in part 1210. Parts 1211, 1212, 1213, and 1214 are reserved for future agency-specific regulations.

The new regulations in part 1210 apply to Board proceedings in appeals of certain DHS adverse actions that are covered under subparts F and G of 5 CFR part 9701. Part 1210 consists of four subparts.

Subpart A of part 1210 discusses the scope of part 1210 and the Board's policy with regard to application of part 1210 in a fair and efficient manner (1210.1); addresses MSPB jurisdiction (1210.2); sets forth the applicability of 5 CFR parts 1201, 1208, and 1209 to appeals by DHS employees (1210.3); defines certain words and terms used within part 1210 (1210.4); describes when and how the Board and/or an adjudicating official may revoke, amend or waive the regulations in part 1210 (1210.5); and adds a savings provision indicating that part 1210 does not apply to adverse actions proposed prior to the date of an affected employee's coverage under 5 CFR part 9701, subpart G (1210.6).

Subpart B of part 1210 sets forth procedures for appeals of actions taken under 5 CFR Part 9701, Subpart F, including agency responsibilities regarding notice of appeal rights (1210.10); procedures for filing an appeal (1210.11); representation by, and disqualification of, representatives (1210.12); burden and degree of proof and affirmative defenses (1210.13); required disclosure and the scope of discovery (1210.14); discovery procedures (1210.15); intervention by the Director of OPM (1210.16); procedures applicable to settlement (1210.17); case suspension procedures (1210.18); the right to a hearing (1210.19); summary judgment (1210.20); and requirements pertaining to the adjudicating official's initial decision, including completion deadlines and interim relief (1210.21).

Subpart C of part 1210 addresses procedures applicable to petitions for review of initial decisions and petitions for reconsideration, including requirements such as who may file and the use of electronic filing (1210.30(a)); time limits applicable to petitions for review, cross petitions for review and responses (1210.30(b)); the proper place for filing petitions for review, cross

petitions for review, and responses (1210.30(c)); time limits within which the Board must render its decision (1210.30(d)); the ramifications of the Board's failure to meet such time limits (1210.30(e)); and requirements applicable to an OPM request for reconsideration (1210.31).

Subpart D of part 1210 addresses MSPB review of decisions of the Mandatory Removal Panel (MRP), including jurisdiction and procedures and time limits applicable to a request for review (1210.40); the standard of review and time limits applicable to a decision by the Board (1210.41); intervention by the Director of OPM (1210.42); finality of Board decisions and judicial review (1210.43); and requests for reconsideration (1210.44).

Availability of Documents

You can get an electronic copy of the entire set of amendments to 5 CFR part 1201 and the entirety of 5 CFR part 1210 using the Internet by visiting the Merit System Protection Board's Web page at <http://www.mspb.gov>. In addition, paper copies may be obtained by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify this final rule as the final regulatory changes regarding the Department of Homeland Security Personnel System.

Summary and Analysis of the Comments Received on the Interim Regulatory Changes: The Board's **Federal Register** notice of interim regulatory changes provided for a comment period of 30 days after date of publication, which ended on Monday, November 5, 2007. The Board received five comments, three from individuals, and the others from the National Treasury Employees Union and the American Federation of Government Employees. As explained below, upon consideration of these comments, the Board is making several amendments to its interim regulatory changes. The comments are summarized and discussed below.

Comment 1: An employee from the Transportation Security Administration stated a preference for the MSPB's appeals process under 5 CFR Part 1201 to the TSA's Disciplinary Review Board process. The commenter made the following statements:

"I know that I would want to have the option of thirty days to appeal an adverse action versus the 20 days proposed. I beg of you to keep in place the current appeal rights for all employees in the Federal system."

MSPB's Response to Comment 1: Pursuant to the DHS's regulations, at 5 CFR 9701.702, DHS's appellate

procedures supersede those of the MSPB to the extent that there may be inconsistencies between the procedures. The Board had the options of following the DHS regulations or issuing its own conforming regulations. It chose the latter option. In order for the Board's regulations to be conforming, they must provide for an appeal period of 20 days instead of 30 days.

Comment 2: An employee from the Transportation Security Administration raised concerns about the difficulties in receiving pay raises.

MSPB's Response to Comment 2: This comment did not address any of the interim regulatory changes in 5 CFR Part 1201 or 1210.

Comment 3: A DHS employee expressed opposition to the implementation of the DHS personnel management system as a whole.

MSPB's Response to Comment 3: This comment did not address any of the interim regulatory changes in 5 CFR Part 1201 or 1210.

Comment 4: The National Treasury Employees Union (NTEU) commented on 11 provisions in the interim regulatory changes. Most of NTEU's suggestions, if adopted, would result in MSPB regulations that would not be consistent, as required by 5 CFR 9701.702, with Subpart G of Part 9701. However, as explained below, the Board has determined that several of NTEU's suggested revisions would add clarity to the Board's regulations and that those suggestions should be adopted.

MSPB's Response to Comment 4: The Board's responses to NTEU's 11 suggestions are as follows:

Suggestion 1: The Board's regulations should not incorporate DHS's initial service period:

MSPB's Response to Suggestion 1: DHS's regulations, at 5 CFR 9701.603, define "initial service period" as the one- or two-year period employees must serve after selection for a designated DHS position in the competitive service for the purpose of providing an employee the opportunity to demonstrate competencies in a specific occupation. 5 CFR 9701.604(d)(1) provides that the Board would have no jurisdiction over an appeal brought by a nonpreference eligible employee serving an initial service period. MSPB's regulation, at 5 CFR 1210.2(a), states that the Board lacks jurisdiction over those classes of employees excluded under 5 CFR 9701.604(d). However, MSPB's regulations clarify that, as determined by DHS, prior Federal civilian service counts toward completion of the initial service period.

To be consistent with DHS's regulations, MSPB's regulations must

recognize that a nonpreference eligible employee does not acquire appeal rights until after the initial service period has been fulfilled.

Suggestion 2: MSPB should revise 5 CFR 1210.10 to require DHS to include in its decision notices to employees information about the availability of an appeal to the Board of an adverse arbitration decision.

MSPB's Response to Suggestion 2: The Board agrees and will revise 5 CFR 1210.10 accordingly. NTEU correctly noted that other agencies are required, under 5 CFR 1201.21(d)(3), to inform employees in the decision notices as to whether they have the opportunity to request Board review of an arbitration decision. NTEU further noted that Board appeal of an arbitration decision "is clearly available in mixed cases pursuant to 5 CFR 9701.709." It is the Board's understanding that DHS takes the position that certain provisions of 5 CFR Part 1201, Subpart E, including 5 CFR 1201.154(d), will apply to the Board's processing of mixed case appeals brought under 5 CFR Part 9701. Board review of arbitration decisions is available in mixed cases pursuant to subsection 1201.154(d).

Suggestion 3: If the Board is going to incorporate the 20-day deadline in DHS's regulations for filing an appeal, the Board should exercise its discretion liberally to permit consideration of the merits of untimely filed appeals upon a showing of good cause. In addition, DHS should have only 10 days, not 15 days, to respond to appeals.

MSPB's Response to Suggestion 3: Because DHS's regulations do not provide for any exception from the 20-day deadline for filing an appeal, see 5 CFR 9701.706(k)(1) ("All appeals" "will be filed no later than 20 days after the effective date of the action being appealed, or no later than 20 days after the date of service of the Department's decision, whichever is later."), MSPB's conforming regulations cannot so provide either. As for the suggestion that DHS be given 10 days, instead of 15 days to respond to appeals, the Board declines to adopt it. Because a response entails the filing of a narrative response as well as submission of a record, the Board believes that the 15-day time frame is more reasonable.

Suggestion 4: MSPB's regulations should authorize administrative judges to act on case suspension requests submitted unilaterally.

MSPB's Response to Suggestion 4: Because DHS's regulations require that case suspension requests be made jointly, MSPB's conforming regulations cannot provide for authorization of

unilaterally submitted case suspension requests.

Suggestion 5: The MSPB regulations governing discovery should be modified to give DHS employees an additional 30 days following receipt of DHS's initial disclosures to make their initial disclosures. They also should be modified to require that the Board's acknowledgment orders advise parties of their initial disclosure obligations.

MSPB's Response to Suggestion 5: An amendment to MSPB's regulations which would require DHS to submit initial disclosures within 10 days of the date of the Board's acknowledgment order and would allow appellants to wait until 40 days after the date of the acknowledgment order to file their initial disclosures would make it extremely difficult for the parties to complete discovery, for a hearing to be held and for an initial decision to be made within the 90-day deadline imposed by DHS's regulations. As for the suggested amendment to MSPB's acknowledgment orders, it is inconsistent with current practice for Board regulations to set requirements for acknowledgment orders. Moreover, such an amendment would be unnecessary because acknowledgment orders issued in appeals subject to these regulations will contain notice of initial disclosure requirements.

Suggestion 6: MSPB's regulations, at 5 CFR 1210.17(b), should be amended to permit either party to invoke the service of a settlement judge.

MSPB's Response to Suggestion 6: In order to reconcile its regulations with DHS's regulations, at 5 CFR 9701.706(i)(1) and (2), the Board must require that the request for the services of a settlement judge be made by the parties jointly.

Suggestion 7: The MSPB's regulations should not require administrative judges to resolve appeals through summary judgment when they conclude that no material facts are in dispute, and appellants should have 30 days, instead of 15 days, to file an opposition.

MSPB's Response to Suggestion 7: In order to reconcile its regulations with DHS's regulations, at 5 CFR 9701.706(k)(5), MSPB's regulations must require an administrative judge to render summary judgment on the law without a hearing when there are no material facts in dispute. The Board declines the suggestion to give appellants 30 days to oppose a summary judgment motion in all instances because the 90-day deadline for issuance of an initial decision may not permit judges to give appellants this much time to file an opposition. Moreover, 15 days is the same amount

of time that a complainant with a discrimination complaint has to oppose a summary judgment motion. See 29 CFR 1609.109(g)(2). In addition, it should be noted that the Board's regulations, at 5 CFR 1210.20(c), do not provide for a rigid deadline but, instead, state that an opposition to a summary judgment motion "shall be filed within 15 days of service of the motion, or at the time specified by the adjudicating official." Therefore, where time permits, an administrative judge could give an appellant a longer period than 15 days to file an opposition. The regulations also would permit the judge to provide for a response period shorter than 15 days. Finally, under neither DHS's nor MSPB's regulations are appellants precluded from seeking summary judgment.

Suggestion 8: The MSPB's regulations, at 5 CFR 1210.19(b), should be amended to require that the administrative judge conduct an in-person hearing whenever material facts are in dispute.

MSPB's Response to Suggestion 8: The suggestion, stated otherwise, is that whenever the administrative judge holds a hearing on an appeal, it must always be an in-person hearing. However, the Board, in a recent decision, recognized that, for hearings held pursuant to 5 CFR Part 1201, there is no statutory mandate for an unlimited entitlement to an in-person hearing. *Koehler v. Dept. of the Air Force*, 99 M.S.P.R. 82, ¶ 6 (2005). Over the years, especially under circumstances where there were issues as to the inconvenience and expense of travel, the Board has given appellants the option of having their hearings conducted telephonically. *Id.* As technology has developed, the Board has offered the option of videoconference hearings so that an appellant at a remote location could avail himself of a hearing without undertaking the expense and inconvenience of having to travel to a designated hearing site. *Id.* at ¶ 8, citing *Siman v. Dept. of the Air Force*, 80 M.S.P.R. 306, ¶ 6 (1998).

Like the rest of the Federal Government, the Board is facing serious challenges to work harder and faster, and to decide cases more efficiently. *Id.* at ¶ 11. Therefore, the Board cannot ignore the advances in videoconferencing technology, which provide a less costly alternative to affording every appellant an in-person hearing. Under the MSPB's interim regulatory changes, one of the factors that judges must consider in deciding whether to hold a hearing in whole or in part by videoconference or telephone is undue prejudice to the appellant. The

Board believes that its regulations strike the right balance between giving appellants the right to appear before an administrative judge and conserving the resources of the parties and the Board.

Suggestion 9: To the extent that the time-of-filing rules in the MSPB's regulations, at 5 CFR 1210.21(a), apply to all filings with the Board, they should be set forth as a separate regulation in Subpart A of the MSPB's regulations.

MSPB's Response to Suggestion 9: The time-of-filing rules in 5 CFR 1210.21(a) are intended to apply only to the requirement that initial decisions be issued within 90 days after the date on which the appeal is filed; they do not determine whether an appeal was timely filed with the Board. The Board is amending its interim regulatory changes to make this intent clearer.

Suggestion 10: The MSPB should refrain from adopting the standard for mitigating penalties in the DHS regulations.

MSPB's Response to Suggestion 10: In order to reconcile its regulations with DHS's regulations, at 5 CFR 9701.706(k)(6), the MSPB must adopt DHS's standard for the mitigation of penalties.

Suggestion 11: The MSPB should revoke its regulations on "mandatory removal offenses," or, in the alternative, clarify its regulations to reflect that a de novo standard of review applies to the review of decisions of the Mandatory Removal Panel that involve issues of discrimination.

MSPB's Response to Suggestion 11: The MSPB lacks authority to revoke the appeals process for mandatory removal offenses established by DHS. Nor can it issue regulations that expand its jurisdiction over appeals of DHS actions taken for mandatory removal offenses beyond the jurisdiction that the DHS regulations provide. However, the Board will adopt the suggestion that 5 CFR 1210.41(a) be clarified to reflect that a de novo standard of review applies to allegations of discrimination contained in mixed case appeals of MRP decisions.

Comment 5: The American Federation of Government Employees (AFGE) objects largely to provisions that must be in the MSPB regulations in order for them to be reconciled with the DHS regulations. The first section of the AFGE comments contains an objection to our issuance of the regulations as interim regulations. The MSPB addressed this concern in a letter to AFGE and will summarize this letter below. The second section of the AFGE comments objects to the regulations because they purportedly bypass the collective bargaining rights of DHS employees. The third and fourth

sections of the AFGE comments suggest changes to specific provisions in 5 CFR Parts 1201 and 1210, respectively. Each section of AFGE's comment letter is addressed below.

Part 1. The MSPB should rescind the interim rule issued on October 5, 2007, because it violates the notice and comment requirements of the Administrative Procedure Act.

MSPB's Response: As reflected in this notice, the MSPB has taken all comments it received into serious consideration and, as a result, will make several modifications to its interim regulatory changes. It is important to note that the Administrative Procedure Act, at 5 U.S.C. 553(b)(A), provides that its notice and comment requirements do not apply to "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." This MSPB interim rule falls within this exception. The U.S. Court of Appeals for the D.C. Circuit clarified this exception in *JEM Broadcasting Co., Inc. v. F.C.C.*, 22 F.3d 320, 326–27 (D.C. Cir. 1994): "Our oft-cited formulation holds that the 'critical feature' of the procedural exception 'is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'" (citations omitted). This interim rule is intended merely to conform MSPB practices and procedures to the changes implemented by DHS in a final rule after notice and comment. Therefore, MSPB has not violated any of the requirements of the APA.

Part 2: MSPB should rescind the interim rule because it bypasses the collective bargaining rights of DHS employee unions and their bargaining unit members.

MSPB's Response: The Board has been informed that the DHS regulations governing the appeals process will not apply to DHS employees who are covered by a collective bargaining agreement until negotiations between DHS management officials and representatives of the appropriate labor organizations have been concluded.

Part 3: AFGE's suggestions regarding the interim regulatory changes to 5 CFR, Part 1201: AFGE suggests two modifications. The first suggested modification is to 5 CFR 1201.3(b)(3), which pertains to the Board's jurisdiction over appeals of certain actions taken by DHS. The suggestion is that language be added regarding possible conflicts between Part 1210 and Part 9701 as modified by a collective bargaining agreement. The second suggested modification is that

the policy statement in 5 CFR 1201.11 be modified to reflect the concept of fairness as well as expedience.

MSPB's Response: The Board declines to adopt the first suggestion. At this time, there are no collective bargaining agreements that modify the time limits and procedures in Part 9701. Should that change, the Board will consider revising its regulations at that time. The Board has adopted the second suggestion and modifies 5 CFR 1201.11 accordingly.

Part 4: AFGE's suggestions regarding the interim regulatory changes to 5 CFR Part 1210: AFGE suggests modifications to seven provisions of 5 CFR Part 1210. As explained below, the Board is adopting the suggestion pertaining to the discovery obligations.

Suggestion 1: Modify the savings provision in 5 CFR 1210.6 to note that it will be subject to modified time limits and procedures set by 5 CFR Part 9701 or applicable collective bargaining agreements.

MSPB's Response to Suggestion 1: According to AFGE, this proposed modification "simply acknowledges the possibility that bargaining could result in changed provisions of Part 9701 being applicable to members of bargaining units." The Board declines to adopt the suggestion. At this time, there are no collective bargaining agreements that modify the time limits and procedures in Part 9701. Should that change, the Board will consider revising its regulations at that time.

Suggestion 2: Modify 5 CFR 1210.14 to allow for appellants' provision of documents and information that become known to him or her after the close of the initial disclosure period.

MSPB's Response to Suggestion 2: The purpose of this suggestion seems to be to allow appellants to disclose or identify documents as they become aware of their existence. The Board finds that an effective way to make this modification applicable to both parties is to add to 5 CFR 1210.14(a) the requirement that both parties update their initial disclosures as relevant documents and information are discovered or become available. The Board is modifying 5 CFR 1210.14(a) accordingly.

Suggestion 3: The discovery procedures, specifically, 5 CFR 1210.15(b)(2), should be modified to allow for discovery beyond the limitations set out in 5 CFR 1210.15(b)(1) "for good cause, and as fairness may require" instead of under a "necessity and good cause" standard.

MSPB's Response to Suggestion 3: In order to reconcile its regulations with DHS's regulations, at 5 CFR

9701.706(k)(3)(iii), the Board must consider requests for additional discovery under the “necessity and good cause” standard.

Suggestion 4: The language regarding the right to a hearing set out in 5 CFR 1210.19(b) should be modified to make it clear that, absent summary judgment, a hearing must be held.

MSPB’s Response to Suggestion 4: Read together, subparts (a) and (b) of 5 CFR 1210.19 make it clear that, absent summary judgment, there is a right to a hearing but that the form of hearing to be held is within the administrative judge’s discretion.

Suggestion 5: The summary judgment provision, at 5 CFR 1210.20, should be stricken in its entirety or, in the alternative, subsection (d), which provides that an administrative judge may initiate summary judgment sua sponte if he or she determines that material facts may not be in dispute, should be stricken.

MSPB’s Response to Suggestion 5: In order to reconcile its regulations with DHS’s regulations, at 5 CFR 9701.706(k)(5), MSPB’s regulations must require an administrative judge to render summary judgment on the law without a hearing when there are no material facts in dispute. That is the case whether summary judgment is initiated by a party or by the judge.

Suggestion 6: The mitigation of penalty standard in 5 CFR 1210.21(b) should be stricken in its entirety.

MSPB’s Response to Suggestion 6: In order to reconcile its regulations with DHS’s regulations, at 5 CFR 9701.706(k)(6), MSPB’s regulations must contain DHS’s standard for mitigation of penalties.

Suggestion 7: All references to mandatory removal offenses should be stricken from 5 CFR Part 1210.

MSPB’s Response to Suggestion 7: The Board lacks authority to revoke the appeals process for mandatory removal offenses established by DHS. However, as explained above, the Board is adopting the suggestion of NTEU that 5 CFR 1210.41(a) be clarified to reflect that a de novo standard of review applies to allegations of discrimination contained in mixed case appeals of MRP decisions.

List of Subjects in 5 CFR Parts 1201, 1210, and 1215

Administrative practice and procedure, Civil rights, Government employees.

■ For reasons set forth in the preamble, the interim rule published October 5, 2007 (72 FR 56883) is adopted as final with the following changes:

PART 1201—PRACTICES AND PROCEDURES

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

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Section 1201.11 is amended by adding a new sentence at the end of the section to read as follows:

§ 1201.11 Scope and policy.

* * * It is the Board’s policy that these rules will be applied in a manner that ensures the fair and efficient processing of each case.

PART 1210—DEPARTMENT OF HOMELAND SECURITY HUMAN RESOURCES MANAGEMENT SYSTEM

■ 3. The authority citation for part 1210 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701.

■ 4. Section 1210.10(a)(4) is revised to read as follows:

§ 1210.10 Notice of appeal rights.

(a) * * *

(4) Notice of any right the employee has to file a grievance, including notice that the election of any applicable grievance procedure may result in a waiver of the employee’s right to file an appeal with the Board and as to whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.154(d); and

* * * * *

■ 5. Section 1210.14 is amended by revising paragraphs (a)(1)(ii) and (a)(2)(ii) to read as follows:

§ 1210.14 Initial disclosures; scope of discovery.

(a) * * *

(1) * * *

(ii) The name, work address and work telephone number, if known, of each individual likely to have discoverable information that the Department may use in support of its claims or defenses, identifying the subjects of such information.

(2) * * *

(ii) The name, address and telephone number, if known, of each individual likely to have discoverable information that the appellant may use in support of his or her claims or defenses, identifying the subjects of the information. Each party must make its initial disclosure based on the information then reasonably available to the party. Each party has an ongoing obligation to supplement and update its initial disclosure as relevant documents and information are discovered or

become available. A party is not excused from making its disclosures because it has not fully completed the investigation of its case, because it challenges the sufficiency of the other party’s disclosures or because the other party has not made its disclosures.

■ 6. Section 1210.21 is amended by adding a new sentence to the end of paragraph (a) to read as follows:

§ 1210.21 Initial decision by the adjudicating official.

(a) *General.* * * * For purposes of this subsection only, a document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it.

* * * * *

■ 7. Section 1210.41 is amended by adding a sentence to paragraph (a)(3) to read as follows:

§ 1210.41 Decision of the Board.

(a) * * *

(3) * * * The Board will apply a de novo standard of review to allegations of discrimination contained in mandatory removal appeal actions.

* * * * *

Dated: April 10, 2008.

William D. Spencer,

Clerk of the Board.

[FR Doc. E8–8092 Filed 4–17–08; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. AMS–FV–07–0151; FV08–959–1 FR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Onion Committee (Committee) for the 2007–08 and subsequent fiscal periods from \$0.02 to \$0.03 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Assessments upon onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain

in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* April 21, 2008.

FOR FURTHER INFORMATION CONTACT:

Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682-2833, Fax: (956) 682-5942, or E-mail: Belinda.Garza@usda.gov.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on August 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2007-08 and subsequent fiscal periods from \$0.02 to \$0.03 per 50-pound equivalent of onions handled.

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

For the 2004-05 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 16, 2007, and unanimously recommended 2007-08 expenditures of \$202,315 and an assessment rate of \$0.03 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were \$193,315. The assessment rate of \$0.03 is \$0.01 higher than the rate currently in effect. The Committee recommended the increased rate to continue to support the increased budget for research started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase, the Committee's reserve funds would drop to \$114,728. The Committee believes a reserve that low is not adequate for its operations.

The major expenditures recommended by the Committee for the 2007-08 fiscal period include \$64,315 for personnel and office expenses, \$45,000 for compliance, \$25,000 for promotion, and \$30,000 for research. Budgeted expenses for these items in 2006-07 were \$62,315, \$43,000, \$25,000, and \$25,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions.

Onion shipments for the fiscal period are estimated at 5,775,000 fifty-pound equivalents, which should provide \$173,250 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$196,543) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, \$959.43).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2007-08 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 118 producers of onions in the production area and approximately 34 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small

Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2006–07 marketing year, the industry's 34 handlers shipped onions produced on 12,460 acres with the average and median volume handled being 179,457 and 171,537 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 34 handlers were estimated to be \$86.7 million, with average and median revenues being \$2.55 million and \$2.35 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that 32 of the 34 (94 percent) handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the \$6,500,000 annual receipt threshold. All of the 118 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed \$750,000.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2007–08 and subsequent fiscal periods from \$0.02 to \$0.03 per 50-pound equivalent. The Committee unanimously recommended 2007–08 expenditures of \$202,315 and an assessment rate of \$0.03 per 50-pound equivalent. The assessment rate of \$0.03 is \$0.01 higher than the current rate. The quantity of assessable onions for the 2007–08 fiscal period is estimated at 5,775,000 fifty-pound equivalents. Thus, the \$0.03 rate should provide \$173,250 in assessment

income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be more than adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2007–08 fiscal period include \$64,315 for personnel and office expenses, \$45,000 for compliance, \$25,000 for promotion, and \$30,000 for research. Budgeted expenses for these items in 2006–07 were \$62,315, \$43,000, \$25,000, and \$25,000, respectively.

The Committee recommended the increased rate to continue funding a research project begun last year without having to draw a large amount from reserves. Without the increase, the Committee's reserve funds would drop to \$114,728. The Committee believes a reserve that low is not adequate for its operations.

The Committee reviewed and unanimously recommended 2007–08 expenditures of \$202,315, which included increases in the management fee, compliance, and research. Numerous alternative expenditure levels were discussed based upon the relative value of the research project to the onion industry. The assessment rate of \$0.03 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 5,775,000 fifty-pound equivalents for the 2007–08 fiscal period. The assessment rate should generate \$173,250 in income. Considering income from interest and assessments, total income will be approximately \$24,065 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2007–08 fiscal period could range between \$10.00 and \$28.00 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total grower revenue could range between .11 and .30 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the

meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 16, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on February 29, 2008 (73 FR 11060). Committee staff mailed copies of the proposed rule to all South Texas onion handlers and producers. In addition, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending March 17, 2008, was provided for interested persons to respond to the proposal. Two comments were received. One supported the proposed increase and one opposed the proposal.

The commenter in support of the assessment rate increase stated that the proposed increase is very modest in light of constantly increasing costs. The commenter noted that planted South Texas onion acreage remains volatile, but has shown an overall decline, which further impacts on the Committee's revenues.

The commenter opposing the increase did not state the reason why he was not in favor of the increase, only that it should remain the same. However, we believe that the assessment increase, as recommended by the Committee, is reasonable and necessary.

Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the

information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2007–08 fiscal period began on August 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this action which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in past fiscal periods. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2007, an assessment rate of \$0.03 per 50-pound equivalent is established for South Texas onions.

Dated: April 15, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1149 Filed 4–15–08; 12:13 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 250

[Docket No. DOT–OST–01–9325]

RIN No. 2105–AD63

Oversales and Denied Boarding Compensation

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT or Department) is amending its rules relating to oversales and denied boarding compensation to increase the limits on the compensation paid to “bumped” passengers, to cover flights by certain U.S. and foreign air carriers operated with aircraft seating 30 through 60 passengers, which are currently exempt from the rule, and to make other changes. These changes are intended to maintain consumer protection commensurate with developments in the aviation industry. This action is taken on the Department’s initiative and in response to a petition from the Air Transport Association.

DATES: This rule is effective May 19, 2008.

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Aviation Consumer Protection Division, Office of the General Counsel, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–5952 (voice), 202–366–5944 (fax), tim.kelly@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background

Part 250 establishes minimum standards for the treatment of airline passengers holding confirmed reservations on certain U.S. and foreign carriers who are involuntarily denied boarding (“bumped”) from flights that are oversold. In most cases, bumped passengers are entitled to compensation. Part 250 sets the minimum amount of compensation that is required to be provided to passengers who are bumped involuntarily. Until now the rule has not applied to flights operated with aircraft with a design capacity of 60 or fewer passenger seats.

In adopting the original rule in the 1960s, the Civil Aeronautics Board (CAB), the Department’s predecessor in aviation economic regulation, recognized the inherent unfairness in carriers selling more “confirmed” reservations for a flight than they have seats. Therefore, the CAB sought to reduce the number of passengers

involuntarily denied boarding to the smallest practicable number without prohibiting deliberate overbooking or interfering unnecessarily with the carriers’ reservations practices. Air travelers receive some benefit from controlled overbooking because it allows flexibility in making and canceling reservations as well as buying and refunding tickets. Overbooking makes possible a system of confirmed reservations that can almost always be honored. It allows airlines to fill more seats, reducing the pressure for higher fares, and makes it easier for people to obtain reservations on the flights of their choice. On the other hand, overbooking is the major cause of oversales, and the people who are inconvenienced are not those who do not show up for their flights, but passengers who have conformed to all carrier rules. The current rule allocates the risk of being denied boarding among travelers by requiring airlines to solicit volunteers and use a boarding priority procedure that is not unjustly discriminatory.

In 1981, the CAB amended the oversales rule to exclude from the rule all operations using aircraft with 60 or fewer passenger seats. (ER–1237, 46 FR 42442, August 21, 1981.) At the time of that proceeding, the impact of the rule on carriers operating small aircraft was found to be significant. If a passenger was denied boarding on a typical small-aircraft short-haul flight and subsequently missed a connection to a long-haul flight, the short-haul carrier usually had to compensate the passenger in an amount equal to twice the value of the passenger’s remaining ticket coupons to his or her destination, subject to a maximum limitation. For example, if the short-haul fare was \$50 and the connecting long-haul fare was \$500, the first carrier often had to pay the passenger denied boarding compensation in an amount far greater than \$50, depending on whether alternate transportation could be arranged to arrive within a short time, despite the minimal fare that the first carrier received for its flight. The problem was exacerbated by the fact that most commuter airline flights at the time were on small turboprop and piston engine aircraft which were affected by weight limitations in high temperature/humidity conditions to a greater extent than jets and, therefore, might require bumping even when the carrier did not book beyond the seating capacity of the aircraft.

Part 250 has tended to reduce passenger inconvenience and financial loss occasioned by overbooking without imposing heavy burdens on the airlines or significant costs on the traveling

public. In focusing only on the treatment of passengers whose boarding is involuntarily denied, we have avoided regulating carriers' reservations practices. Overall, it appears that the rule has served a useful purpose; however, in light of recommendations from various sources, including Congress, the Department's Inspector General, and major airlines themselves, we reviewed the rule and have decided to revise certain aspects of the rule that we believe are outdated. In view of the passage of time since the rule was last revised and changes in commercial air travel over that time, we have decided to increase the compensation maximums and extend the rule to cover a broader range of aircraft. The Department is also making certain other changes of lesser impact.

The Current Denied Boarding Compensation Rule

The purpose of the Department's denied boarding compensation rule is to balance the rights of passengers holding reservations with the desirability of allowing air carriers to minimize the adverse economic effects of "no-shows" (passengers with reservations who cancel or change their flights at the last minute, or who fail to appear and provide no notice). The rule sets up a two-part system. The first encourages passengers to voluntarily relinquish their confirmed reservations in exchange for compensation agreed to between the passenger and the airline. The second requires that, where there is an insufficient number of volunteers, passengers who are bumped involuntarily be given compensation in an amount specified in the rule. In addition, the Department requires carriers to give passengers notice of those procedures through signs and written notices provided with tickets and at airports, and to report the number of passengers denied boarding to the Department on a quarterly basis.

The Civil Aeronautics Board (CAB) first required payments to bumped passengers over 46 years ago. In Order No. E-17914, dated January 8, 1962, the CAB conditioned its approval of "no-show penalties" for confirmed passengers on a requirement that bumped passengers be compensated. An oversales rule was adopted in 1967 as 14 CFR Part 250 (ER-503, 32 FR 11939, August 18, 1967) and revised substantially in 1978 and 1982 after comprehensive rulemaking proceedings (ER-1050, 43 FR 24277, June 5, 1978 and ER-1306, 47 FR 52980, November 24, 1982, respectively). The key features of the current requirements are as follows:

(1) In the event of an oversold flight, the airline must first seek volunteers who are willing to relinquish their seats in return for compensation of the airline's choosing.

(2) If there are not enough volunteers, the airline must use non-discriminatory procedures ('boarding priorities') in deciding who is to be bumped involuntarily.

(3) Most passengers who are involuntarily bumped are eligible for denied boarding compensation, with the amount depending on the price of each passenger's ticket and the length of his or her delay. If the airline can arrange alternate transportation that is scheduled to arrive at the passenger's destination within 1 hour of the planned arrival time of the oversold flight, no compensation is required. If the alternate transportation is scheduled to arrive between 1 and 2 hours after the planned arrival time of the oversold flight (between 1 and 4 hours on international flights), the compensation equals 100% of the passenger's one-way fare to his or her next stopover or final destination, with a \$200 maximum. If the airline cannot meet the 2 (or 4) hour deadline, the compensation rate doubles to 200% of the passenger's one-way fare, with a \$400 maximum. This compensation is in addition to the value of the passenger's ticket, which he or she can use for alternate transportation or have refunded if not used.

Discussion

On July 10, 2007, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment on several issues associated with the oversales rule; see 72 FR 37491. We received over 1,280 comments in response to the ANPRM. About 20 of the comments were from organizations, with the rest from individuals. Most of the comments from the organizations, including those from air carriers and organizations representing air carriers, expressed the opinion that the rule serves a useful purpose and had benefited the industry and the public. Many of the individual comments did not express an opinion on the specific issues discussed in the ANPRM but rather urged that overbooking be banned, described their own negative air travel experiences, or commented on other issues (e.g., flight delays).

On November 20, 2007, the Department published a Notice of Proposed Rulemaking (72 FR 65237) in which we proposed several specific changes to the Oversales rule. We did not propose to ban overbooking as many individual commenters urged. As

indicated in the "Background" section above, air travelers receive some benefit from controlled overbooking. We are not aware of levels of consumer harm that require such a sweeping solution at this time, and we believe that the additional oversale protections that we are adopting here will address the principal issues related to this regulation that require action by the Department.

The issues that were presented in the NPRM and a summary of the comments appear below.

The Maximum Amount of Denied Boarding Compensation

It has been 25 years since the rule was last revised, and the existing \$200 and \$400 limits on the amount of required denied boarding compensation for passengers involuntarily denied boarding have not been raised since 1978. The Department has received recommendations from various sources that it reexamine its oversales rule and, in particular, the maximum amounts of compensation set forth in the rule. In this regard, in a sense-of-the-Senate amendment to the Department of Transportation and Related Agencies Appropriations Act of 2000, Public Law 106-69, the Senate noted its sense that the Department should amend its denied boarding rule to double the applicable compensation amounts. Legislation has also been introduced in Congress to require the Department to review the rule's maximum amounts of compensation. (See S. 319, reported in the Senate April 26, 2001.) In addition, in his February 12, 2000, Final Report on Airline Customer Service Commitments, the Department's Inspector General (IG) recommended, among other things, that the airlines petition the Department to increase the amount of denied boarding compensation payable to involuntarily bumped passengers. In response thereto, and citing the length of time since the maximum amounts of denied boarding compensation were last revised, the Air Transport Association (the trade association of the larger U.S. airlines) filed a petition with the Department on April 3, 2001, requesting that a rulemaking be instituted to examine those amounts.¹ (Docket DOT-OST-

¹ It is important to note that the maximum involuntary denied boarding amounts set forth in Part 250 are amounts below which carriers cannot set their maximum compensation. Airlines have been and continue to be free, as a competitive tool, to voluntarily set their maximum compensation levels at amounts greater than that provided in the Department's rule. With the exception of JetBlue Airways, whose recently changed policy is described below, we are not aware of any carrier that has elected to do so.

2001–9325.) More recently, the IG on November 20, 2006, issued his “Report on the Follow-up Review Performed of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment” in which he recommended that we determine whether the maximum denied boarding compensation (DBC) amount needs to be increased and whether the oversales rule needs to be extended to cover smaller aircraft.

The CAB’s decision in 1978 to double the maximum amount of denied boarding compensation to \$400 was based on its determination that the previous maximum was inadequate to redress the inconvenience to bumped passengers and that the increase would provide a greater incentive to carriers to reduce the number of persons involuntarily bumped from their flights. Following promulgation of the amendment to the rule in 1978 requiring the solicitation of volunteers and doubling the compensation maximum, the overall industry rate of involuntary denied boardings per 10,000 enplanements in fact declined for many years. Until 2007, the rate for the past decade has been slightly below the level of involuntary bumping reported 10 years ago. In this regard, 55,828 passengers were involuntarily bumped from their flights in 2006 on the 19 largest U.S. airlines (carriers whose denied boarding rate is tracked in the Department’s monthly Air Travel Consumer Report²). Additional passengers were bumped by other airlines, whose denied boarding rate is not tracked in this report but whose bumped passengers are subject to the compensation rates in the DOT rule. The annual rate of involuntary denied boardings per 10,000 enplanements for the carriers tracked in the report has increased in each of the past three years and in 2007 was at the highest level in the past ten years. Involuntary denied boarding rates from the Air Travel Consumer Report for that period appear below:

Year	Invol. DB's per 10,000 passengers
1997	1.06
1998	0.87
1999	0.88
2000	1.04
2001	0.82
2002	0.72

² This report tracks the denied boarding rate of air carriers that each account for at least 1% of domestic scheduled-service passenger revenues for the previous year. Consequently, the list of carriers whose performance is tracked in this report can change from year to year.

Year	Invol. DB's per 10,000 passengers
2003	0.86
2004	0.86
2005	0.89
2006	1.01
2007	1.12

Likely contributing to this upward trend is the fact that flights are fuller: from 1978 to 2006 the system-wide load factor (percentage of seats filled) for U.S. airlines increased from 61.5% to 79.2%, with most of this increase taking place since 1994. The most-recently reported monthly load factors have been in the mid-80% range.

With respect to the denied boarding compensation limits, inflation has eroded the value of the \$200 and \$400 limits that were established in 1978. Using the Consumer Price Index for All Urban Consumers (CPI-U, the basis for the inflation adjustor in the Department’s domestic baggage liability rule, 14 CFR 254.6), \$400 in 1978 was worth \$128 at the time of the NPRM (\$125 today). See the Bureau of Labor Statistics Inflation Calculator at <http://www.bls.gov/cpi/home.htm>. Stated another way, in order to have the same purchasing power today as in 1978, \$400 would have needed to be \$1,248 as of the time of the NPRM (\$1,272 today).

At the same time, however, air fares have not risen to the same extent as the CPI-U. While historical comparisons of air fares are problematic, one frequently-used index for changes in air fares is passenger yield. Yield is passenger revenue divided by revenue passenger miles—the revenue collected by airlines for carrying one passenger for one mile. According to the Air Transport Association, system-wide nominal yield (i.e., not adjusted for inflation) for all reporting U.S. air carriers was 8.29 cents per revenue passenger mile in 1978 and 12.69 cents per revenue passenger mile in 2006 (latest available data)—an increase of 53.1% from the 1978 figure.

Applying the CPI-U calculation to the current \$200 and \$400 DBC limits that were established in 1978 would have produced updated limits of \$624 and \$1,248, respectively, at the time of the NPRM. However, the NPRM noted that applying the 53.1% increase in passenger yield through 2006 to the current \$200 and \$400 limits would have produced updated limits of \$306 and \$612. It is important to note that the \$200 and \$400 figures in Part 250 are merely *limits* on the amount of denied boarding compensation required under the rule; the compensation *rate* is 100% or 200% of the passenger’s fare (depending on how long he or she was

delayed by the bumping). In the ANPRM, the Department requested comment on whether the maximums in the rule should be increased so that that a higher percentage of denied boarding compensation payments are not “capped” by the limits.

In the ANPRM the Department sought comment on five options with respect to the monetary limits on denied boarding compensation—increasing the limits based on the CPI-U or on the increase in fare yields, doubling the current limits, eliminating the limits (i.e., so there would be no cap on denied boarding compensation payments), or making no change to the current limits. In the NPRM the Department proposed to amend the oversales rule to double the limits on involuntary denied boarding compensation from \$200 to \$400 for passengers who are rerouted within two hours (four hours internationally) and from \$400 to \$800 for passengers who are not rerouted within these timeframes. As many commenters to the ANPRM pointed out, there is a significant air-fare component to the denied boarding compensation formula (100%/200% of the bumped passenger’s fare), and air fares have risen less than the CPI. As indicated above, system-wide nominal yield (not adjusted for inflation) for all reporting U.S. air carriers, which is a frequently used index for changes in air fares, was 8.29 cents per revenue passenger mile in 1978 and 12.69 cents per revenue passenger mile in 2006, an increase of 53.1%. Nonetheless, we did not propose the “fares/yield” option from the ANPRM as the sole method for updating the compensation caps.

Denied boarding compensation is intended in part to compensate for the passenger’s inconvenience, lost time, and lost opportunities. The value of these considerations is linked to general inflation as well as to the cost of air fares. Therefore, the arguments of the carrier organizations about the decline in real (i.e., inflation-adjusted) air fares during that period are somewhat off the mark, because consumers live with some of the consequences of denied boarding in today’s dollars, not 1978 dollars. As we indicated in the ANPRM, 30 years of inflation have taken their toll on the value of the existing limits. As noted above, \$400 in 1978 was worth \$128 at the time of the NPRM, based on the change in the CPI-U. Therefore, we proposed to base part of an increase in the compensation caps on the CPI-U.

By doubling the existing limits we would blend these two approaches. The limits proposed in the NPRM fall between the higher figures that would be produced by the CPI option and the

lower numbers that would result from the “fares/yield” option. We sought comment on this proposal, including any comments and justifications that were not already provided in response to the ANPRM about alternative amounts or methodologies.

It is important to note that this proposal concerning limits on compensation for involuntary denied boardings would not necessarily require carriers to offer more compensation to the great majority of passengers affected by overbooking because most such situations are handled through volunteers who agree to give up their seat in exchange for mutually-agreed compensation, typically at the departure gate. Nor would it affect the significant proportion of involuntarily bumped passengers—possibly the majority—with fares low enough that the formula for involuntary denied boarding compensation would not exceed the current limits. Finally, even with respect to involuntarily bumped passengers whose denied boarding compensation might increase with higher maximums, many such passengers accept a voucher for future travel on that airline (often in a face amount greater than the legally required denied boarding compensation) in lieu of a check. Carriers make such offers because vouchers do not entail the same cost as cash compensation given rates of non-use and inventory-management restrictions.

Comments

Our proposal to double the denied boarding compensation limits was endorsed by the American Society of Travel Agents (ASTA), the Airports Council International—North America (ACI-NA), the Aviation Consumer Action Project (ACAP), the Coalition for an Airline Passenger Bill of Rights (CAPBOR), Jet Airways (India), and all of the individuals who commented on this issue. ACAP also endorsed a minimum DBC amount of \$100. ASTA remarked that the reasoning in the Regulatory Evaluation is sound and suggested that for lengthy delays (e.g., next day), DBC should be higher, e.g., perhaps based on the CPI concept. ACI-NA asserted that incentives against unreasonable overbooking levels must remain effective because current high load factors make rerouting more difficult. The National Business Travel Association (NBTA) favored an increase in DBC limits but believed that the Department’s proposal did not go far enough—the Association noted that business travelers often pay high fares and book peak flights that it contended are more likely to be oversold and

consequently favored limits of \$400/\$800 (the NPRM proposal) or half of that passenger’s fare, whichever is higher. The Air Transport Association stated that it did not oppose the basic elements of the NPRM but had objections to certain proposals (see below) that were not related to the adjustment of the compensation limits.

The proposal to double the limits was opposed by most other organizations that commented on this issue. (No individual commenters opposed the proposal, although one felt that the limits should be removed altogether and several said that overbooking should be banned.) The Air Carrier Association of America (ACAA) stated that the increased limits are unfair to smaller carriers that have fewer rerouting options that would permit them to limit DBC to the 100% rate. ACAA said that the limits should be increased no more than 25%, although it gave no basis for this figure. The Regional Airline Association (RAA) said that involuntary denied boardings are rare and the current system is working, but if the limits are increased the adjustment should be based on historical increases in fares/yield rather than \$400/\$800. The National Air Carrier Association said that the limits should be increased only for carriers that consistently bump a high number of passengers. Delta Air Lines stated that there is no justification for an increase in the limits, but echoed RAA’s contention (as did China Eastern Airlines) that any increase that does take place should be based on increases in fares rather than the \$400/\$800 proposal. Philippine Airlines wanted an increase of no more than 10%.

Response to Comments

After careful consideration of all of the comments, we have decided to double the current DBC limits as proposed. The limits have not been adjusted in nearly 30 years, and the purchasing power of the limits has eroded. Air fares have increased by more than 50% in that time, and thus a higher percentage of bumped passengers is undoubtedly having their DBC capped at a figure lower than the 100% or 200% DBC rate. The Department has been urged to reexamine the limits by the Senate, the Department’s Inspector General, and the airlines themselves (see ATA’s petition for rulemaking in this proceeding). As ACI-NA noted in its comments, unrealistic deterrents in the rule could produce more oversales—and indeed the rate of involuntary denied boardings has increased 30% in the past three years. Carriers whose schedules make it difficult to reroute passengers in time to

limit DBC to the 100% rate are nonetheless in control of their overbooking rates and of the attractiveness of the compensation that they offer to prospective volunteers. With respect to the comments that urge us to base the increase in the limits solely on the increase in fares/yields, as noted above, denied boarding compensation is intended in part to compensate for the passenger’s inconvenience, lost time, and lost opportunities, and the value of these considerations is linked to general inflation as well as to the cost of air fares.

The Small-Aircraft Exclusion

The oversales rule originally issued by the CAB did not contain an exclusion for small aircraft. In 1981 that agency amended Part 250 to exclude operations with aircraft seating 60 or fewer passengers. The CAB determined that without this exclusion the denied boarding rule imposed a proportionately greater financial and operational burden on these small-aircraft operators than on carriers operating larger aircraft. In addition, because of the lower revenues generated by these small aircraft, the financial burden of denied boarding compensation placed certificated carriers operating aircraft with 60 or fewer seats at a competitive disadvantage relative to commuter carriers (non-certificated) operating similar equipment and on similar routes which were not subject to Part 250. The number of flights that was excluded by the amendment was small and most such flights were operated by small carriers that operated small aircraft exclusively. Thus, Part 250 currently applies to certificated U.S. carriers and foreign carriers holding a permit, or exemption authority, issued by the Department, only with respect to operations performed with aircraft seating more than 60 passengers.

The majority of the aircraft operated by the regional airline industry have 60 or fewer seats and thus are exempt from the denied boarding rule. However, this sector has experienced tremendous growth. According to the Regional Airline Association³, passenger enplanements on regional carriers have increased more than 100% since 1995, and regional airlines now carry one out of every five domestic air travelers in the United States. RAA states that revenue passenger miles on regional carriers have increased 40-fold since 1978 and increased 17 percent from 2004 to 2005 alone. As noted in the NPRM, regional jets have fueled much

³ See <http://www.raa.org>.

of the recent growth. According to RAA, from 1989 to 2004 the number of turbofan aircraft (regional jets) in the regional-airline fleet increased from 54 to 1,628 and regional jets now make up 59% of the regional-carrier fleet. Although many regional jets have more than 60 passenger seats and thus are subject to Part 250, the ubiquitous 50-seat and smaller regional jet models have driven much of the growth of the regional-carrier sector. Moreover, most regional jets are operated by regional carriers affiliated with a major carrier via a code-share agreement, a fee-for-service arrangement, and/or an equity stake in the regional carrier. RAA asserts that 99% of regional airline passengers traveled on code-sharing regional airlines in 2005.

DOT statistics also demonstrate the growth in traffic on flights operated by aircraft with 31 through 60 seats. From the fourth quarter (4Q) of 2002 (earliest available consistent data) to 4Q2006, the number of flights using aircraft with 31 through 60 seats increased by 13.5% while the number of flights using aircraft with more than 60 seats rose only 3.4%. The number of passengers carried on flights using aircraft with 31 through 60 seats increased by 34.9% from 4Q 2002 through 4Q 2006, while the number of passengers carried on flights using aircraft with more than 60 seats rose by only 12.1% during that period.⁴

As noted in the NPRM, the increased use of jet aircraft in the 30-to-60 seat sector accompanied by the increase in the “branding” of those operations with the codes and livery of major carriers has blurred the distinction between small-aircraft and large-aircraft service in the minds of many passengers. There would seem to be little, if any, difference to a consumer bumped from a small aircraft or a large aircraft—the effect is the same. Therefore, the NPRM proposed to extend the applicability of the oversales rule to flights using aircraft having 30 or more seats.

Comments

This proposal was supported by the ACAA, NBTA, ACI-NA, and by the two individuals who commented on this issue. ACAA stated that the current exclusion for these aircraft is unfair to smaller carriers that do not have aircraft of a size that benefit from the exclusion. The initiative was opposed by RAA, Delta Air Lines, and Peninsula Airways. RAA said that the proposal would have disparate cost impact on regional carriers that cannot always raise fares due to competition from automobiles.

RAA asserted that cost increases will cause marginal routes to be dropped, reducing competition and leaving some small points without service. The organization was concerned that DBC on connecting flight may exceed a regional carrier's fare. It noted that the small aircraft and short runways frequently used by regional carriers cause seats to be figuratively “roped off” (i.e., to have to exclude passengers from those seats) for safety-related weight/balance reasons more frequently than is the case for larger aircraft, but under the current rule DBC must still be paid. Delta also noted this latter issue and suggested that if this proposal is finalized, the Department should amend the “substitution of equipment” exception to DBC to include passengers bumped as a result of the need to limit payload for safety-related weight/balance reasons.

Peninsula Airways (an Alaskan operator) stated that aircraft with less than 35 seats should remain excluded from the rule, but if the proposal to include aircraft with 30–60 seats is adopted, the rule should exclude commuter operations with propeller aircraft solely within the state of Alaska. This would capture regional jets, the commenter noted, while maintaining the current relief for small turboprops. Peninsula contended that this is justified for the same reasons that CAB originally excluded aircraft with 60 seats or less. Peninsula also disputed the statement in the NPRM that on a codeshare “the major carrier is responsible for providing denied boarding compensation on the flights of the smaller carrier.” Peninsula says that this is true only on fee-for-service arrangements, and Peninsula uses a pro-rate system.

Response to Comments

For the reasons described above, we are extending the applicability of the oversales rule to flights using aircraft with 30 or more passenger seats. Since the time that the CAB exempted this sector of the industry from the rule in 1981, the vast majority of operations at this level has become affiliated and integrated with the “brand” of a major carrier. In recent times, aircraft with 30 through 60 seats (to a large extent regional jets) have been substituted for larger airplanes on numerous routes. The great majority of the traffic that would be covered by this initiative is carried by airlines that are owned by or affiliated with a major carrier or its parent company. In its comments on the ANPRM, JetBlue asserted that 57% of the flights operated in August 2007 for American, Continental, Delta, Northwest, United and U.S. Airways

were on regional jets. Some of those regional jets no doubt have more than 60 seats and thus are already subject to the oversales rule, but many are not. In its comments on the ANPRM, ACAA provided data showing that regional jets account for half or nearly half of all departures at most hub airports.

A significant amount, if not most, of the service on small-aircraft flights operated for major carriers is provided under a “fee-for-service” arrangement such as Peninsula Airways referred to, where a major carrier dictates the market, the schedule, and the price of the flight. Under such an arrangement the tickets are not sold under the regional carrier's code, so that the passenger's contract of carriage covering the transportation is solely with the major carrier. In such circumstances, the flights are for purposes relevant to this rule flights of the major carrier, not the regional airline, in which case the major carrier is responsible for providing denied boarding compensation on the flights of the smaller carrier.

As a result of changes in the marketplace, we now believe that consumers who purchase transportation in this aircraft class are entitled to the protections of the oversales rule. Carriers that use small aircraft to operate flights for a major carrier can protect themselves contractually by negotiating a mutually acceptable sharing of risk with the major airline. However, we are sensitive to the operational challenges faced by operators of aircraft with 30 through 60 seats. As certain commenters noted, these aircraft are more susceptible than larger airplanes to the need to limit payload in certain situations, typically hot weather, especially at higher altitudes. These situations, which cannot be reliably forecast when reservations are being taken weeks and months in advance, sometimes cause passengers to have to be bumped. Consequently, as suggested by Delta, we will revise the existing DBC exception in our oversales rule for substitution of aircraft of lesser capacity to include situations where the aircraft is not substituted, but payload must be limited for safety reasons and passengers are bumped as a result. We expect carriers to keep adequate records that will demonstrate the legitimate use of this exception to DBC when it is employed. Consistent with our obligations under the Regulatory Flexibility Act to assess the impact of rules on operators of aircraft having 60 or fewer seats (see 14 CFR 399.73), this new relief will be limited to flights operated with aircraft having 60 or fewer seats. Larger aircraft are affected by unpredictable payload restrictions

⁴ DOT Form 41, schedule T–100.

less often, and operators of those aircraft are not the subject of the Regulatory Flexibility Act.

We will not exempt flights using aircraft with less than 35 seats or commuter-carrier operations using propeller aircraft solely within the state of Alaska, as was suggested by Peninsula Airways. We believe that carriers serving Alaska have sufficient experience with the operational considerations in that environment to be able to implement overbooking practices that do not expose the carrier to undue risk, and we are reluctant to deny Alaskan travelers the benefits of the rule. The new exemption for denied boardings caused by safety-related payload restrictions on flights using aircraft with 60 or fewer seats (see above) should address many of the situations about which Peninsula was concerned.

Boarding Priorities

Boarding priority rules determine the order in which various categories of passengers will be involuntarily bumped when a flight is oversold. Part 250 states that boarding priority rules must not provide any undue or unreasonable preference. The IG in his 2000 report identified possible ambiguities in the Department's requirements regarding boarding priority rules, and he recommended that we provide examples of what we consider to be an undue or unreasonable preference. The IG was also concerned that the amounts of compensation provided passengers who are involuntarily bumped was in some cases less than the face value of vouchers given to passengers who volunteer to give up their seats. He therefore recommended, in addition to raising the maximum compensation amounts for involuntarily bumped passengers, as discussed above, that we require carriers to disclose orally to passengers, at the time the airline makes an offer to volunteers, what the airline is obligated to pay passengers who are involuntarily bumped.

Our boarding priority requirement was designed to give carriers the maximum flexibility to set their own procedures at the gate, while affording consumers protection against unfair and unreasonable practices. Thus, the rule (1) requires that airlines establish their own boarding priority rules and criteria for oversale situations consistent with Part 250's requirement to minimize involuntary bumpings and (2) states that those boarding priority rules and criteria "shall not make, give, or cause any undue or unreasonable preference or advantage to any particular person or

subject any particular person to any unjust or unreasonable prejudice or disadvantage in any respect whatsoever." (14 CFR 250.3(a))

Although we are not aware of any problems resulting from this rule as written, we agree that guidance regarding this provision would be useful to the industry and public alike. In the NPRM we requested comment on whether the Department should list in the rule, as examples of permissible boarding priority criteria, the following:

- A passenger's time of check in (first-come, first-served);
- Whether a passenger has a seat assignment before reaching the departure gate for carriers that assign seats;
- A passenger's fare;
- A passenger's frequent flyer status; and
- Special priorities for passengers with disabilities, within the meaning of 14 CFR Part 382, or for unaccompanied minors.

We stated that the five examples proposed here are illustrative only, and not exclusive. We did not intend by these examples to foreclose the use by carriers of other boarding priorities that do not give a passenger undue preference or unjustly prejudice any passenger.

Comments

Philippine Airlines and ACI-NA favored the proposal. RAA said that it is not necessary but that the organization did not oppose it. ASTA opposed the proposal, stating that passengers with low fares or no frequent-flyer miles on that carrier are no less inconvenienced by bumping and should not be singled out.

Response to Comments

For the reasons described above, we will adopt this proposal. With respect to ASTA's comment, airlines set their own boarding priorities and the longstanding ability of airlines to have boarding priorities based on passengers' fares or frequent-flyer status is not at issue in this proceeding. Airlines have had such boarding priorities for years, and the Department has not found this to be inconsistent with the mandate in section 14 CFR 250.3(a) described above. The proposal in this proceeding is simply intended to clarify and provide improved access to this policy by including it in the rule.

Notice to Volunteers

Accurately notifying passengers of their rights in an oversale situation is important, so that they can make an informed decision. Part 250 already

contains requirements designed to accomplish that objective and to protect passengers from being involuntarily bumped if they have not been accorded adequate notice. Section 250.2b(b) prohibits a carrier from denying boarding involuntarily to any passenger who was earlier asked to volunteer without having been informed about the danger of being denied boarding involuntarily and the amount of compensation that would apply if that occurred. While this provision would appear to provide adequate incentive for airlines to provide complete notice to passengers who are asked to volunteer, and to protect those passengers not provided such notice, we saw some merit in the suggestion to make this notice requirement more direct. Accordingly, in the NPRM we sought comment on whether we should amend section 250.2b to affirmatively require that, no later than the time a carrier asks a passenger to volunteer, it inform that person whether he or she is in danger of being involuntarily bumped and, if so, the compensation the carrier is obligated to pay.

Comments

RAA and ATA strongly objected to this proposal. Both organizations said that it is unrealistic and would impede passenger processing at airports without providing any consumer benefit. RAA asserted that it would be highly burdensome to determine the risk to each prospective volunteer of being bumped involuntarily and would increase delays at the gate. Most carriers make general announcements rather than soliciting individual passengers, RAA claimed, and individual pre-solicitation notice is impossible in those circumstances. ATA said that volunteers have already decided to give up their reservation in exchange for the offered compensation, and the risk of being bumped is irrelevant.

The Aviation Consumer Action Project said that potential volunteers should be given a written statement summarizing the DOT rule, with monetary penalties payable to the passenger if this is not done.

There were no individual consumer comments on this issue.

Response to Comments

For the reasons summarized above, and consistent with the recommendation of the IG, we will finalize the proposal. Commenters' concerns about the practicality of the provision appear to result from a misunderstanding of what we proposed. Informing a prospective volunteer "whether he or she is in danger of being

involuntarily denied boarding” need not entail a precise calculation of the probability of that person being involuntarily bumped. Carriers may still make general announcements seeking volunteers and, if the need arises to accept the offer of any of those who indicate a willingness to volunteer, it would be sufficient for a carrier to tell a volunteer just before handing him or her the volunteer compensation that there is a reasonable chance that he or she may have been bumped involuntarily (if that is true), and if that were to be the case the compensation would be \$X. The oversales regimen relies in large part on consumers being able to make informed decisions and this is no more than what is required under the current rule.

Reporting

Section 250.10 of the current rule requires all carriers that are subject to Part 250 to file a quarterly report (Form 251) on oversale activity. Due to staffing limitations, for many years the only carriers whose oversale data have been routinely reviewed, entered into an automated system, or published by the Department are the airlines that are subject to the on-time performance reporting requirement. Those are the U.S. carriers that each account for at least 1 percent of total domestic scheduled-service passenger revenues—currently 20 airlines (see 14 CFR 234). For a current list of these carriers, see the Department’s *Air Travel Consumer Report* at <http://airconsumer.ost.dot.gov/reports/index.htm>. This report provides data for these airlines in four areas: On-time performance, baggage mishandling, oversales, and consumer complaints. The oversale data for that report are derived from the Form 251 reports mandated by Part 250. The data in the Form 251 reports filed by the other carriers is not keypunched, summarized, published, or routinely reviewed.

In the NPRM the Department proposed to revise section 250.10 to relieve all carriers of this reporting requirement except for the airlines whose data is being used, i.e., U.S. carriers reporting on-time performance under Part 234. Those airlines account for the vast majority of domestic traffic and bumpings, so the Department would still receive adequate information and the public would continue to have access to published data for the same category of carriers as before. Such action would be consistent with the Paperwork Reduction Act and the Regulatory Flexibility Act. It would also result in consistent carrier reporting

requirements for all four sections of the Air Travel Consumer Report.

Comments

Three airlines and two airline associations commented on this issue; all of them favored the proposal.

Response to Comments

For the reasons summarized above, we will revise the rule to relieve all carriers of this reporting requirement except for “reporting carriers” as defined in 14 CFR 234.2 and any carrier that voluntarily submits data pursuant to section 234.7 of that part. At the present time this is 20 airlines. The carriers that are being relieved of this requirement need not file a Form 251 report for the quarter during which this amendment goes into effect.

All other comments on the various issues in this proceeding were beyond the scope of the NPRM.

Overbooking Notice

Section 250.11 specifies the text of a notice that carriers must use on signs at ticket-selling locations and in notices accompanying tickets to disclose overbooking and describe denied boarding procedures. One portion of this notice states that there are exceptions to the requirement to pay denied boarding compensation. In the NPRM we proposed to revise that section of the notice to state that failing to comply with the carrier’s check-in deadline is one such exception and to require carriers to either include their check-in deadline in the notice or state in the notice that the airline’s check-in deadline is available upon request from the carrier.

Comments

The Air Transport Association objected to this proposal. It said that check-in times can vary, especially between domestic and international operations; that the information is available on carriers’ Web sites; that air travelers have become used to checking in early since 9/11; and that most of the notices would be displayed at airports and by the time a traveler sees the notice at the airport it is too late.

Response to Comments

We have decided to finalize the proposal. We believe that it is important for consumers to be aware that missing the carrier’s check-in deadline disqualifies them from eligibility for denied boarding compensation if they should be involuntarily denied boarding. A great deal of consumer information is available on carrier Web sites, but this does not obviate the

usefulness of affirmatively pointing out key information in notices of this type. Airlines that find it burdensome to include their specific check-in deadline(s) in the notice can simply state that the deadlines are available from the carrier upon request, as stated in the NPRM. Finally, this revised notice is not limited to airports; pursuant to section 250.11(b) of the existing rule (which is not being revised), the sec. 250.11(a) notice described in the NPRM must also accompany tickets.

Technical Changes

We are revising the definition of “Carrier” in section 250.1 to (1) explicitly include commuter air carriers (with respect to the extension of the rule to flights using aircraft with 30 through 60 seats), (2) remove citations to the Federal Aviation Act, a statute that no longer exists under that name, and (3) reduce the range of sections cited in this definition as the source of DOT authority for foreign air carriers to the one section that is most applicable. (The other sections cited in the foreign-carrier citation are procedural in nature and are not necessary in this definition.)

Regulatory Notices

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

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order. A discussion of possible costs and benefits of the proposed rule is presented in the preamble and in the accompanying Regulatory Evaluation, a copy of which has been placed in the docket. The Regulatory Evaluation concluded that the benefits of the rule appear to exceed the costs. It noted that the absolute number of involuntary denied boardings, the rate of such denied boardings per 10,000 enplanements and the ratio of involuntary to voluntary denied boardings have all increased substantially in recent years, suggesting that the 30-year-old caps on involuntary denied boarding compensation that are being updated here have been encouraging carriers to resort to involuntary denied boardings more frequently. The average one-way fare (all domestic and international flights) was \$232 in the 2nd Quarter of 2007, above the \$200 compensation limit that pertains to the 2-hour deadline. Due to the regulatory caps on denied boarding

compensation, a passenger flying at or above an above-average fare will not receive the full amount of compensation derived from the fare-based formula in the rule. Similarly, the air carriers are not subject to the disincentive of the loss of a higher-than-average fare if a passenger is bumped.

The added cost of doubling of the denied boarding compensation caps would be approximately four cents per passenger even if every single passenger who is involuntarily denied boarding receives the maximum compensation (which is not the case). The monetary cost for this option would result in a corresponding dollar-for-dollar monetary benefit for the bumped passengers. It is not expected that an additional four-cent charge on a \$200 ticket would make a material difference in ticket demand or air carrier net revenues from ticket sales.

B. Executive Order 13132 (Federalism)

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This amendment does not: (1) Have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on State and local governments; or (3) preempt state law because states are already preempted from regulating in this area under the Airline Deregulation Act (ADA), 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because nothing in this rule would significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. Certain elements of this rule may impose new requirements on certain

small air carriers, but the Department believes that the economic impact will not be significant. All air carriers have control over the extent to which the rule impacts them because they control their own overbooking rates. Carriers can mitigate the cost of denied boarding compensation by obtaining volunteers who are willing to give up their seat for less (or different) compensation than what the rule mandates for passengers who are bumped involuntarily, and by offering travel vouchers in lieu of cash compensation.

The vast majority of the traffic that will be covered by the oversales rule for the first time as a result of this amendment is carried by airlines that are owned by or affiliated with a major carrier or its parent company. Moreover, a significant amount, if not most, of the service on such flights is provided under a "fee-for-service" arrangement, where a major carrier dictates the market, the schedule, and the price of the flight. Under such an arrangement the tickets are not sold under the regional carrier's code, so that the passenger's contract of carriage covering the transportation is solely with the major carrier. In such circumstances, the flights are, for all legal and practical purposes, flights of the major carrier, not the regional airline, in which case the major carrier is responsible for providing denied boarding compensation on the flights of the smaller carrier. The monetary costs of most of these options result in a corresponding dollar-for-dollar monetary benefit for members of the public who are bumped from their confirmed flights and for small businesses that employ some of them. The options provide an economic incentive for carriers to use more efficient overbooking rates that result in fewer bumpings while still allowing the carriers to fill seats that would go unsold as the result of "no-show" passengers. At the same time, this final rule provides that the oversales requirements will not apply when a passenger is denied boarding on an aircraft with a designed capacity of 30 through 60 passenger seats due to a need to reduce the number of passengers for safety purposes (e.g., weight/balance, maximum takeoff weight). This exemption greatly reduces the financial burden of the oversales rule on operators of small aircraft, whether by small entities (who by definition only operate aircraft of 60 seats or fewer) or other carriers. This is particularly true with respect to events that are not easy to predict at the time reservations are taken (e.g., hot weather)

that affect safety-related payload limits. Finally, it is worth noting that one provision in this Final Rule relieves an existing reporting requirement for all but the largest carriers. For all these reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

DOT has long-standing OMB clearance for the reporting requirements in Part 250 (OMB No. 2138-0018). Prior to issuance of this final rule, we estimated a reporting burden of 1600 hours annually for 40 U.S. carriers and 600 hours annually for 100 foreign carriers. This final rule is reducing reporting requirements so that only 20 U.S. carriers will continue to report denied boarding information for a total of 800 hours annually. We will modify our paperwork inventory for this rule accordingly.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

List of Subjects in 14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, we amend 14 CFR Part 250 as follows:

PART 250—[AMENDED]

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 417.

■ 2. In § 250.1 the definition for "Large aircraft" is removed and the definition for "Carrier" is revised to read as follows:

§ 250.1 Definitions.

* * * * *

Carrier means: (1) a direct air carrier, except a helicopter operator, holding a certificate issued by the Department of Transportation pursuant to 49 U.S.C. 41102 or that has been found fit to conduct commuter operations under 49 U.S.C. 41738, or an exemption from 49 U.S.C. 41102, authorizing the scheduled transportation of persons; or (2) a foreign air carrier holding a permit issued by the Department pursuant to 49 U.S.C. 41302, or an exemption from that provision, authorizing the scheduled foreign air transportation of persons.

* * * * *

■ 3. Section 250.2 is revised to read as follows:

§ 250.2 Applicability.

This part applies to every carrier, as defined in § 250.1, with respect to scheduled flight segments using an aircraft that has a designed passenger capacity of 30 or more passenger seats, operating in (1) interstate air transportation or (2) foreign air transportation with respect to nonstop flight segments originating at a point within the United States.

■ 4. In § 250.2b, paragraph (b) is amended by removing the last sentence and by adding a new first sentence to read as follows:

§ 250.2b Carriers to request volunteers for denied boarding.

* * * * *

(b) Every carrier shall advise each passenger solicited to volunteer for denied boarding, no later than the time the carrier solicits that passenger to volunteer, whether he or she is in danger of being involuntarily denied boarding and, if so, the compensation the carrier is obligated to pay if the passenger is involuntarily denied boarding. * * *

■ 5. In § 250.3 paragraph (b) is added to read as follows:

§ 250.3 Boarding priority rules.

* * * * *

(b) Boarding priority factors may include, but are not limited to, the following:

- (1) A passenger's time of check-in;
- (2) Whether a passenger has a seat assignment before reaching the departure gate for carriers that assign seats;
- (3) The fare paid by a passenger;
- (4) A passenger's frequent-flyer status; and
- (5) A passenger's disability or status as an unaccompanied minor.

■ 6. Section 250.5(a) is revised to read as follows:

§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

(a) Subject to the exceptions provided in § 250.6, a carrier to whom this part applies as described in § 250.2 shall pay compensation to passengers denied boarding involuntarily from an oversold flight at the rate of 200 percent of the fare (including any surcharges and air transportation taxes) to the passenger's next stopover, or if none, to the passenger's final destination, with a maximum of \$800. However, the compensation shall be one-half the amount described above, with a \$400 maximum, if the carrier arranges for comparable air transportation [see § 250.1], or other transportation used by

the passenger that, at the time either such arrangement is made, is planned to arrive at the airport of the passenger's next stopover, or if none, the airport of the passenger's final destination, not later than 2 hours after the time the direct or connecting flight from which the passenger was denied boarding is planned to arrive in the case of interstate air transportation, or 4 hours after such time in the case of foreign air transportation.

* * * * *

■ 7. Section 250.6(b) is revised to read as follows:

* * * * *

(b) The flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger because of substitution of equipment of lesser capacity when required by operational or safety reasons; or, on an aircraft with a designed passenger capacity of 60 or fewer seats, the flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger due to weight/balance restrictions when required by operational or safety reasons;

* * * * *

■ 8. Section 250.9(b) is revised to read as follows:

§ 250.9 Written explanation of denied boarding compensation and boarding priorities.

* * * * *

(b) The statement shall read as follows:

Compensation for Denied Boarding

If you have been denied a reserved seat on (name of air carrier), you are probably entitled to monetary compensation. This notice explains the airline's obligation and the passenger's rights in the case of an oversold flight, in accordance with regulations of the *U.S. Department of Transportation*.

Volunteers and Boarding Priorities

If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until airline personnel first ask for volunteers who will give up their reservation willingly, in exchange for a payment of the airline's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily in accordance with the following boarding priority of (name of air carrier): (In this space the carrier inserts its boarding priority rules or a summary thereof, in a manner to be

understandable to the average passenger.)

Compensation for Involuntary Denied Boarding

If you are denied boarding involuntarily, you are entitled to a payment of "denied boarding compensation" from the airline unless: (1) you have not fully complied with the airline's ticketing, check-in and reconfirmation requirements, or you are not acceptable for transportation under the airline's usual rules and practices; or (2) you are denied boarding because the flight is canceled; or (3) you are denied boarding because a smaller capacity aircraft was substituted for safety or operational reasons; or (4) on a flight operated with an aircraft having 60 or fewer seats, you are denied boarding due to safety-related weight/balance restrictions that limit payload; or (5) you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or (6) the airline is able to place you on another flight or flights that are planned to reach your next stopover or final destination within one hour of the planned arrival time of your original flight.

Amount of Denied Boarding Compensation

Passengers who are eligible for denied boarding compensation must be offered a payment equal to their one-way fare to their destination (including connecting flights) or first stopover of four hours or longer, with a \$400 maximum. However, if the airline cannot arrange "alternate transportation" (see below) for the passenger, the compensation is doubled (\$800 maximum). The fare upon which the compensation is based shall include any surcharge and air transportation tax.

"Alternate transportation" is air transportation (by any airline licensed by DOT) or other transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next scheduled stopover of 4 hours or longer or, if none, the passenger's final destination, no later than 2 hours (for flights between U.S. points, including territories and possessions) or 4 hours (for international flights) after the passenger's originally scheduled arrival time.

Method of Payment

Except as provided below, the airline must give each passenger who qualified for involuntary denied boarding

compensation a payment by cash or check for the amount specified above, on the day and at the place the involuntary denied boarding occurs. If the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment shall be sent to the passenger within 24 hours. The air carrier may offer free or discounted transportation in place of the cash payment. In that event, the carrier must disclose all material restrictions on the use of the free or discounted transportation before the passenger decides whether to accept the transportation in lieu of a cash or check payment. The passenger may insist on the cash/check payment or refuse all compensation and bring private legal action.

Passenger's Options

Acceptance of the compensation may relieve (name of air carrier) from any further liability to the passenger caused by its failure to honor the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

■ 9. In § 250.10, remove the word "carrier" and replace it with the phrase "reporting carrier as defined in 14 CFR 234.2 and any carrier that voluntarily submits data pursuant to § 234.7 of that part."

■ 10. Section 250.11(a) is revised to read as follows:

§ 250.11 Public disclosure of deliberate overbooking and boarding procedures.

(a) Every carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States which is in the charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers, a sign located so as to be clearly visible and clearly readable to the traveling public, which shall have printed thereon the following statement in boldface type at least one-fourth of an inch high:

Notice—Overbooking of Flights

Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for compensation of the airline's choosing. If there are not enough

volunteers, the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions, including failure to comply with the carrier's check-in deadline (carrier shall insert either "of ___ minutes prior to each flight segment" or "(which are available upon request from the air carrier)" here), persons denied boarding involuntarily are entitled to compensation. The complete rules for the payment of compensation and each airline's boarding priorities are available at all airport ticket counters and boarding locations. Some airlines do not apply these consumer protections to travel from some foreign countries, although other consumer protections may be available. Check with your airline or your travel agent.

* * * * *

Issued this 14th day of April, 2008, at Washington, DC.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 08-1145 Filed 4-16-08; 9:08 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 748 and 774

[Docket No. 080307395-8515-01]

RIN 0694-AE32

Technical Corrections to the Export Administration Regulations Based Upon a Systematic Review of the CCL

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to make various technical corrections and clarifications to the EAR as a result of a systematic review of the Commerce Control List (CCL) that was conducted by the Bureau of Industry and Security (BIS). This rule is the first phase of the regulatory implementation of the results of a review of the CCL that was conducted by BIS starting in 2007. The BIS CCL review benefited from input received from BIS's Technical Advisory Committees (TACs) and comments that were received from the interested public in response to the publication of a BIS notice of inquiry on July 17, 2007 (72 FR 39052).

DATES: *Effective Date:* This rule is effective: April 18, 2008. Although there is no formal comment period, public

comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694-AE32, by any of the following methods:

E-mail: publiccomments@bis.doc.gov
Include "RIN 0694-AE32" in the subject line of the message.

Fax: (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

Mail or Hand Delivery/Courier:
Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694-AE32.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to David.Rostker@omb.eop.gov, or by fax to (202) 395-7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.* RIN 0694-AE32)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT:

Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce; by telephone: (202) 482-2440; or by fax: 202-482-3355.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the Export Administration Regulations (EAR) to make various technical corrections and clarifications to the EAR as a result of a systematic review of the Commerce Control List (CCL) that was conducted by the Bureau of Industry and Security (BIS) beginning in 2007. This rule is the first phase of the regulatory implementation of the results of that review. This rule focuses on making needed technical corrections and clarifications to the CCL. The BIS CCL review benefited from input received from BIS's Technical Advisory Committees (TACs) and public comments received in response to a BIS notice of inquiry (July 17, 2007, 72 FR 39052).

BIS intends to publish another rule later this year that will implement the

second phase of the regulatory implementation of the results of that systematic review of the CCL. That rule is tentatively titled, "Revisions to the Export Administration Regulations based upon a Systematic Review of the Commerce Control List" (RIN: 0694-AE33). That second rule will include substantive changes to the CCL.

As a part of the implementation phase of the CCL review, the agency is also taking other non-regulatory actions to improve the public's understanding of the CCL. These BIS actions involve publishing certain advisory opinions and creating new web guidance to provide greater clarity to exporters and reexporters regarding existing provisions of the CCL. BIS has also created a new process whereby BIS has stated its intention to conduct similar types of systematic reviews of the CCL in the future in order to continuously improve the CCL.

This rule makes the following technical revision to the Export Administration Regulations (EAR):

In Supplement No. 1 to Part 748 (BIS-748P, BIS-748P-A; Item Appendix, and BIS-748P-B; End-User Appendix; Multipurpose Application Instructions), this rule amends the instructions for "Block 6: Documents submitted with application", to provide guidance to applicants who wish to include foreign availability support material for items not controlled for national security reasons. This new instruction guidance under Block 6 explains the procedure applicants should follow for submitting this information. The purpose of submitting this foreign availability information would be to make the U.S. Government more aware of the foreign availability of items not controlled for national security reasons.

In addition, this rule makes the following technical revisions to the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR):

(1) This rule revises the "Related Controls" paragraphs in the following twenty-four CCL entries: 0A018, 1A001, 1A003, 1A005, 1C004, 1C006, 1C008, 1C009, 1C011, 1C012, 1D001, 1D018, 1E002, 2A983, 2B004, 2B005, 2E101, 2E201, 3A002, 3B002, 3B992, 3D002, 4D003, and 5E002 by adding additional related controls references or making changes for greater specificity for the related controls references. BIS includes related controls references in CCL entries to assist exporters in classifying items on the CCL and in some cases provides cross-references for items that are listed on the CCL, but are under the export control jurisdiction of other U.S. Government agencies. Several of the public comments received by BIS, as a part of the CCL review process, requested that BIS add these types of additional related controls

references to better assist the public in classifying their items using the CCL.

(2) This rule is also amending the "Unit" paragraph in the following fourteen CCL entries: 1B003, 2B001, 2B003, 2B004, 4A001, 4A003, 4A004, 5B001, 6A002, 6A004, 6A005, 8A001, 9A004, and 9B009. Several of the comments received by BIS, as a part of the CCL review process, requested that changes be made to the "Unit" paragraphs of certain CCL entries, so that the unit of measurement in the "Unit" paragraphs would conform to standard quantities for the items controlled in those respective CCL entries. BIS agreed that these technical corrections should be made to the CCL in order to ensure that the "Unit" paragraphs conformed with the items controlled in those CCL entries.

(3) In three CCL entries, 6D003, 8D001 and 8E001, this rule removes outdated references in the "License Exceptions" section of each of these CCL entries that had incorrectly referred to License Exception TSR non-availability for items under those CCL entries controlled for Missile Technology (MT) reasons. None of these three CCL entries is controlled for MT reasons, so the reference to the restriction on the use of License Exception TSR in these CCL entries is outdated and confusing. This rule corrects that by removing the outdated reference to the MT restriction in each of these CCL entries.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2007, 72 FR 46137 (August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to

waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. The changes made by this rule are not substantive changes, but rather are updates to cross-references, conformance of units of measure to item descriptions, and removal of outdated references. This rule does not alter any right, obligation or prohibition that applies to any person under the Export Administration Regulations (EAR). Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 748 and 774 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Supplement No. 1 to part 748 is amended by revising "Block 6: Documents submitted with Application", to read as follows:

Supplement No. 1 to Part 748 BIS-748P, BIS-748P-A: Item Appendix, and BIS-748P-B; End-User Appendix; Multipurpose Application Instructions

* * * * *

Block 6: Documents submitted with Application. Review the documentation you are required to submit with your application in accordance with the provisions of part 748 of the EAR, and mark all applicable Boxes with an (X).

Mark the Box "Foreign Availability" with an (X) if you are submitting an assertion of foreign availability with your license application. See part 768 of the EAR for instructions on foreign availability submissions.

If you are *not* making a foreign availability assertion under part 768 of the EAR, you may still mark the box "Foreign Availability" with an (X), if you are submitting an assertion of foreign availability with your license application. Foreign availability assertions covered under part 768 are limited to items controlled for national security reasons. However, if an applicant intends to include foreign availability support material for items not controlled for national security reasons, applicants are permitted to do this as part of the license application by marking the box "Foreign Availability" with an (X) and including the foreign availability information, along with the support material for the license application. Applicants must clearly label this support material as "Foreign availability information—outside the scope of part 768". Although this information is outside the scope of part 768, applicants should still use Supplement No. 1 to part 768 for general guidance regarding what types of information may be suitable for demonstrating foreign availability. The purpose of submitting this type of foreign availability information will be to make the U.S. Government more aware of the foreign availability of items not controlled for national security reasons.

Mark the "Tech. Specs." box with an (X) if you are submitting descriptive literature, brochures, technical specifications, etc. with your application.

* * * * *

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A018 is amended by revising the "Related Controls" paragraph in the List of Items Controlled section, to read as follows:

0A018 Items on the Wassenaar Munitions List.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See § 746.8(b)(1) for additional BIS licensing requirements for

Rwanda concerning this entry. (2) See also 0A979, 0A988, and 22 CFR 121.1 Categories I(a), III(b–d), and X(a).

* * * * *

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," & Toxins, Export Control Classification Number (ECCN) 1A001 is amended by revising the "Related Controls" paragraph in the List of Items Controlled section, to read as follows:

1A001 Components Made From Fluorinated Compounds, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Items specially designed or modified for missiles or for items on the U.S. Munitions List are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR 121.1 Category XXI). (2) See also 1C009.

* * * * *

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," & Toxins, Export Control Classification Number (ECCN) 1A003 is amended by revising the "Related Controls" paragraph in the List of Items Controlled section, to read as follows:

1A003 Manufactures of Non-Fluorinated Polymeric Substances Controlled by 1C008.a.3 in Film, Sheet, Tape or Ribbon Form With Either of the Following Characteristics (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: This entry does not control manufactures when coated or laminated with copper and designed for the production of electronic printed circuit boards. See also 1C008.

* * * * *

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," & Toxins, Export Control Classification Number (ECCN) 1A005 is amended by revising the "Related Controls" paragraph in the List of Items Controlled section, to read as follows:

1A005 Body Armor, and Specially Designed Components Therefor, Not Manufactured to Military Standards or Specifications, Nor to Their Equivalents in Performance.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Bulletproof and bullet resistant vests (body armor) NIJ levels III and IV, are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR 121.1 Categories X(a) and XIV(f, h)). (2) For "fibrous or filamentary materials" used in the manufacture of body armor, see ECCN 1C010. (3) See § 746.8(b)(1) for additional licensing requirements concerning this entry.

* * * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," & Toxins, Export Control Classification Number (ECCN) 1B003 is amended by revising the "Unit" paragraph in the List of Items Controlled section, to read as follows:

1B003 Tools, Dies, Molds or Fixtures, for "Superplastic Forming" or "Diffusion Bonding" Titanium or Aluminum or Their Alloys, Specially Designed for the Manufacture of (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Tools in number; dies, molds, or fixtures in \$ value

* * * * *

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," & Toxins, Export Control Classification Number (ECCN) 1C004 is amended by revising the "Related Controls" paragraph in the List of Items Controlled section, to read as follows:

1C004 Uranium Titanium Alloys or Tungsten Alloys With a "Matrix" Based on Iron, Nickel or Copper, Having All of the Characteristics (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 1C117 and 1C226.

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," & Toxins, Export Control Classification Number (ECCN) 1C006 is amended by revising the "Related Controls" paragraph in the List of Items Controlled section, to read as follows:

1C006 Fluids and Lubricating Materials, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled*Unit:* * * **Related Controls:* See also 1C996.

* * * * *

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” & Toxins, Export Control Classification Number (ECCN) 1C008 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

1C008 Non-Fluorinated Polymeric Substances, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled*Unit:* * * **Related Controls:* See also 1A003.

* * * * *

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” & Toxins, Export Control Classification Number (ECCN) 1C009 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

1C009 Unprocessed Fluorinated Compounds, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled*Unit:* * * **Related Controls:* See also 1A001.

* * * * *

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” & Toxins, Export Control Classification Number (ECCN) 1C011 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

1C011 Metals and Compounds, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled*Unit:* * * *

Related Controls: (1) See also 1C018 and 1C111. (2) Items controlled by 1C011.a, and metal fuels in particle form, whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99 percent or more of items controlled by 1C011.b. are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR 121.1 Category V).

* * * * *

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” & Toxins, Export Control Classification Number (ECCN) 1C012 is amended by revising the “Reason for Control” paragraph in the License Requirements section and the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

1C012 Materials, as Follows (See List of Items Controlled).

License Requirements*Reason for Control:***Control(s)**

Items described in 1C012 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110, item 9A)).

* * * * *

List of Items Controlled*Unit:* * * **Related Controls:* See also 0C002.

* * * * *

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” & Toxins, Export Control Classification Number (ECCN) 1D001 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

1D001 “Software” Specially Designed or Modified for the “Development”, “Production” or “Use” of Equipment Controlled by 1B001 to 1B003.

* * * * *

List of Items Controlled*Unit:* * * *

Related Controls: (1) See ECCNs 1E101 (“use”) and 1E102 (“development” and “production”) for technology for items controlled by this entry. (2) Also see 1D002, 1D101, 1D201, and 1D999.

* * * * *

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” & Toxins, Export Control Classification Number (ECCN) 1D018 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

1D018 “Software” Specially Designed or Modified for the “Development”, “Production”, or “Use” of Items Controlled by 1B018.

* * * * *

List of Items Controlled*Unit:* \$ value

Related Controls: See § 746.8(b)(1) for additional BIS licensing requirements for Rwanda concerning this entry.

* * * * *

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” & Toxins, Export Control Classification Number (ECCN) 1E002 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

1E002 Other “Technology”, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled*Unit:* * * *

Related Controls: See also 1E001, 1E101, 1E102, 1E202, and 1E994 for “technology” related to 1E002.e or .f.

* * * * *

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A983 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

2A983 Explosives or Detonator Detection Equipment, Both Bulk and Trace Based, Consisting of an Automated Device, or Combination of Devices for Automated Decision Making to Detect the Presence of Different Types of Explosives, Explosive Residue, or Detonators; and Parts and Components, n.e.s.

* * * * *

List of Items Controlled*Unit:* * * *

Related Controls: Also see 1A004 and 1A995.

* * * * *

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B001 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

2B001 Machine Tools and Any Combination Thereof, for Removing (or cutting) Metals, Ceramics or “Composites”, Which, According to the Manufacturer’s Technical Specifications, Can Be Equipped With Electronic Devices for “Numerical control”; and Specially Designed Components (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Machine tools in number; components in \$ value

* * * * *

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B003 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

2B003 “Numerically Controlled” or Manual Machine Tools, and Specially Designed Components, Controls and Accessories Therefor, Specially Designed for the Shaving, Finishing, Grinding or Honing of Hardened (R_c = 40 or More) Spur, Helical and Double-Helical Gears With a Pitch Diameter Exceeding 1,250 mm and a Face Width of 15% of Pitch Diameter or Larger Finished to a Quality of AGMA 14 or Better (Equivalent to ISO 1328 class 3).

* * * * *

List of Items Controlled

Unit: Machine Tools in number; components, controls and accessories in \$ value

* * * * *

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B004 is amended by revising the “Unit” and “Related Controls” paragraphs in the List of Items Controlled section, to read as follows:

2B004 Hot “Isostatic Presses”, Having All of the Characteristics Described in the List of Items Controlled, and Specially Designed Components and Accessories Therefor.

* * * * *

List of Items Controlled

Unit: Presses in number; components and accessories in \$ value

Related Controls: (1) See ECCN 2D001 for software for items controlled under this entry. (2) See ECCNs 2E001 (“development”), 2E002 (“production”), and 2E101 (“use”) for technology for items controlled under this entry. (3) For specially designed dies, molds and tooling, see ECCNs 1B003, 2B018, 9B004, and 9B009. (4) For additional controls on dies, molds and tooling, see ECCNs 1B101.d, 2B104 and 2B204. (5) Also see ECCNs 2B117 and 2B999.a.

* * * * *

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B005 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

2B005 Equipment Specially Designed for the Deposition, Processing and In-Process Control of Inorganic Overlays, Coatings and Surface Modifications, as Follows, for Non-Electronic Substrates, by Processes Shown in the Table and Associated Notes Following 2E003.f, and Specially Designed Automated Handling, Positioning, Manipulation and Control Components Therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) This entry does not control chemical vapor deposition, cathodic arc, sputter deposition, ion plating or ion implantation equipment specially designed for cutting or machining tools. (2) Vapor deposition equipment for the production of filamentary materials are controlled by 1B001 or 1B101. (3) Chemical Vapor Deposition furnaces designed or modified for densification of carbon-carbon composites are controlled by 2B104. (4) See also 2B999.i.

* * * * *

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2E101 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

2E101 “Technology” According to the General Technology Note for the “Use” of Equipment or “Software” Controlled by 2B004, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, 2D002 or 2D101.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) This entry controls only “technology” for 2B009 and 2B109 for spin forming machines combining the functions of spin forming and flow forming, and flow forming machines. (2) Also see 2E201.

* * * * *

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2E201 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

2E201 “Technology” According to the General Technology Note for the “Use” of Equipment or “Software” Controlled by 2A225, 2A226, 2B001, 2B006, 2B007.b, 2B007.c, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D002, 2D201 or 2D202 for NP Reasons.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: Also see 2E290 and 2E991.

* * * * *

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A002 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

3A002 General Purpose Electronic Equipment, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: “Space qualified” atomic frequency standards defined in 3A002.g.2 are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR 121.1 Category XV). See also 3A292 and 3A992.

* * * * *

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B002 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

3B002 Test Equipment, Specially Designed for Testing Finished or Unfinished Semiconductor Devices, as Follows (See List of Items Controlled), and Specially Designed Components and Accessories Therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 3A999.a and 3B992.

* * * * *

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B992 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

3B992 Equipment Not Controlled by 3B002 for the Inspection or Testing of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 3A992.a.

* * * * *

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D002 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

3D002 “Software” Specially Designed for the “Use” of Any of the Following (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: Also see 3D991.

* * * * *

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A001 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

4A001 Electronic Computers and Related Equipment, and “Electronic Assemblies” and Specially Designed Components Therefor.

* * * * *

List of Items Controlled

Unit: Computers and related equipment in number; “electronic assemblies” and components in \$ value

* * * * *

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A003 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

4A003 “Digital Computers”, “Electronic Assemblies”, and Related Equipment Therefor, as Follows, and Specially Designed Components Therefor.

* * * * *

List of Items Controlled

Unit: Computers and related equipment in number; “electronic assemblies” and components in \$ value

* * * * *

■ 31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A004 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

4A004 Computers, as Follows (See List of Items Controlled) and Specially Designed Related Equipment, “Electronic Assemblies” and Components Therefor.

* * * * *

List of Items Controlled

Unit: Computers and related equipment in number; “electronic assemblies” and components in \$ value

* * * * *

■ 32. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D003 is

amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

4D003 Specific “Software”, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 4D993.

* * * * *

■ 33. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”, Part 1 Telecommunications, Export Control Classification Number (ECCN) 5B001 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

5B001 Telecommunication Test, Inspection and Production Equipment, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; components and accessories in \$ value

* * * * *

■ 34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”, Part 2 “Information Security”, Export Control Classification Number (ECCN) 5E002 is amended by revising the “Related Controls” paragraph in the List of Items Controlled section, to read as follows:

5E002 “Technology” According to the General Technology Note for the “Development”, “Production” or “Use” of Equipment Controlled by 5A002 or 5B002 or “Software” Controlled by 5D002.

* * * * *

List of Items Controlled

Unit: N/A

Related Controls: See also 4E001 for 4A001.b, 4E001 for 4D001 for 4A001.b, and 5E992.

* * * * *

■ 35. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A002 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

6A002 Optical Sensors.

* * * * *

List of Items Controlled

Unit: Number

* * * * *

■ 36. In Supplement No. 1 to part 774 (the Commerce Control List), Category

6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A004 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

6A004 Optics.

* * * * *

List of Items Controlled

Unit: Number

* * * * *

■ 37. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A005 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

6A005 “Lasers” (Other Than Those Described in 0B001.g.5 or .h.6), Components and Optical Equipment, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Number

* * * * *

■ 38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6D003 is amended by revising the “License Exceptions” section, to read as follows:

6D003 Other “Software”, as Follows (See List of Items Controlled).

* * * * *

License Exceptions

CIV: Yes, for 6D003.h.1

TSR: Yes, except for exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of “software” for items controlled by 6D003.a.

* * * * *

■ 39. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A001 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

8A001 Submersible Vehicles and Surface Vessels, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Number

* * * * *

■ 40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8D001 is amended by

revising the “License Exceptions” section, to read as follows:

8D001 “Software” Specially Designed or Modified for the “Development”, “Production” or “Use” of Equipment or Materials Controlled by 8A (Except 8A018 or 8A992), 8B or 8C.

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except for exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of “software” specially designed for the “development” or “production” of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b.

* * * * *

■ 41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8E001 is amended by revising the “License Exceptions” section, to read as follows:

8E001 “Technology” According to the General Technology Note for the “Development” or “Production” of Equipment or Materials Controlled by 8A (Except 8A018 or 8A992), 8B or 8C.

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except for exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of “technology” for items controlled by 8A001.b, 8A001.d or 8A002.o.3.b.

* * * * *

■ 42. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A004 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

9A004 Space Launch Vehicles and “Spacecraft”.

* * * * *

List of Items Controlled

Unit: Number

* * * * *

■ 43. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9B009 is amended by revising the “Unit” paragraph in the List of Items Controlled section, to read as follows:

9B009 Tooling Specially Designed for Producing Turbine Engine Powder Metallurgy Rotor Components Capable of Operating at Stress Levels of 60% of Ultimate Tensile Strength (UTS) or More and Metal Temperatures of 873 K (600 °C) or More.

* * * * *

List of Items Controlled

Unit: Number

* * * * *

Dated: April 11, 2008.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E8–8302 Filed 4–17–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Florfenicol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of florfenicol injectable solution for the treatment of bovine respiratory disease.

DATES: This rule is effective April 18, 2008.

FOR FURTHER INFORMATION CONTACT:

Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: cindy.burnsteel@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 556 Morris Ave., Summit, NJ 07901, filed NADA 141–265 for veterinary prescription use of NUFLOR GOLD (florfenicol) Injectable Solution by subcutaneous injection in beef and non-lactating dairy cattle for the treatment of bovine respiratory disease. The NADA is approved as of March 21, 2008, and the regulations are amended in 21 CFR 522.955 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness

data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of “rule” in 5 U.S.C. 804(3)(A) because it is a rule of “particular applicability.” Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Revise § 522.955 to read as follows:

§ 522.955 Florfenicol.

(a) *Specifications.* Each milliliter (mL) of solution contains:

(1) 300 milligrams (mg) florfenicol in the inactive vehicles 2-pyrrolidone and triacetin.

(2) 300 mg florfenicol in the inactive vehicle n-methyl-2-pyrrolidone.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter for use of product described in paragraph (a)(1) as in paragraph (d)(1)(i) and for use of product described in paragraph (a)(2) as in paragraph (d)(1)(ii).

(c) *Related tolerance.* See § 556.283 of this chapter.

(d) *Conditions of use*—(1) *Cattle*—(i) 300 mg/mL florfenicol in 2-pyrrolidone and triacetin (inactive vehicles).

(A) *Amount.* 40 mg/kilogram (kg) body weight as a single subcutaneous injection.

(B) *Indications for use.* For treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Histophilus somni* in beef and non-lactating dairy cattle.

(C) *Limitations.* Do not slaughter within 44 days of last treatment. Do not use in female dairy cattle 20 months of age or older. Use may cause milk residues. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) 300 mg/mL florfenicol in n-methyl-2-pyrrolidone (inactive vehicle).

(A)(1) *Amount.* 20 mg/kg of body weight as an intramuscular injection. A second dose should be administered 48 hours later. Alternatively, 40 mg/kg of body weight as a single subcutaneous injection may be used.

(2) *Indications for use.* For treatment of BRD associated with *Mannheimia (Pasteurella) haemolytica*, *P. multocida*, and *Haemophilus somnus*. For treatment of bovine interdigital phlegmon (foot rot, acute interdigital necrobacillosis, infectious pododermatitis) associated with *Fusobacterium necrophorum* and *Bacteroides melaninogenicus*.

(B)(1) *Amount.* 40 mg/kg of body weight as a single subcutaneous injection.

(2) *Indications for use.* For control of respiratory disease in cattle at high risk of developing BRD associated with *Mannheimia (Pasteurella) haemolytica*, *P. multocida*, and *Haemophilus somnus*.

(C) *Limitations.* Do not slaughter within 28 days of last intramuscular treatment or within 38 days of subcutaneous treatment. Do not use in female dairy cattle 20 months of age or older. Use may cause milk residues. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: April 4, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8-8346 Filed 4-17-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Insulin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for the veterinary prescription use of an injectable suspension of porcine insulin zinc for the reduction of hyperglycemia and hyperglycemia-associated clinical signs in cats with diabetes mellitus.

DATES: This rule is effective April 18, 2008.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8337, e-mail: melanie.berson@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 29160 Intervet Lane, Millsboro, DE 19966, filed a supplement to NADA 141-236 providing for the veterinary prescription use of VETSULIN (porcine insulin zinc) Suspension for the reduction of hyperglycemia and hyperglycemia-associated clinical signs in cats with diabetes mellitus. The application also provides for a lower initial dosage of insulin for dogs. The supplemental NADA is approved as of March 24, 2008, and the regulations are amended in 21 CFR 522.1160 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act 21 U.S.C 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval. The three years of marketing exclusivity applies only to the indication for use in cats for which this supplement is approved.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 522.1160, revise paragraphs (a) and (c) to read as follows:

§ 522.1160 Insulin.

(a) *Specifications.* Each milliliter of porcine insulin zinc suspension contains 40 international units (IU) of insulin.

* * * * *

(c) *Conditions of use—(1) Dogs—(i) Amount.* Administer an initial once-daily dose of 0.5 IU per kilogram of body weight by subcutaneous injection concurrently with or right after a meal. Adjust this once-daily dose at appropriate intervals based on clinical signs, urinalysis results, and glucose curve values until adequate glycemic control has been attained. Twice-daily therapy should be initiated if the duration of insulin action is determined to be inadequate. If twice-daily treatment is initiated, the two doses should be 25 percent less than the once daily dose required to attain an acceptable nadir.

(ii) *Indications for use.* For the reduction of hyperglycemia and hyperglycemia-associated clinical signs in dogs with diabetes mellitus.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats—(i) Amount.* Administer an initial dose of 1 to 2 IU by subcutaneous

injection. Injections should be given twice daily at approximately 12-hour intervals. For cats fed twice daily, the injections should be concurrent with or right after a meal. For cats fed ad libitum, no change in feeding is needed. Adjust the dose at appropriate intervals based on clinical signs, urinalysis results, and glucose curve values until adequate glycemic control has been attained.

(ii) *Indications for use.* For the reduction of hyperglycemia and hyperglycemia-associated clinical signs in cats with diabetes mellitus.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 4, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8-8347 Filed 4-17-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG-2008-0267]

Drawbridge Operation Regulation; Illinois Waterway, Joliet, IL 8K Run

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operations of the Cass Street Drawbridge, across the Illinois Waterway, Mile 288.1, at Joliet, Illinois. The deviation is necessary for the bridge to remain closed to navigation during the effective period for the Joliet City Center Partnership 8K Run.

DATES: This temporary deviation is effective from 8:30 a.m. to 11:30 a.m., May 10, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0267 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Robert A. Young Federal Building, Room

2.107F, 1222 Spruce Street, St. Louis, MO 63103-2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, (314) 269-2378.

SUPPLEMENTARY INFORMATION: The Illinois Department of Transportation requested a temporary deviation for the Cass Street Drawbridge, mile 288.1, at Joliet, Illinois across the Illinois Waterway as the drawbridge is along the route of the Joliet City Center Partnership 8K Run. The Cass Street Drawbridge currently operates in accordance with 33 CFR 117.393(c), which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart, except that they need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m., Monday through Saturday. In order to facilitate the annual event, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the drawbridge to remain closed to navigation from 8:30 a.m. to 11:30 a.m., May 10, 2008.

There are no alternate routes for vessels transiting this section of the Illinois Waterway.

The Cass Street Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 16.5 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 8, 2008.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. E8-8472 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0139; FRL-8359-9]

Thiamethoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of the insecticide thiamethoxam and its metabolite, CGA-322704, in or on soybean, hulls and soybean, aspirated grain fractions. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 18, 2008. Objections and requests for hearings must be received on or before June 17, 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-2008-0139. 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: Julie Chao, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8735; e-mail address: chao.julie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

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

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

In addition to accessing 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-2008-0139 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 June 17, 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-2008-0139, 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 March 12, 2008 (73 FR 13225) (FRL-8354-6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7301) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419-8300. The petition requested that 40 CFR 180.565 be amended by establishing a tolerance for combined residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine, and its metabolite, CGA-322704, N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl-N'-nitro-guanidine, in or on soybean, hulls at 2.0 ppm and soybean, aspirated grain fractions at 0.08 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all

other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....”

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine, and its metabolite, CGA-322704, N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl-N'-nitro-guanidine, in or on soybean, hulls at 2.0 ppm and soybean, aspirated grain fractions at 0.08 ppm. EPA’s assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by thiamethoxam 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 June 22, 2007, (72 FR 34401) (FRL-8133-6).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be

determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

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

A summary of the toxicological endpoints for thiamethoxam used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 22, 2007 (72 FR 34401) (FRL-8133-6).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to thiamethoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing thiamethoxam tolerances in 40 CFR 180.565. EPA assessed dietary exposures from thiamethoxam in food as follows:

For both acute and chronic exposure assessments EPA combined residues of clothianidin coming from thiamethoxam with residues of thiamethoxam per se. As discussed above, thiamethoxam's major metabolite is CGA-322704, which is also the registered active ingredient clothianidin. There is available information indicating that thiamethoxam and clothianidin have different toxicological effects in

mammals and should be assessed separately, however, these exposure assessments for this action incorporated the total residue of thiamethoxam and clothianidin to estimate dietary exposure. This aggregation of thiamethoxam and clothianidin began with the initial assessment of thiamethoxam, prior to the requested registration of clothianidin as an active ingredient, and is being maintained in this action for historical purposes. In future assessments, as time and resources allow, the EPA will provide a rationale for the separate analysis of risks coming from thiamethoxam and clothianidin, and will conduct separate evaluations of exposure and risk for each chemical. The combining of these residues, as was done in these assessments, results in highly conservative estimates of dietary exposure and risk.

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed maximum residues of thiamethoxam and clothianidin observed in the thiamethoxam field trials. It was also assumed that 100% of crops with registered or requested uses of thiamethoxam are treated. This assumption is highly conservative with respect to thiamethoxam use and removes the need to include residues of clothianidin coming from the use of that active ingredient.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994-1996 and 1998 Nationwide CSFII. As to residue levels in food, EPA assumed maximum residues of thiamethoxam and clothianidin observed in the thiamethoxam field trials. It was also assumed that 100% of crops with registered or requested uses of thiamethoxam are treated. This assumption is highly conservative with respect to thiamethoxam use and removes the need to include residues of clothianidin coming from the use of that active ingredient.

A complete listing of the inputs used in these assessments can be found in the document titled "Thiamethoxam Acute and Chronic Aggregate Dietary and Drinking Water Exposure and Risk

Assessments for FIFRA Section 3 Registration," available in the docket EPA-HQ-OPP-2006-0523, <http://www.regulations.gov>.

iii. *Cancer.* A quantitative cancer exposure assessment is not necessary because EPA concluded that thiamethoxam is "Not Likely to be Carcinogenic to Humans" based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. Therefore, the Agency concluded that thiamethoxam is not expected to pose a carcinogenic risk and an exposure assessment pertaining to cancer risk is not necessary.

iv. *Anticipated residue information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. For the present action, EPA has used maximum residue values from field trials. These trials are designed to produce worst-case residue levels in foods, and likely overestimate residues of thiamethoxam and clothianidin that may actually occur in or on foods.

2. *Dietary exposure from drinking water.* Thiamethoxam is expected to be persistent and mobile in terrestrial and aquatic environments. These fate properties suggest that thiamethoxam has a potential to move into surface water and shallow ground water. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for thiamethoxam in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of thiamethoxam. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and the Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of thiamethoxam for acute exposures are estimated to be 12.26 parts per billion (ppb) for surface water and 7.94 ppb for ground water. The EDWCs for chronic exposures are

estimated to be 1.29 ppb for surface water and 7.94 ppb for ground water.

The registrant has conducted small-scale prospective ground water studies in several locations in the United States to investigate the mobility of thiamethoxam in a vulnerable hydrogeological setting. A review of those data shows that generally residues of thiamethoxam as well as CGA-322704 are below the limit of quantitation (0.05 ppb). When quantifiable residues are found, they are sporadic and at low levels. The maximum observed residue levels from any monitoring well were 1.0 ppb for thiamethoxam and 0.73 ppb for CGA-322704. These values are well below the modeled estimates summarized above, indicating that the modeled estimates are, in fact, protective of what actual exposures are likely to be.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For both the acute and chronic assessments the acute EDWC of 12.26 ppb (0.0123 ppm) was used as a worst-case estimate of exposure via drinking water.

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

Thiamethoxam is registered for use on turfgrass on golf courses, residential lawns, commercial grounds, parks, playgrounds, athletic fields, landscapes, interiorscapes and sod farms. Thiamethoxam is applied by commercial applicators only. Therefore, exposures resulting from homeowner applications were not assessed. However, entering areas previously treated with thiamethoxam could lead to exposures for adults and children. As a result, risk assessments have been completed for postapplication scenarios. Short-term exposures (1 to 30 days of continuous exposure) may occur as a result of activities on treated turf. There are no use patterns for thiamethoxam that indicate intermediate-term (1 to 6 months of continuous exposure) or chronic non-dietary exposures are likely to occur.

Dermal exposures were assessed for adults and children. Oral non-dietary ingestion exposures (i.e. soil ingestion, and hand-/object-to-mouth) were assessed for children as well. Since all postapplication scenarios occur outdoors the potential for inhalation exposure is negligible and therefore does not require an inhalation exposure assessment. For purposes of this assessment exposure from residential

lawns is used to represent the worst case scenario for both dermal and oral postapplication exposure.

Postapplication dermal exposure resulting from contact with treated turf was assessed using the EPA's Standard Operating Procedures for Residential Exposure and a chemical-specific turf transfer residue study.

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

Thiamethoxam is a member of the neonicotinoid class of pesticides and produces, as a metabolite, another neonicotinoid, clothianidin. Structural similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events (EPA, 2002). Although clothianidin and thiamethoxam bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) for clothianidin, thiamethoxam, and the other neonicotinoids are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that clothianidin operates by direct competitive inhibition, while thiamethoxam is a non-competitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nicotinic acetylcholine receptors, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors, which, in turn, confers the notably greater selective toxicity of this class towards insects, including aphids and leafhoppers, compared to mammals. While the insecticidal action of the neonicotinoids is neurotoxic, the most sensitive regulatory endpoint for thiamethoxam is based on unrelated effects in mammals, including effects on the liver, kidney, testes, and hematopoietic system. Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (e.g., testicular tubular

atrophy with thiamethoxam; mineralized particles in thyroid colloid with imidacloprid). Thus, there is currently no evidence to indicate that neonicotinoids share common mechanisms of toxicity, and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the neonicotinoids. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* In the developmental studies, there is no evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses to *in utero* exposure to thiamethoxam. The developmental NOAELs are either higher than or equal to the maternal NOAELs. The toxicological effects in fetuses do not appear to be any more severe than those in the dams or does. In the rat developmental neurotoxicity study, there was no quantitative evidence of increased susceptibility.

There is evidence of increased quantitative susceptibility for male pups in both two-generation reproductive studies. In one study, there are no toxicological effects in the dams whereas for the pups, reduced bodyweights are observed at the highest dose level, starting on day 14 of lactation. This contributes to an overall decrease in bodyweight gain during the entire lactation period. Additionally, reproductive effects in males appear in the F₁ generation in the form of increased incidence and severity of testicular tubular atrophy. These data are considered to be evidence of increased quantitative susceptibility for male pups (increased incidence of testicular tubular atrophy at 1.8

milligrams/kilogram/day (mg/kg/day) when compared to the parents (hyaline changes in renal tubules at 61 mg/kg/day; NOAEL is 1.8 mg/kg/day).

In the more recent two-generation reproduction study, the most sensitive effect was sperm abnormalities at 3 mg/kg/day (the NOAEL is 1.2 mg/kg/day) in the F₁ males. This study also indicates increased susceptibility for the offspring for this effect.

Although there is evidence of increased quantitative susceptibility for male pups in both reproductive studies, NOAELs and LOAELs were established in these studies and the Agency selected the NOAEL for testicular effects in F₁ pups as the basis for risk assessment. The Agency has confidence that the NOAEL selected for risk assessment is protective of the most sensitive effect (testicular effects) for the most sensitive subgroup (pups) observed in the toxicological database.

Due to the finding of quantitative sensitivity in the reproduction studies, the EPA conducted a degree of concern analysis to assess the residual uncertainties for pre- and/or postnatal susceptibility. The Agency concluded that there is low concern for an increased susceptibility in the young given:

i. There was no increased sensitivity (qualitative or quantitative) in the rat developmental, rabbit developmental and rat developmental neurotoxicity studies.

ii. There was a clear NOAEL identified for the effects in pups in the rat reproduction studies where sensitivity was seen.

iii. The Agency selected this NOAEL as the basis for risk assessment.

3. *Conclusion.* The final rule published in the **Federal Register** of January 5, 2006 (<http://www.epa.gov/fedrgstr/EPA-PEST/2005/January/Day-05/p089.htm>) reported that the EPA had determined that the 10X special safety factor to protect infants and children should be retained for thiamethoxam based on the following factors: Effects on endocrine organs observed across species; the significant decrease in alanine amino transferase levels in the companion animal studies and in the dog studies; the mode of action of this chemical in insects (interferes with the nicotinic acetyl choline receptors of the insect's nervous system); the transient clinical signs of neurotoxicity in several studies across species; and the suggestive evidence of increased quantitative susceptibility in the rat reproduction study.

Since that determination, EPA has received and reviewed a Developmental Neurotoxicity (DNT) study in rats and

an additional Reproduction study in rats. Taking the results of this study into account, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for thiamethoxam is complete, including acceptable/guideline developmental toxicity, 2-generation reproduction, and developmental neurotoxicity studies designed to detect adverse effects on the developing organism, which could result from the mechanism that may have produced the decreased alanine amino transferase levels.

ii. For the reasons discussed above, there is low concern for an increased susceptibility in the young.

iii. Although there is evidence of neurotoxicity after acute exposure to thiamethoxam at doses of 500 mg/kg/day including drooped palpebral closure, decrease in rectal temperature and locomotor activity and increase in forelimb grip strength, no evidence of neuropathology was observed. These effects occurred at doses at least fourteenfold and 416-fold higher than the doses used for the acute, and chronic risk assessments, respectively; thus, there is low concern for these effects since it is expected that the doses used for regulatory purposes would be protective of the effects noted at much higher doses.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on assumption that the maximum residues of thiamethoxam and clothianidin observed in the thiamethoxam field trials were remaining on crops. Although there is available information indicating that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately, the residues of each have been combined in these assessments to ensure that the estimated exposures of thiamethoxam do not underestimate actual potential thiamethoxam exposures. An assumption of 100% crop treated was made for all foods evaluated in the assessments. For both the acute and chronic assessments the acute EEC of 12.26 ppb (0.0123 ppm) was used as a worst-case estimate of exposure via drinking water. Compared to the results from small-scale prospective ground water studies where the maximum observed residue levels from any monitoring well were 1.0 ppb for thiamethoxam and 0.73 ppb for CGA-322704, the modeled estimates are

protective of what actual exposures are likely to be. Similarly conservative Residential SOPs as well as a chemical-specific turf transfer residue (TTR) study were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by thiamethoxam.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thiamethoxam will occupy 3% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to thiamethoxam from food and water will utilize 42% of the cPAD for children 1 to 2 years old, the population group with greatest exposure. Based on the use patterns proposed, chronic residential exposure to residues of thiamethoxam is not expected.

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

Thiamethoxam is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for thiamethoxam. The level of concern for the margin of exposure (MOE) is 100 for all residential uses (i.e., MOEs less than 100 indicate potential risks of concern). Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and

residential exposures aggregated result in aggregate MOEs of 730 through 2,800 for all exposure scenarios (dermal exposures, and oral non-dietary ingestion) for infants, children and adults.

4. Intermediate-term risk.

Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). There are no use patterns for thiamethoxam that indicate intermediate-term (1 to 6 months of continuous exposure) exposures are likely to occur.

5. *Aggregate cancer risk for U.S. population.* The Agency has classified thiamethoxam as not likely to be a human carcinogen based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. Thiamethoxam is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no CODEX or Mexican maximum residue limits (MRLs) for thiamethoxam. A number of Canadian MRLs exist for this chemical and are in accord with U.S. tolerances. The new/ revised tolerances established by this rule have been derived using the NAFTA Tolerance Harmonization Spreadsheet.

V. Conclusion

Based upon review of the supporting data, EPA has determined that tolerance levels for the following crops should be set as follows: soybean, hulls at 2.0 ppm; and soybean, aspirated grain fractions at 0.08 ppm. Therefore,

tolerances are established for the combined residues of thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl] tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine, and its metabolite, CGA-322704, N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl-N'-nitro-guanidine, in or on soybean, hulls at 2.0 ppm and soybean, aspirated grain fractions at 0.08 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined

that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 9, 2008.

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 180.565 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Soybean, aspirated grain fractions	0.08
Soybean, hulls	2.0
* * *	* *

[FR Doc. E8-8398 Filed 4-17-08; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also

used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Pima (FEMA Docket No. B-7750).	Town of Marana (07-09-1759P).	September 6, 2007; September 13, 2007; <i>The Daily Territorial</i> .	The Honorable Ed Honea, Mayor, Town of Marana, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	December 13, 2007	040118
Pima (FEMA Docket No. B-7750).	Unincorporated areas of Pima County (07-09-1759P).	September 6, 2007; September 13, 2007; <i>The Daily Territorial</i> .	The Honorable Richard Elias, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	December 13, 2007	040073
California:					
Riverside (FEMA Docket No. B-7761).	City of Perris (07-09-0955P).	November 8, 2007; November 15, 2007; <i>The Press-Enterprise</i> .	The Honorable Daryl R. Busch, Mayor, City of Perris, 101 North D Street, Perris, CA 92570.	February 14, 2008	060258

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Riverside (FEMA Docket No. B-7761).	Unincorporated areas of Riverside County (07-09-0955P).	November 8, 2007; November 15, 2007; <i>The Press-Enterprise</i> .	The Honorable John F. Tavaglione, Chairman, Board of Supervisors Riverside County, 4080 Lemon Street, Fifth Floor, Riverside, CA 92501.	February 14, 2008	060245
San Diego (FEMA Docket No. B-7750).	City of Carlsbad (07-09-1622P).	October 4, 2007; October 11, 2007; <i>San Diego Daily Transcript</i> .	The Honorable Claude A. Lewis, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, CA 92008.	September 24, 2007	060285
San Diego (FEMA Docket No. B-7750).	City of San Marcos (07-09-1622P).	October 4, 2007; October 11, 2007; <i>San Diego Daily Transcript</i> .	The Honorable James Desmond, Mayor, City of San Marcos, One Civic Center Drive, San Marcos, CA 92069.	September 24, 2007	060296
San Diego (FEMA Docket No. B-7750).	Unincorporated areas of San Diego County (07-09-1622P).	October 4, 2007; October 11, 2007; <i>San Diego Daily Transcript</i> .	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	September 24, 2007	060284
San Diego (FEMA Docket No. B-7754).	Unincorporated areas of San Diego County (07-09-1709P).	October 11, 2007; October 18, 2007; <i>San Diego Daily Transcript</i> .	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	January 17, 2008	060284
Shasta (FEMA Docket No. B-7754).	City of Anderson (07-09-1859P).	October 17, 2007; October 24, 2007; <i>Tri-Valley Post</i> .	The Honorable Keith Webster, Mayor, City of Anderson, 1887 Howard Street, Anderson, CA 96007.	January 22, 2008	060359
Stanislaus (FEMA Docket No. B-7754).	Unincorporated areas of Stanislaus County (08-09-0041X).	October 18, 2007; October 25, 2007; <i>The Modesto Bee</i> .	The Honorable William O'Brien, Chairman of the Board of Supervisors, 1010 Tenth Street, Suite 6500, Modesto, CA 95354.	October 19, 2007	060384
Ventura (FEMA Docket No. B-7754).	City of Simi Valley (07-09-1419P).	October 18, 2007; October 25, 2007; <i>Ventura County Star</i> .	The Honorable Paul Miller, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	January 24, 2008	060421
Colorado:					
El Paso (FEMA Docket No. B-7754).	City of Colorado Springs (07-08-0414P).	October 10, 2007; October 17, 2007; <i>El Paso County Advertiser and News</i> .	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	January 16, 2008	080060
El Paso (FEMA Docket No. B-7754).	Unincorporated areas of El Paso County (07-08-0414P).	October 10, 2007; October 17, 2007; <i>El Paso County Advertiser and News</i> .	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903-2208.	January 16, 2008	080059
Jefferson (FEMA Docket No. B-7761).	City of Lakewood (07-08-0666P).	November 15, 2007; November 22, 2007; <i>The Golden Transcript</i> .	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	February 21, 2008	085075
Connecticut: New Haven (FEMA Docket No. B-7761).	Town of Branford (07-01-0657P).	October 4, 2007; October 11, 2007; <i>New Haven Register</i> .	The Honorable Cheryl Morris, First Selectwoman, Town of Branford, 1019 Main Street, Branford, CT 06405.	September 19, 2007	090073
Florida:					
Duval (FEMA Docket No. B-7761).	City of Jacksonville (07-04-2369P).	November 12, 2007; November 19, 2007; <i>Jacksonville Daily Record</i> .	The Honorable John Peyton, Mayor, City of Jacksonville, City Hall at Saint James, Fourth Floor, 117 West Duval Street, Jacksonville, FL 32202.	February 19, 2008	120077
Polk (FEMA Docket No. B-7761).	City of Davenport (07-04-5360P).	November 7, 2007; November 14, 2007; <i>The Polk County Democrat</i> .	The Honorable Peter Rust, Mayor, City of Davenport, P.O. Box 125, Davenport, FL 33836-0125.	October 29, 2007	120410
Sarasota (FEMA Docket No. B-7754).	Unincorporated areas of Sarasota County (07-04-3837P).	October 11, 2007; October 18, 2007; <i>Sarasota Herald-Tribune</i> .	The Honorable Nora Patterson, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	January 17, 2008	125144
St. Johns (FEMA Docket No. B-7754).	Unincorporated areas of St. Johns County (07-04-5711P).	October 18, 2007; October 25, 2007; <i>The St. Augustine Record</i> .	The Honorable Ben Rich, Chairman, Saint Johns County Board of Commissioners, 4020 Lewis Speedway, Saint Augustine, FL 32084.	September 28, 2007	125147
Illinois:					
St. Clair (FEMA Docket No. B-7754).	City of Belleville (06-05-C230P).	October 18, 2007; October 25, 2007; <i>Belleville News-Democrat</i> .	The Honorable Mark W. Eckert, Mayor, City of Belleville, 101 South Illinois Street, Belleville, IL 62220.	January 24, 2008	170618
St. Clair (FEMA Docket No. B-7754).	City of O'Fallon (07-05-4876P).	October 18, 2007; October 25, 2007; <i>Belleville News-Democrat</i> .	The Honorable Gary L. Graham, Mayor, City of O'Fallon, 255 South Lincoln Avenue, O'Fallon, IL 62269.	September 28, 2007	170633
St. Clair (FEMA Docket No. B-7754).	Unincorporated areas of St. Clair County (06-05-C230P).	October 18, 2007; October 25, 2007; <i>Belleville News-Democrat</i> .	The Honorable Mark Kern, Chairman, St. Clair County Board of Supervisors, County Courthouse, 10 Public Square, Belleville, IL 62220-1623.	January 24, 2008	170616
Will (FEMA Docket No. B-7754).	Village of Mokena (07-05-5016P).	October 11, 2007; October 18, 2007; <i>The Herald News</i> .	The Honorable Joseph W. Werner, Village President, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	September 21, 2007	170705
Maine: Lincoln (FEMA Docket No. B-7761).	Town of Bristol (07-01-0799P).	November 8, 2007; November 15, 2007; <i>The Lincoln County News</i> .	The Honorable Chad Hanna, Chairman, Board of Selectmen, Town of Bristol, P.O. Box 147, Bristol, ME 04539.	October 23, 2007	230215

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maryland: Cecil (FEMA Docket No: B-7754).	Unincorporated areas of Cecil County (06-03-B926P).	October 18, 2007; October 25, 2007; <i>Cecil Whig</i> .	The Honorable William C. Manlove, President, Cecil County Board of Commissioners, 107 North Street, Elkton, MD 21921.	January 24, 2008	240019
Massachusetts: Berkshire (FEMA Docket No: B-7754).	City of Pittsfield (07-01-0973P).	October 18, 2007; October 25, 2007; <i>The Berkshire Eagle</i> .	The Honorable James M. Ruberto, Mayor, City of Pittsfield, 70 Allen Street, Pittsfield, MA 01201.	January 24, 2008	250037
Bristol (FEMA Docket No: B-7761).	Town of Easton (07-01-0531P).	November 9, 2007; November 16, 2007; <i>The Easton Journal</i> .	The Honorable Colleen A. Corona, Chairman, Board of Selectmen, Town of Easton, 136 Elm Street, North Easton, MA 02356.	February 15, 2008	250053
Suffolk (FEMA Docket No: B-7754).	City of Revere (07-01-0489P).	October 10, 2007; October 17, 2007; <i>The Revere Journal</i> .	The Honorable Thomas G. Ambrosino, Mayor, City of Revere, City Hall, 281 Broadway, Revere, MA 02151.	September 20, 2007	250288
Michigan: Oakland (FEMA Docket No: B-7754).	Township of West Bloomfield (07-05-3615P).	October 17, 2007; October 24, 2007; <i>Spinal Column Newsweekly</i> .	The Honorable David Flaisher, Supervisor, Township of West Bloomfield, P.O. Box 250130, West Bloomfield, MI 48325-0130.	October 2, 2007	260182
Minnesota: Benton (FEMA Docket No: B-7754).	City of St. Cloud (06-05-B082P).	October 17, 2007; October 24, 2007; <i>St. Cloud Times</i> .	The Honorable Dave Kleis, Mayor, City of Saint Cloud, 400 Second Street South, Saint Cloud, MN 56301.	January 23, 2008	270456
Benton (FEMA Docket No: B-7754).	City of Sauk Rapids (06-05-B082P).	October 17, 2007; October 24, 2007; <i>Sauk Rapids Herald</i> .	The Honorable Mark Campbell, Mayor, City of Sauk Rapids, 914 Arbor Way, Sauk Rapids, MN 56379.	January 23, 2008	270023
Benton (FEMA Docket No: B-7754).	Unincorporated areas of Benton County (06-05-B082P).	October 17, 2007; October 24, 2007; <i>Sauk Rapids Herald</i> .	The Honorable Dick Soyka, Chairman of Benton County, 531 Dewey Street, P.O. Box 129, Foley, MN 56329.	January 23, 2008	270019
Hennepin (FEMA Docket No: B-7754).	City of Brooklyn Park (07-05-2478P).	October 18, 2007; October 25, 2007; <i>Brooklyn Park Sun</i> .	The Honorable Steve Lampi, Mayor, City of Brooklyn Park, 1209 88th Avenue North, Brooklyn Park, MN 55424.	October 29, 2007	270152
Hennepin (FEMA Docket No: B-7754).	City of Edina (07-05-4704P).	October 18, 2007; October 25, 2007; <i>Edina Sun-Current</i> .	The Honorable James Hovland, Mayor, City of Edina, 4801 West 50th Street, Edina, MN 55424.	September 28, 2007	270160
Hennepin (FEMA Docket No: B-7754).	City of Hopkins (07-05-4704P).	October 18, 2007; October 25, 2007; <i>Hopkins Sun-Sailor</i> .	The Honorable Eugene Maxwell, Mayor, City of Hopkins, 1010 First Street South, Hopkins, MN 55343.	September 28, 2007	270166
Hennepin (FEMA Docket No: B-7754).	City of St. Louis Park (07-05-4704P).	October 18, 2007; October 25, 2007; <i>St. Louis Park Sun-Sailor</i> .	The Honorable Jeff Jacobs, Mayor, City of St. Louis Park, 7300 Metro Boulevard, Suite 300, Edina, MN 55437-2302.	September 28, 2007	270184
Mississippi: DeSoto (FEMA Docket No: B-7754).	City of Southaven (07-04-4518P).	October 25, 2007; November 1, 2007; <i>DeSoto Times Today</i> .	The Honorable Charles G. Davis, Mayor, City of Southaven, 8710 Northwest Drive, Southaven, MS 38671.	October 9, 2007	280331
Missouri: Greene (FEMA Docket No: B-7761).	Unincorporated areas of Greene County (07-07-1448P).	November 8, 2007; November 15, 2007; <i>Springfield News-Leader</i> .	The Honorable David Coonrod, Presiding Commissioner, Greene County, 933 North Robberson, Springfield, MO 65802.	February 14, 2008	290782
St. Louis (FEMA Docket No: B-7754).	City of Chesterfield (06-07-B578P).	October 11, 2007; October 18, 2007; <i>The St. Louis Daily Record</i> .	The Honorable John Nations, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017-0670.	January 17, 2008	290896
St. Louis (FEMA Docket No: B-7754).	City of Chesterfield (07-07-1386P).	October 11, 2007; October 18, 2007; <i>The St. Louis Daily Record</i> .	The Honorable John Nations, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017-0760.	September 27, 2007	290896
St. Louis (FEMA Docket No: B-7754).	Unincorporated areas of St. Louis County (06-07-B578P).	October 11, 2007; October 18, 2007; <i>The St. Louis Daily Record</i> .	The Honorable Charlie A. Dooley, County Executive, St. Louis County, 41 South Central Avenue, Clayton, MO 63105.	January 17, 2008	290327
Montana: Richland (FEMA Docket No: B-7754).	City of Sidney (07-08-0006P).	October 17, 2007; October 24, 2007; <i>Sidney Herald</i> .	The Honorable Brett Smelser, Mayor, City of Sidney, 115 Second Street Southeast, Sidney, MT 59270.	January 23, 2008	300065
Richland (FEMA Docket No: B-7754).	Unincorporated areas of Richland County (07-08-0006P).	October 17, 2007; October 24, 2007; <i>Sidney Herald</i> .	The Honorable Don Stepler, Chairman, Richland County Board of Commissioners, 201 West Main Street, Sidney, MT 59270.	January 23, 2008	300165
Nebraska: Hall (FEMA Docket No: B-7754).	City of Grand Island (07-07-0780P).	October 18, 2007; October 25, 2007; <i>The Grand Island Independent</i> .	The Honorable Margaret Hornady, Mayor, City of Grand Island, 100 East First Street, Grand Island, NE 68801.	September 28, 2007	310103

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lancaster (FEMA Docket No. B-7754).	City of Hickman (07-07-1852P).	October 25, 2007; November 1, 2007; <i>Lincoln Journal Star</i> .	The Honorable Jim Hrouda, Mayor, City of Hickman, P.O. Box 127, Hickman, NE 68372.	November 5, 2007	310136
Lancaster (FEMA Docket No. B-7761).	City of Lincoln (07-07-0628P).	November 8, 2007; November 15, 2007; <i>Lincoln Journal Star</i> .	The Honorable Chris Beutler, Mayor, City of Lincoln, 555 South 10th Street, Second Floor, Room 208, Lincoln, NE 68508.	October 24, 2007	315273
New Jersey: Passaic (FEMA Docket No. B-7738).	Township of Little Falls (07-02-1082X).	August 9, 2007; August 16, 2007; <i>The Record</i> .	The Honorable Eugene Kulick, Mayor, Township of Little Falls, Township Government Offices, 225 Main Street, Little Falls, NJ 07424.	November 15, 2007	340401
Passaic (FEMA Docket No. B-7738).	Borough of West Paterson (07-02-1082X).	August 9, 2007; August 16, 2007; <i>The Record</i> .	The Honorable Pat Lapore, Mayor, Borough of West Paterson, Municipal Building, Five Brophy Lane, West Paterson, NJ 07424.	November 15, 2007	340412
New Mexico: Sandoval (FEMA Docket No. B-7750).	Unincorporated areas of Sandoval County (07-06-1048P).	September 20, 2007; September 27, 2007; <i>The Santa Fe New Mexican</i> .	Ms. Debbie Hayes, County Manager, Sandoval County, P.O. Box 40, Bernalillo, NM 87004.	August 27, 2007	350055
North Carolina: Alamance (FEMA Docket No. B-7745).	City of Burlington (06-04-BY00P).	May 15, 2007; May 22, 2007; <i>The Times-News</i> .	The Honorable Stephen M. Ross, Mayor of the City of Burlington, P.O. Box 1358, 425 South Lexington Avenue, Burlington, North Carolina 27215.	August 20, 2007	370002
Dare (FEMA Docket No. B-7745).	Town of Nags Head (07-04-4138P).	June 21, 2007; June 28, 2007; <i>The Coastland Times</i> .	Mr. Charles L. Cameron, Manager, Town of Nags Head, P.O. Box 99, 5401 South Croatan Highway, Nags Head, North Carolina 27959.	June 13, 2007	375356
Dare (FEMA Docket No. B-7745).	Unincorporated areas of Dare County (07-04-4138P).	June 21, 2007; June 28, 2007; <i>The Coastland Times</i> .	Mr. Terry Wheeler, Manager, Dare County, P.O. Drawer 1000, 211 Budleigh Street, Manteo, North Carolina 27954.	June 13, 2007	375348
Durham (FEMA Docket No. B-7745).	City of Durham (07-04-2980P).	August 14, 2007; August 21, 2007; <i>The Herald-Sun</i> .	The Honorable William V. Bell, Mayor of the City of Durham, Office of the Mayor, 101 City Hall Plaza, Durham, North Carolina 27701.	August 7, 2007	370086
Durham (FEMA Docket No. B-7745).	Unincorporated areas of Durham County (07-04-2980P).	August 14, 2007; August 21, 2007; <i>The Herald-Sun</i> .	Mr. Michael M. Ruffin, Manager, Durham County, 200 East Main Street, 2nd Floor, Old Courthouse, Durham, North Carolina 27701.	August 7, 2007	370085
Mecklenburg (FEMA Docket No. B-7754).	Town of Huntersville (07-04-0542P).	October 15, 2007; October 22, 2007; <i>The Charlotte Observer</i> .	The Honorable Kim Phillips, Mayor, Town of Huntersville, P.O. Box 667, Huntersville, NC 28078.	January 21, 2008	370478
Orange (FEMA Docket No. B-7745).	Unincorporated areas of Orange County (06-04-C141P).	July 31, 2007; August 7, 2007; <i>Chapel Hill Herald</i> .	Mr. Moses Carey, Jr., Chairman of the Orange County Board of Commissioners, 200 South Cameron Street, Hillsborough, North Carolina 27278.	November 5, 2007	370342
Union (FEMA Docket No. B-7745).	Town of Indian Trail (06-04-BX22P).	May 15, 2007; May 22, 2007; <i>The Enquirer Journal</i> .	The Honorable Sandy Moore, Mayor of the Town of Indian Trail, P.O. Box 2430, Indian Trail, North Carolina 28079.	August 21, 2007	370235
Union (FEMA Docket No. B-7745).	Unincorporated areas of Union County (06-04-BX22P).	May 15, 2007; May 22, 2007; <i>The Enquirer Journal</i> .	Mr. Mike Shalati, Manager, Union County, 500 North Main Street, Room 925, Monroe, North Carolina 28112.	August 21, 2007	370234
Wake (FEMA Docket No. B-7745).	Town of Wake Forest (07-04-0615P).	August 2, 2007; August 9, 2007; <i>The Wake Weekly</i> .	The Honorable Vivian A. Jones, Mayor of the Town of Wake Forest, 401 Elm Avenue, Wake Forest, North Carolina 27587.	November 7, 2007	370244
Ohio: Lake (FEMA Docket No. B-7754).	Village of Perry (07-05-0261P).	October 25, 2007; November 1, 2007; <i>The News-Herald</i> .	The Honorable Lee Lydic, Mayor, Village of Perry, P.O. Box 100, Perry, OH 44081.	October 1, 2007	390320
Oklahoma: Cleveland (FEMA Docket No. B-7761).	City of Moore (07-06-1082P).	November 8, 2007; November 15, 2007; <i>The Norman Transcript</i> .	The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, OK 73160.	February 14, 2008	400044
Tulsa (FEMA Docket No. B-7754).	City of Tulsa (07-06-2371P).	October 18, 2007; October 25, 2007; <i>Tulsa World</i> .	The Honorable Kathy Taylor, Mayor, City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	January 24, 2008	405381
Tulsa (FEMA Docket No. B-7754).	Unincorporated areas of Tulsa County (07-06-2371P).	October 18, 2007; October 25, 2007; <i>Tulsa World</i> .	The Honorable Randi Miller, Chair, Tulsa County Board of Supervisors, 500 South Denver Avenue, Tulsa, OK 74103.	January 24, 2008	400462
Pennsylvania: Bucks (FEMA Docket No. B-7754).	Township of Wrightstown (07-03-1222P).	October 18, 2007; October 25, 2007; <i>Bucks County Courier Times</i> .	The Honorable Chester Pogonowski, Chairman, Board of Supervisors, Wrightstown Township, 2203 Second Street Pike, Wrightstown, PA 18940.	September 24, 2007	421045

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montgomery (FEMA Docket No. B-7761).	Township of Lower Moreland (07-03-0583P).	November 8, 2007; November 15, 2007; <i>The Globe</i> .	The Honorable Kurt G. Mayer, President, Lower Moreland Township Commissioners, 640 Red Lion Road, Huntingdon Valley, PA 19006.	October 24, 2007	420702
South Carolina:					
Horry (FEMA Docket No. B-7754).	City of Conway (07-04-4404P).	October 18, 2007; October 25, 2007; <i>Horry Independent</i> .	The Honorable Gregory K. Martin, Mayor, City of Conway, P.O. Box 1075, Conway, SC 29528.	January 24, 2008	415106
Horry (FEMA Docket No. B-7754).	Unincorporated areas of Horry County (07-04-4404P).	October 18, 2007; October 25, 2007; <i>Horry Independent</i> .	The Honorable Liz Gilland, Council Chairman, Horry County, 1511 Elm Street, Conway, SC 29526.	January 24, 2008	415104
Horry (FEMA Docket No. B-7754).	Unincorporated areas of Horry County (07-04-5516P).	October 18, 2007; October 25, 2007; <i>Horry Independent</i> .	The Honorable Liz Gilland, Council Chairman, Horry County, 1511 Elm Street, Conway, SC 29526.	January 24, 2008	415104
Lexington (FEMA Docket No. B-7761).	Town of Springdale (07-04-5295P).	November 8, 2007; November 15, 2007; <i>The Lexington County Chronicle</i> .	The Honorable Pat G. Smith, Mayor, Town of Springdale, 2915 Platt Springs Road, Springdale, SC 29170.	October 31, 2007	450138
Texas:					
Cameron (FEMA Docket No. B-7754).	Village of Laguna Vista (08-06-0039P).	October 18, 2007; October 25, 2007; <i>The Brownsville Herald</i> .	The Honorable David Privett, Mayor, Village of Laguna Vista, 122 Fernandez Street, Laguna Vista, TX 78578.	October 29, 2007	485483
Cameron (FEMA Docket No. B-7754).	Unincorporated areas of Cameron County (08-06-0039P).	October 18, 2007; October 25, 2007; <i>The Brownsville Herald</i> .	The Honorable Carlos H. Cascos, CPA, Cameron County Judge, 1100 East Monroe Street, Second Floor, Brownsville, TX 78520.	October 29, 2007	480101
Collin (FEMA Docket No. B-7754).	City of Allen (07-06-1312P).	October 11, 2007; October 18, 2007; <i>The Allen American</i> .	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	January 17, 2008	480131
Collin (FEMA Docket No. B-7761).	City of McKinney (07-06-1687P).	November 8, 2007; November 15, 2007; <i>McKinney Courier-Gazette</i> .	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	February 14, 2008	480135
Collin (FEMA Docket No. B-7754).	City of Murphy (07-06-0453P).	October 17, 2007; October 24, 2007; <i>Wylie News</i> .	The Honorable Bret Baldwin, Mayor, City of Murphy, 206 North Murphy Road, Murphy, TX 75094.	January 23, 2008	480137
Collin (FEMA Docket No. B-7761).	City of Plano (07-06-0629P).	November 8, 2007; November 15, 2007; <i>Plano Star Courier</i> .	The Honorable Pat Evans, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.	October 31, 2007	480140
Collin (FEMA Docket No. B-7754).	City of Plano (07-06-0947P).	October 11, 2007; October 18, 2007; <i>Plano Star Courier</i> .	The Honorable Pat Evans, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.	January 17, 2008	480140
Collin (FEMA Docket No. B-7754).	City of Plano (07-06-1312P).	October 18, 2007; October 25, 2007; <i>Plano Star Courier</i> .	The Honorable Pat Evans, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.	January 17, 2008	480140
Collin (FEMA Docket No. B-7761).	Unincorporated areas of Collin County (07-06-1687P).	November 8, 2007; November 15, 2007; <i>McKinney Courier-Gazette</i> .	The Honorable Keith Self, Collin County Judge, Collin County Government Center, 210 South McDonald Street, Suite 626, McKinney, TX 75069.	February 14, 2008	480130
Harris (FEMA Docket No. B-7761).	Unincorporated areas of Harris County (07-06-1886P).	November 15, 2007; November 22, 2007; <i>Houston Chronicle</i> .	The Honorable Ed Emmett, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	February 20, 2008	480287
Hays (FEMA Docket No. B-7754).	City of Buda (07-06-1313P).	October 17, 2007; October 24, 2007; <i>Hays Free Press</i> .	The Honorable Bobby Lane, Mayor Pro-Tem, City of Buda, 217 Arikara Street, Buda, TX 78610.	January 23, 2008	481640
Montgomery (FEMA Docket No. B-7750).	Unincorporated areas of Montgomery County (07-06-1001P).	September 12, 2007; September 19, 2007; <i>The Montgomery County News</i> .	The Honorable Alan B. Sadler, County Judge, Montgomery County, 301 North Thompson, Suite 210, Conroe, TX 77301.	October 1, 2007	480483
Tarrant (FEMA Docket No. B-7761).	City of Arlington (07-06-1545P).	October 11, 2007; October 18, 2007; <i>Arlington Star-Telegram</i> .	The Honorable Robert Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76010.	September 28, 2007	485454
Tarrant (FEMA Docket No. B-7761).	City of Benbrook (07-06-1254P).	November 8, 2007; November 15, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Jerry Dittich, Mayor, City of Benbrook, 911 Winscott Road, Benbrook, TX 76126.	February 14, 2008	480586
Tarrant (FEMA Docket No. B-7750).	City of Fort Worth (07-06-0930P).	September 20, 2007; September 27, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	December 27, 2007	480596
Tarrant (FEMA Docket No. B-7761).	City of Fort Worth (07-06-1254P).	November 8, 2007; November 15, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 14, 2008	480596
Tarrant (FEMA Docket No. B-7761).	City of Fort Worth (07-06-1675P).	November 8, 2007; November 15, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 14, 2008	480596
Tarrant (FEMA Docket No. B-7750).	City of Fort Worth (07-06-1902P).	September 20, 2007; September 27, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	August 31, 2007	480596

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant (FEMA Docket No. B-7761).	City of Fort Worth (07-06-2141P).	November 8, 2007; November 15, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Michael Moncrief, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 14, 2008	480596
Tarrant (FEMA Docket No. B-7761).	City of Fort Worth (07-06-2202P).	October 11, 2007; October 18, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Michael Moncrief, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, TX 76102.	January 17, 2008	480596
Tarrant (FEMA Docket No. B-7761).	Unincorporated areas of Tarrant County (07-06-1254P).	November 8, 2007; November 15, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Glen Whitley, Tarrant County Judge, 100 East Weatherford, Suite 501, Fort Worth, TX 76196.	February 14, 2008	480582
Tarrant (FEMA Docket No. B-7761).	Unincorporated areas of Tarrant County (07-06-2141P).	November 8, 2007; November 15, 2007; <i>Fort Worth Star-Telegram</i> .	The Honorable Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	February 14, 2008	480582
Travis (FEMA Docket No. B-7754).	Unincorporated areas of Travis County (07-06-0940P).	October 18, 2007; October 25, 2007; <i>Austin American-Statesman</i> .	The Honorable Samuel T. Biscoe, Travis County Judge, 314 West 11th Street, Suite 520, Austin, TX 78701.	January 24, 2008	481026
Williamson (FEMA Docket No. B-7750).	City of Round Rock (07-06-2615P).	September 18, 2007; September 25, 2007; <i>Round Rock Leader</i> .	The Honorable Nyle Maxwell, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	December 26, 2007	481048
Williamson (FEMA Docket No. B-7750).	Unincorporated areas of Williamson County (07-06-2615P).	September 18, 2007; September 25, 2007; <i>Round Rock Leader</i> .	The Honorable Dan A. Gattis, Williamson County Judge, 301 Southeast Inner Loop, Suite 109, Georgetown, TX 78626.	December 26, 2007	481079
Virginia: Fauquier (FEMA Docket No. B-7750).	Unincorporated areas of Fauquier County (07-03-1036P).	September 12, 2007; September 19, 2007; <i>Fauquier Times Democrat</i> .	Mr. Harry Atherton, Chairman, Fauquier County Board of Supervisors, Ten Hotel Street, Suite 208, Warrenton, VA 20186.	February 7, 2008	510055
Independent City (FEMA Docket No. B-7754).	City of Winchester (07-03-1291P).	October 18, 2007; October 25, 2007; <i>The Winchester Star</i> .	The Honorable Elizabeth Minor, Mayor, City of Winchester, 422 National Avenue, Winchester, VA 22601.	January 24, 2008	510173
Montgomery (FEMA Docket No. B-7761).	Unincorporated areas of Montgomery County (07-03-1077P).	November 8, 2007; November 15, 2007; <i>Roanoke Times</i> .	The Honorable Steve L. Spradlin, Chair, Montgomery County Board of Supervisors, 1553 Oilwell Road, Blacksburg, VA 24060.	February 14, 2008	510099
Wise (FEMA Docket No. B-7761).	Town of Wise (07-03-1197P).	November 8, 2007; November 15, 2007; <i>The Coalfield Progress</i> .	The Honorable Clifton Carson, Mayor, Town of Wise, P.O. Box 1100, Wise, VA 24293.	February 14, 2008	510179
West Virginia: Jefferson (FEMA Docket No. B-7754).	Unincorporated areas of Jefferson County (07-03-0242P).	October 18, 2007; October 25, 2007; <i>The Journal</i> .	The Honorable Frances Morgan, President, Jefferson County Commission, Post Office Box 250, Charles Town, WV 25414.	January 24, 2008	540065
Wisconsin: Milwaukee (FEMA Docket No. B-7761).	City of West Allis (07-05-4106P).	November 1, 2007; November 8, 2007; <i>Milwaukee Journal Sentinel</i> .	The Honorable Jeannette Bell, Mayor, City of West Allis, City Hall, Room 123, 7525 West Greenfield Avenue, West Allis, WI 53214.	October 18, 2007	550285

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

Dated: March 31, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8-8332 Filed 4-17-08; 8:45 am]

BILLING CODE 9110-12-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1160

RIN 3134-AA01

Technical Amendments To Reflect the New Authorization for a Domestic Indemnity Program

AGENCY: Federal Council on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The Federal Council on the Arts and the Humanities is adopting as a final rule, without change, the amendments which were published in the **Federal Register** as a proposed rule on March 4, 2008. The amendments reflect Congress's authorization of a Domestic Indemnity Program under

section 426 of The Consolidated Appropriations Act of 2008, Public Law 110-161 (December 26, 2007), and provide examples to guide applicants considering applying for indemnification of exhibitions with domestic or foreign-owned objects.

DATES: This rule is effective April 18, 2008.

FOR FURTHER INFORMATION CONTACT:

Heather C. Gottry, Counsel to the Federal Council on Arts and the Humanities, 1100 Pennsylvania Avenue, NW., Room 529, Washington, DC 20506. (Phone: (202) 606-8322, facsimile (202) 606-8600, or e-mail to gencounsel@neh.gov.) Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION:**I. Background on Domestic Indemnity Program Technical Amendments**

In 1975, the United States Congress enacted the Arts and Artifacts Indemnity Act, 20 U.S.C. 971–977, as amended, which established the Arts and Artifacts Indemnity Program administered by the Federal Council on the Arts and the Humanities (Federal Council). Under the Arts and Artifacts Indemnity Program, the United States Government guarantees to pay claims for loss or damage, subject to certain limitations, arising from exhibitions of foreign and domestic-owned objects determined by the Federal Council to be of educational, cultural, historical or scientific value. The Arts and Artifacts Indemnity Program is administered by the Museum Program at the National Endowment for the Arts, on behalf of the Federal Council, per “Indemnities Under the Arts and Artifacts Act” regulations (hereinafter “the Regulations”), which are set forth at 45 CFR part 1160.

Since 1975, the Regulations have been promulgated and amended by the Federal Council pursuant to the express and implied rulemaking authorities granted by Congress to make and amend rules needed for the effective administration of the Indemnity Program. On December 26, 2007, through section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161, the Arts and Artifacts Indemnity Act was amended in part to expand coverage of the Arts and Artifacts Indemnity program to up to \$5,000,000,000 at any one time for domestic exhibitions. (20 U.S.C. 974(b).) On March 4, 2008, a proposed rule was published by the Federal Council in the **Federal Register** (73 FR 11577) and public comment was solicited on technical amendments to the Regulations to reflect the authorization of a Domestic Indemnity Program.

II. Public Comments on the Proposed Rule

The Federal Council’s March 4, 2008 proposed rule in the **Federal Register** at 73 FR 11577 provided a 30-day public comment period which ended on April 3, 2008. No comments were submitted in response to the proposed rulemaking.

III. Matters of Regulatory Procedure

Regulatory Planning and Review (E.O. 12866)

Under Executive Order 12866, the Federal Council on the Arts and the Humanities must determine whether the regulatory action is “significant” and

therefore subject to OMB review and the requirements of the Executive Order. The Order defines a “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The final rule makes technical amendments to reflect Congress’ authorization of a Domestic Indemnity Program under section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007)). As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this final rule is not a “significant regulatory action” from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal Program.

Regulatory Flexibility Act

Because this final rule makes certain technical amendments, the Federal Council has determined in Regulatory Flexibility Act (5 U.S.C. 601 et seq.) review that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule is exempt from the requirements of the Paperwork Reduction Act, since it makes only technical amendments to reflect Congress’ authorization of a Domestic Indemnity Program under Section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007). An OMB form 83–1 is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect State, local, and tribal governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million

or more as adjusted for inflation in any one year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the final rule does not have significant takings implications. No rights, property or compensation has been, or will be, taken. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this final rule does not have federalism implications that warrant the preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Federal Council has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Federal Council has evaluated this final rule and determined that it has no potential negative effects on federally recognized Indian tribes.

National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 45 CFR Part 1160

Administrative practice and procedure, Art, Indemnity payments, Museums, Nonprofit organizations.

Dated: April 11, 2008.

Heather C. Gottry,

Counsel to the Federal Council on the Arts and the Humanities.

■ For the reasons stated in the preamble and under the authority of section 426 of The Consolidated Appropriations Act

of 2008, Public Law 110–161 (December 26, 2007), the Federal Council on the Arts and the Humanities amends 45 CFR Part 1160 as follows:

PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

■ 1. The authority citation for 45 CFR Part 1160 continues to read as follows:

Authority: 20 U.S.C. 971–977.

■ 2. Revise § 1160.4 to read as follows:

§ 1160.4 Eligibility for international exhibitions.

An indemnity agreement for an international exhibition made under these regulations shall cover:

(a) Eligible items from outside the United States while on exhibition in the United States;

(b) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions; and

(c) Eligible items from the United States while on exhibition in the United States, in connection with other eligible items from outside the United States which are integral to the exhibition as a whole.

(d)(1) *Example.* An American art museum is organizing a retrospective exhibition which will include more than 150 works of art by Impressionist painter Auguste Renoir. Museums in Paris and London have agreed to lend 125 works of art, covering every aspect of his career, many of which have not been seen together since the artist's death in 1919. The organizer is planning to include 25 masterpieces by Renoir from American public and private collections. The show will open in Chicago and travel to San Francisco and Washington.

(2) *Discussion.* This example is a common application for coverage of both foreign- and domestic-owned objects in an international exhibition. The foreign-owned objects are eligible for indemnity coverage under paragraph (a) of this section, and the domestic-owned objects may be eligible for indemnity coverage under paragraph (c) of this section if the foreign-owned objects are integral to the purposes of the exhibition as a whole. In reviewing this application, the Federal Council would evaluate the exhibition as a whole and determine whether the loans of 125 foreign-owned objects are integral to the educational, cultural, historical, or scientific significance of the exhibition on Renoir. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

§§ 1160.5 through 1160.12 [Redesignated as §§ 1160.6 through 1160.13]

■ 3. Sections 1160.5 through 1160.12 are redesignated as §§ 1160.6 through 1160.13.

■ 4. A new § 1160.5 is added to read as follows:

§ 1160.5 Eligibility for domestic exhibitions.

An indemnity agreement for a domestic exhibition made under these regulations shall cover eligible items from the United States while on Exhibition in the United States.

(a)(1) *Example 1.* An American museum is undergoing renovation and will be closed to the public for one year. During that time, masterpieces from the collection will go on tour to three other museums in the United States. Many of these works have never been lent for travel, and this will be a unique and the last opportunity for museum visitors in other parts of the country to see them exhibited together. Once the new building opens, they will be permanently installed and dispersed throughout the museum's galleries.

(2) *Discussion.* (i) This is a straightforward example of a domestic exhibition which would be eligible for consideration for indemnity coverage. Under the previous regulations, eligibility was limited to:

(A) Exhibitions in the United States of entirely foreign-owned objects;

(B) Exhibitions outside of the United States of domestic-owned objects; or

(C) Exhibitions in the United States of both foreign- and domestic-owned objects, with the foreign-owned objects having integral importance to the exhibition.

(ii) In this example, the Federal Council will consider the educational, cultural, historical, or scientific significance of the proposed domestic exhibition of the domestic-owned objects. It would not be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

(b)(1) *Example 2.* An American museum is organizing an exhibition of works by 20th century American artists, which will travel to one other U.S. museum. There are more than 100 objects in the exhibition. The majority of the paintings, drawings and sculpture, valued at more than \$500,000,000, are from galleries, museums and private collections in the United States. The organizing curator has selected ten works of art, mostly drawings and preparatory sketches relating to paintings in the exhibition,

valued at less than \$5,000,000, which will be borrowed from foreign lenders.

(2) *Discussion.* (i) This example raises the question of whether this applicant should submit an application for indemnity coverage for a domestic exhibition or an international exhibition. If the applicant submitted an application for an international exhibition requesting coverage for only the foreign-owned objects eligible under Section 1160.4(a), the Federal Council would evaluate whether the ten foreign-owned objects further the exhibition's educational, cultural, historical, or scientific purposes. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest. In this case, the applicant would have to insure the loans of the domestic-owned objects by other means.

(ii) In the case of an application for an international exhibition requesting coverage for both domestic-owned and foreign-owned objects eligible under section 1160.4(a) and (c), the Federal Council would evaluate the exhibition as a whole to determine if the ten foreign-owned objects are integral to achieving the exhibition's educational, cultural, historical, or scientific purposes. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

(iii) If the applicant submitted an application for a domestic exhibition, however, only the loans of domestic-owned objects, the highest valued part of the exhibition, would be eligible for coverage. The Federal Council would consider if the U.S. loans were of educational, cultural or historic interest. It would not be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest. In this case, the applicant would have to insure the loans of the foreign-owned objects by other means.

§ 1160.6 [Amended]

■ 5. Amend paragraph (j)(2) of newly redesignated § 1160.6 by removing "Director of the United States Information Agency that the exhibition" and adding in its place "Secretary of State or his designee that the international exhibition with eligible items under § 1160.4".

§ 1160.7 [Amended]

■ 6. Amend newly redesignated § 1160.7 by removing "the application will be submitted to the Director of the United States Information Agency" and adding in its place "applications for international exhibitions with eligible

items under § 1160.4 will be submitted to the Secretary of State or his designee.”

[FR Doc. E8–8224 Filed 4–17–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226–6322–02]

RIN 0648–AW58

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) May 1, 2008. Comments on this final rule must be received no later than 5 p.m., local time on May 19, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–AW58 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: Gretchen Arentzen

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

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:

Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail gretchen.arentzen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Website at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2007–2008 specifications and management measures for the Pacific Coast groundfish fishery and Amendment 16–4 of the FMP was published on September 29, 2006 (71 FR 57764). The final rule to implement the 2007–2008 specifications and management measures for the Pacific Coast Groundfish Fishery was published on December 29, 2006 (71 FR 78638). These specifications and management measures were codified in the CFR (50 CFR part 660, subpart G). The final rule was subsequently amended on: March 20, 2007 (71 FR 13043); April 18, 2007 (72 FR 19390); July 5, 2007 (72 FR 36617); August 3, 2007 (72 FR 43193); September 18, 2007 (72 FR 53165); October 4, 2007 (72 FR 56664); December 4, 2007 (72 FR 68097); and December 18, 2007 (72 FR 71583).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its March 10–14, 2008, meeting in Sacramento, California. The

Council recommended adjustments to current groundfish management measures to respond to updated fishery information and other inseason management needs.

Limited Entry Non-Whiting Trawl Fishery Management Measures

At its March 2008 meeting, the Council received new data and analyses on the catch of groundfish in the limited entry trawl fishery. The Council's recommendations for revising 2008 trawl fishery management measures focused on modifying the RCA boundary lines and trip limits to move vessels away from areas where canary rockfish most commonly co-occur with more abundant groundfish stocks, and considered the resulting effects of the movement of the fleet on darkblotched rockfish.

According to the most recently available West Coast Groundfish Observer Program (WCGOP) data, released in late January, 2008, bycatch rates for canary rockfish using selective flatfish trawl gear north of 40°10.00' N. lat. were much higher in 2006 than had been anticipated. By applying these new bycatch rates to landings of target species in the existing fishery bycatch model, NMFS concluded that the 2006 canary rockfish OY had been exceeded by approximately 10 mt. While estimated 2007 total catch of canary rockfish has yet to be determined, higher than anticipated bycatch rates in the north by selective flatfish trawls would be expected to continue in 2008. Based on 2006 WCGOP data indicating higher canary rockfish bycatch rates using selective flatfish trawls north of 40°10.00' N. lat., NMFS believes that the canary rockfish OY could be exceeded in 2008 under status quo regulations. The 2008 regulatory measures were developed assuming a canary rockfish bycatch rate that now has been determined to be too low, which results in an underestimate in the predicted impacts to canary rockfish. In order to keep catch levels within the canary rockfish OY, inseason adjustments are necessary to constrain incidental canary rockfish catch in the limited entry non-whiting trawl fishery.

The Council considered several options available to reduce impacts on canary rockfish in the non-whiting limited entry trawl fishery north of 40°10.00' N. lat. closer to harvest levels initially projected for the fisheries during development of the 2008 management measures: (1) the modification of trawl cumulative limits; and (2) modifications of the trawl RCA boundaries using some of the management area boundaries and

commonly used geographic coordinates, defined at 50 CFR 660.302 under "North-South management area", to provide more area-specific management measures on portions of the coast with differential canary rockfish bycatch rates. Use of management area boundaries and commonly used geographic coordinates for more area-specific management measures were first implemented inseason on April 18, 2007 (72 FR 19390). For 2009–2010, the Council has recommended the development of other tools, such as more refined area closures, similar to the yelloweye rockfish RCAs, but concluded that implementing these types of closures would not be routine management measure changes under either the FMP at 6.2.D or Federal regulations at 50 CFR 660.370(c).

The Council considered several combinations of available management measures and looked at the projected impact of these measures on the resource and the fishery. In order to keep projected impacts of the non-whiting trawl fishery on canary rockfish within the 2008 OY, and to allow fishing opportunities in geographic areas with low canary rockfish bycatch, several modifications to the limited entry non-whiting trawl fishery regulations were recommended, including: (1) modification of the trawl RCA boundaries with continued use of latitudes of interest to have more area specific restrictions; (2) reduction in cumulative limits for some species using selective flatfish trawl gear; and (3) increasing opportunities for sablefish and shortspine thornyheads in areas seaward of the trawl RCA.

Rockfish Conservation Area Boundaries

In March 2007, the Council considered 2005 WCGOP data and the canary rockfish bycatch rates associated with portions of the coast and made fine scale spatial closures based on that analysis. Based on the 2005 WCGOP data, the areas of the coast with the highest canary rockfish bycatch rates were: the area shoreward of the RCA north of Cape Alava; the area shoreward of the RCA between Leadbetter Point and the Washington/Oregon border; and the area shoreward of the RCA between Cape Arago and Humbug Mountain.

Based on analysis of 2006 WCGOP data, in relation to 2005 WCGOP data, canary rockfish bycatch rates differ annually in each area of the coast. Based on the 2006 WCGOP data, the areas of the coast with the highest canary rockfish bycatch rates were distributed slightly differently than in 2005: the area shoreward of the RCA between

Cape Alava (48°10.00' N. lat.) and Leadbetter Point (46°38.17' N. lat.), and the area shoreward of the RCA between Humbug Mountain (42°40.50' N. lat.) and 40°10.00' N. lat. Therefore, a slightly broader scale approach to the area specific management measures was considered in March 2008, compared to March 2007.

Incorporating the 2006 WCGOP data using a weighted average approach, as done in previous years, resulted in the following areas of the coast with the highest bycatch rate of canary rockfish relative to target species taken in the non-whiting trawl fishery: the area shoreward of the RCA north of the Columbia River (46°16.00' N. lat.); and the area shoreward of the RCA between Cape Arago (43°20.83' N. lat.) and 40°10.00' N. lat.

The Council determined that, in order to constrain the incidental catch of canary rockfish and to prevent exceeding the 2008 canary rockfish OY, portions of the limited entry trawl RCA north of 40°10.00' N. lat. should be expanded shoreward, so that the RCA's shoreward boundary is no deeper than a line approximating the 60–fm (110–m) contour in the area north of the Washington/Oregon border and in the area between Cape Arago and 40°10.00' N. lat. This RCA expansion is expected to have a dual effect of eliminating fishing opportunity in areas with trawl efforts exhibiting higher canary rockfish bycatch rates, as well as shifting fishing effort to areas exhibiting relatively lower canary rockfish bycatch rates. The RCA expansion is based on refined modification of the shoreward RCA boundaries in areas north of 40°10.00' N. lat. and will restrict areas with the highest bycatch rates, as identified from a weighted average that incorporates 2005 and 2006 WCGOP data. The Council's Groundfish Management Team (GMT) analyzed the effect of relatively greater restrictions within these two areas and, based on that analysis, recommended expanding the shoreward boundary of the trawl RCA to a line approximating the 60–fm (110–m) contour during the summer in the area between Cape Alava and the Oregon/Washington border and between Humbug Mountain and 40°10.00' N. lat. The Council also considered various alternatives that kept the shoreward boundary of the RCA at a line approximating the 75–fm (137–m) depth contour for portions of the year in the following areas of the coast: between Leadbetter Point and the Oregon/Washington border; and between Humbug Mountain and 40°10.00' N. lat. to reduce the disproportionate impact these area restrictions would have on

vessels based in various ports along the Washington and Oregon coasts. However, the necessary reductions in cumulative trip limits required to keep these areas open shoreward of a line approximating the 75–fm (137–m) depth contour in summer months would make trawling with selective flatfish gear not economically viable for many participants in the non-whiting trawl fishery.

In order to reduce economic impacts on vessels that formerly operated in the nearshore fishing areas, the Council supported liberalization, where possible, of the seaward boundary of the RCA in order to provide open fishing areas of relatively low canary bycatch to accommodate a shift in fishing effort from nearshore to offshore waters. The benefits of shifting effort offshore are twofold: since the highest rates of canary bycatch occur in the areas shoreward of the RCA, shifting effort seaward of the RCA further reduces the effort in the nearshore areas that remain open, thus reducing the amount of canary rockfish caught in those areas; and some displaced vessels whose effort was concentrated in the areas that are restricted may be able to shift their effort seaward of the RCA and remain in the fishery.

Trawl fishing opportunities seaward of the trawl RCA are primarily constrained by measures intended to minimize the incidental catch of darkblotched rockfish. Data from the NMFS trawl survey, logbook data, and anecdotal information from the trawl industry shows that various target species and darkblotched rockfish are found in shallower depths in the north and move deeper toward the south. The Council considered available data, which indicated that darkblotched rockfish have a relatively low bycatch rate outside of a line approximating the 150–fm (274–m) depth contour between the Oregon/Washington border and Cape Falcon (45°46.00' N. lat.) a relatively high bycatch rate between Leadbetter Point and the Oregon/Washington border. The 2008 darkblotched rockfish OY is 330–mt, 40–mt higher than in 2007, as the stock increases in biomass and approaches the rebuilding plan target year of 2011. The Council considered changes to the seaward boundary of the RCA within the context of inducing a shift in effort to areas with lower canary rockfish impacts, while maintaining protections for darkblotched rockfish to meet requirements in the rebuilding plan. Dividing the seaward boundary of the RCA allows more refined area management in response to differential darkblotched bycatch rates based on

latitudes of interest and the depth-based shift in abundance, from north to south, of darkblotched rockfish and target species. Minor adjustments to the seaward boundary of the RCA were considered to shift effort seaward of the RCA by provide targeting opportunity while still protecting darkblotched rockfish.

Based on the information and analysis described above, the Council recommended and NMFS is implementing the following changes to the trawl RCA north of 40°10.00' N. lat.: between Cape Alava and the Oregon/Washington border, the shoreward boundary is shifted shoreward to a line approximating the 60–fm (110–m) depth contour from September 1 through October 31; between Leadbetter Point and the Washington/Oregon border, the seaward boundary is shifted seaward to a line approximating the 200–fm (366–m) depth contour from May 1 through June 30; between the Washington/Oregon border and Cape Falcon, the seaward boundary is shifted seaward to a line approximating the 150–fm (274–m) depth contour from May 1 through August 31; and between Humbug Mountain and 40°10.00' N. lat., the shoreward boundary is shifted shoreward to a line approximating the 60–fm (110–m) depth contour from May 1 through October 31.

Limited Entry Non-Whiting Trawl Trip Limits

In addition to area closures, the Council determined that cumulative limits in the limited entry trawl fishery north of 40°10.00' N. lat. should be modified to reduce effort and catch of target species with selective flatfish trawl gear, and increase effort and catch of some target species with large and small footrope trawl gear. These modifications were designed to induce a shift in effort seaward of the RCA in order to reduce impacts on co-occurring canary rockfish and prevent exceeding the 2008 canary rockfish OY, and to relieve some of the restrictions that were implemented in 2007 to prevent exceeding the lower 2007 darkblotched rockfish OY.

The Council considered various combinations of cumulative limit adjustments paired with RCA modifications to reduce impacts to canary rockfish. As with the RCA boundary revisions, the Council's GMT analyzed revisions to trip limits intended to shift fishing effort away from areas where canary rockfish are more commonly taken as bycatch. The GMT recommended that the Council consider reducing Dover sole, other flatfish, and petrale sole opportunities

for vessels using selective flatfish trawl gear, in order to provide for a disincentive to fish in areas where canary rockfish are found and to shift effort away from areas with a relatively high canary rockfish bycatch rate.

Based on these analyses and recommendations, the Council recommended and NMFS is implementing a decrease in the limited entry selective flatfish trawl fishery cumulative limits north of 40°10.00' N. lat. beginning May 1: for Dover sole from “50,000 lb per two months” to “40,000 lb per two months” through August 31; for other flatfish from “70,000 lb per two months” to “50,000 lb per two months” through December 31; and for petrale sole, from “22,000 lb per two months” to “18,000 lb per two months” through October 31. If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period. Therefore the trip limits for multiple trawl gear are modified for consistency with adjustments in trip limits for the above listed species and gears.

In addition to liberalizing portions of the seaward boundary of the trawl RCA north of 40°10.00' N. lat., the Council considered increasing cumulative limits for: DTS species in areas seaward of the RCA in order to shift more fishing effort to offshore waters; and for minor slope rockfish south of 40°10.00' N. lat. North of 40°10.00' N. lat., the Council considered increasing limits for sablefish and shortspine thornyheads taken with large and small footrope trawl gears, which are only allowed when fishing seaward of the trawl RCA, to create incentives to fish in areas with lower canary rockfish bycatch rates, and to provide additional fishing opportunity under a less constraining 2008 darkblotched rockfish OY of 330 mt. South of 40°10.00' N. lat., the Council considered increasing limits for minor slope rockfish, sablefish and shortspine thornyheads to provide additional fishing opportunity under a less constraining 2008 darkblotched rockfish OY of 330 mt and to increase effort and catch of these target species seaward of the RCA. The Council determined that increasing trip limits for minor slope rockfish, sablefish, and shortspine thornyheads would help prevent exceeding the 2008 canary rockfish OY, and reduce economic impacts, for the following reasons: (1) the shift in effort to areas with lower canary rockfish bycatch rates will

reduce total coastwide incidental catch of canary rockfish; and (2) it may reduce the economic impacts on vessels displaced by nearshore fishery restrictions by providing fishing opportunity while also constraining incidental catch of canary rockfish.

Changes to management measures to constrain the catch of canary rockfish will also affect the incidental catch of darkblotched rockfish and Pacific ocean perch (POP). Increasing incentives to fish seaward of the trawl RCA to reduce impacts on canary rockfish will increase effort in an area of known darkblotched rockfish abundance and the incidental catch of darkblotched rockfish is likely to increase compared to predicted impacts under current management measures. POP is not considered to be a constraining species in the limited entry trawl fishery; the inseason adjustments to management measures implemented by this action are anticipated to keep POP total catch well within its 2008 OY of 150 mt. The Council focused its discussions of various continental slope actions to allow access to the increased 2008 darkblotched rockfish OY, while keeping projected total mortality within the 2008 darkblotched rockfish OY. The Council's GMT analyzed the effects of changes in RCA boundaries, cumulative limit opportunities, and fishing effort on the incidental catch of darkblotched rockfish, and the combined effects of these actions are predicted to result in a total 2008 catch of darkblotched rockfish that is lower than the 2008 OY. Catch of darkblotched rockfish will be monitored and action can be taken inseason if necessary to modify the trawl RCA and cumulative limits to keep total catch within the 2008 darkblotched rockfish OY.

Based on these analyses and recommendations, the Council recommended and NMFS is implementing an increase in the limited entry trawl fishery cumulative limits taken with large and small footrope trawl gears coastwide beginning May 1: sablefish limits are modified from “17,000 lb per two months” to “19,000 lb per two months” through October 31, and shortspine thornyheads are modified from “12,000 lb per two months” to “25,000 lb per two months” through December 31. The Council also recommended and NMFS is implementing an increase in the limited entry trawl fishery cumulative limits for minor slope and darkblotched rockfish between 40°10.00' N. lat. and 38° N. lat., from “10,000 lb per two months” to “15,000 lb per two months” through October 31.

Limited Entry Non-Tribal Whiting Trawl Fishery

The availability of overfished species as incidental catch, particularly canary rockfish, darkblotched rockfish, and widow rockfish, may prevent the industry from harvesting the entire Pacific whiting (whiting) OY during 2008. To allow the industry to have the opportunity to harvest the higher whiting OY while keeping incidental catch within the rebuilding OYs for the incidental species, the Council recommended bycatch limits for the overfished species most commonly taken as incidental catch in the non-tribal whiting fishery. With bycatch limits, the industry has the opportunity to harvest a larger amount of whiting, if they can do so while keeping the incidental catch of specific overfished species within adopted bycatch limits. Regulations provide for the automatic closure of the commercial (non-tribal) portion of the whiting fishery upon attainment of a bycatch limit.

In recent years, the most constraining overfished species for the whiting fishery have been darkblotched, canary and widow rockfish. Current regulations at 50 CFR 660.373 (b)(4) contained the following bycatch limits for the commercial sectors (non-tribal) of the whiting fishery: 4.7 mt for canary, 275 mt for widow, and 25 mt for darkblotched rockfish.

At the March 2008 Council meeting, the GMT examined potential bycatch of overfished species in relation to: performance of the 2007 non-tribal whiting fishery; other inseason management considerations; and the 2008 whiting OY. In 2007, the whiting primary season closed for the catcher processor, mothership and shore-based sectors on July 26, 2007 (72 FR 46176) when estimates indicated that the bycatch limit for widow rockfish had been reached. The 2007 whiting OY was 10 percent lower than the OY in 2006, however, the widow rockfish bycatch limit was raised in 2007 to accommodate an increasing widow rockfish biomass. Widow rockfish are currently under a rebuilding plan, with a projected rebuilding year of 2015. As the widow rockfish biomass increases, encounter rates in the whiting trawl fishery over recent years have also increased. In 2007, the non-tribal whiting fishery was closed upon attainment of the widow rockfish bycatch limit. Subsequently, the limit was increased from 220 mt to 275 mt. Final catch of widow rockfish by the 2007 non-tribal whiting fishery was 235 mt.

With a recommended 2008 U.S. whiting OY of 269,545 mt, and in the absence of any further restrictions, the bycatch of canary rockfish was projected to be approximately 4.0 mt, the bycatch of widow rockfish was projected to be approximately 364.4 mt, and the bycatch of darkblotched rockfish was projected to be approximately 15.4 mt. If a widow bycatch limit was set high enough to accommodate these projected impacts, and the limit was reached, the total impacts on widow rockfish combined with all other fisheries were projected to exceed the 2008 widow rockfish OY. The GMT explored mechanisms to reduce impacts on widow rockfish, so that bycatch limits for all species could be set at a level that could more likely accommodate the 2008 non-tribal whiting OY. Projected impacts on darkblotched rockfish, after implementation of all the RCA and cumulative limit adjustments in this final rule, was 42 mt below the 2008 darkblotched rockfish OY. After conversations with industry about mechanisms to induce an effort shift away from widow rockfish, the GMT explored options that would raise the darkblotched rockfish bycatch limit, to increase flexibility in behavior of the non-tribal whiting fleet, so that they can move to offshore areas if they encounter widow rockfish early in the season. The GMT estimated that if the darkblotched rockfish bycatch limit were raised from 25 mt, to approximately 40 mt, the projected impacts on widow rockfish would decrease to approximately 296 mt. After considering the projected catch of overfished species in all other fishing and research activities, the Council recommended that the canary rockfish bycatch limits for the non-tribal whiting fishery remain at 4.7 mt, which is the same limit that was available during the 2006 and 2007 primary whiting season. The Council recommended maintaining a widow rockfish bycatch limit of 275 mt, the same bycatch limit that was in effect at the end of the 2007 season. To better accommodate current incidental catch projections for the non-tribal whiting fishery, and to induce a shift in effort to areas with lower widow rockfish abundance, the Council recommended the darkblotched rockfish bycatch limit be raised to 40 mt. With this increase, the 2008 estimated total catch of darkblotched rockfish is still predicted to be well below the 2008 darkblotched rockfish OY of 330 mt.

Based on these analyses and recommendations, the Council recommended and NMFS is implementing an increase in the

darkblotched rockfish bycatch limit, in the non-tribal whiting fishery, to 40 mt.

Open Access Sablefish Daily Trip Limit Fishery

The Council discussed reducing the sablefish daily trip limit (DTL) fishery's cumulative limit north of 36° N. lat. in anticipation of a large influx of fishing effort into the sablefish DTL fishery as a result of potential salmon fishery restrictions and closures. The salmon fishery in 2008 is likely to be severely constrained off the coasts of Oregon and California. Fishery managers have received a number of inquiries from salmon fishers who are interested in moving into the open access sablefish DTL fishery.

In 2006, restrictions in the salmon fishery drove an influx of fishers into the open access sablefish DTL fishery and cumulative limits were reduced on May 1, 2006, (71 FR 24601) to provide a longer season. Catches of sablefish were higher than projected throughout the year, and the sablefish DTL fishery was closed north of 36° N. lat. on October 31, 2006 (71 FR 58289).

Only a minimal amount of hook-and-line or pot fishing gear is needed to participate in the sablefish DTL fishery, increasing the likelihood of fishers moving into this fishery. Based on the proposed options for salmon fishery regulations considered by the Council at their March meeting, the 2008 salmon season will be more restricted than it was in 2006. Under the current limits, a large increase in the number of open access sablefish DTL fishery participants could cause an early attainment of the open access sablefish allocation. If the allocation were reached, the fishery would need to be closed, as it was in October 2006.

Though the open access sablefish DTL fishery could provide fishing opportunity for displaced salmon fishers, it would likely have a large effect on fishers who have historically participated in the sablefish fishery. Reducing the open access cumulative limit for sablefish on May 1, 2008, is predicted to result in a longer season, which would benefit fishers who have historically participated in the year-round fishery.

The Council considered various reductions to the current open access sablefish DTL fishery's daily, weekly, and two month limits to sustain the open access sablefish DTL fishery until the end of year. The Council considered industry comments that further reductions in the daily limit would jeopardize the viability of the fishery, due to rising fuel costs, and the GMT analysis indicated that reductions in

weekly limits would not impact overall sablefish catch. The Council recommended that the daily and weekly trip limits for sablefish remain the same and that the cumulative limits for sablefish be reduced to 2,200 lb (998 kg) per two months. The Pacific Council will analyze effort shifts into the open access sablefish DTL fishery at their June 8–13, 2008, meeting when new data from the fishery are available.

Therefore, the Pacific Council recommended and NMFS is implementing a reduction in the open access cumulative trip limits for sablefish north of 36° N. lat. from “300 lb (136 kg) per day, or one landing per week of up to 800 lb (363 kg), not to exceed 2,400 lb (1,089 kg) per two months” to “300 lb (136 kg) per day, or one landing per week of up to 800 lb (363 kg), not to exceed 2,200 lb (998 kg) per two months”, beginning May 1.

California Recreational Fishery

In the California recreational groundfish fishery, the California Department of Fish and Game (CDFG) manages yelloweye, canary, and minor nearshore rockfish under state harvest limits. State harvest limits apply to landings by recreational ocean boats, shore catch, and discards. In September 2007, California’s recreational catch estimates and projections based on recent catch patterns indicated that the California State harvest limit for yelloweye and canary rockfish, which are 2.1 mt, and 9 mt, respectively, were projected to be exceeded. California projected that, without taking inseason action, the total 2007 mortality from the California fishery, combined with all other coastwide recreational and commercial fishery impacts, would exceed the 2007 yelloweye rockfish OY. To reduce recreational fishery impacts on yelloweye and canary rockfish, California closed the recreational boat-based fisheries north of 37°11' N. lat. for all Federal groundfish species subject to bag limits in that area, effective October 1, 2007. California projected that the October 1, 2007, closure would reduce the total mortality from the California recreational fishery to: 7.2 mt yelloweye rockfish; and 10.1 mt canary rockfish. CDFG presented final catch estimates from the 2007 recreational fishery to the Council at their March 2008 meeting. The final catch estimates were: 8.0 mt yelloweye rockfish; and 10.9 mt canary rockfish; which exceeded the 2007 harvest guidelines for these species.

CDFG analyzed several suites of management measures and developed a proposal to reduce the projected catch of these species to a level below the California harvest guidelines in the 2008

recreational groundfish season: 2.1 mt yelloweye rockfish; and 9 mt canary rockfish. To improve inseason tracking of catches in the California recreational fishery, CDFG fishery managers will be working with California Recreational Fishery Survey samplers to monitor the rate of catch accrual of yelloweye and canary rockfish, inform enforcement of ports with landings of prohibited species, and identify ports at which additional outreach and education efforts would be beneficial. CDFG will also be implementing five recreational Yelloweye Rockfish Conservation Areas in State waters, between Pigeon Point (37°11' N. lat.) and the Oregon/California border (42° N. lat.), within which the recreational fishery for rockfish, cabezon, greenlings, and lingcod, will be closed to reduce projected impacts on yelloweye rockfish. CDFG will also be implementing a 20-fm (37-m) depth restriction in the recreational fishery between Pigeon Point and the Oregon/Washington border (the Northern and North-Central Management Areas). The 20-fm (37-m) depth restriction lies primarily within State waters, however in some areas of the coast it extends into Federal water. CDFG requested that the Council adopt use of the 20-fm (37-m) depth restriction in Federal regulations, instead of the 30-fm (55-m) depth restriction currently in Federal regulations, to conform to State regulations. Projections indicate that this suite of management measures will reduce recreational fishery impacts on yelloweye rockfish and canary rockfish, and keep the mortality of yelloweye and canary rockfish within the 2008 California harvest guidelines. Shore fisheries, including shore-based diving, angling and spear fishing, were not affected by this closure, nor were fisheries not subject to bag limits.

Therefore, in order to conform recreational management measures for Federal waters (3–200 nm) to management measures for California state waters (0–3 nm), the Pacific Council recommended and NMFS is implementing a 20-fm (37-m) depth restriction in the California recreational fishery between Pigeon Point and the Oregon/Washington border (the Northern and North-Central Management Areas) beginning May 1, 2008.

Classification

These actions are taken under the authority of 50 CFR 660.370 (c) and are exempt from review under Executive Order 12866.

These actions are taken under the authority of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see ADDRESSES) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to the 2008 groundfish management measures under 5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest. Also for the same reasons, NMFS finds good cause to waive part of the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective May 1, 2008.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its March 10–14, 2008, meeting in Sacramento, CA. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science by approaching without exceeding the OYs for federally managed species. The adjustments to management measures in this document affect: commercial trawl fisheries off Washington, Oregon, and California; bycatch limits in the commercial non-tribal whiting trawl fishery; and recreational fisheries off California. These adjustments to management measures must be implemented by May 1, 2008, to: prevent exceeding the 2008 OYs for canary and yelloweye rockfish; prevent premature closure of fisheries; and eliminate confusion for the public and to improve enforcement by ensuring that Federal and state recreational regulations conform to each other. Changes to the cumulative limits in the limited entry trawl fishery and to the trawl RCA are needed to reduce the projected bycatch of canary rockfish, a groundfish species that is currently subject to rebuilding requirements. The projected bycatch of canary rockfish must be reduced in order to keep coastwide fisheries from exceeding that species’s rebuilding OY. Changes to the trawl RCA and changes to trip limits in the limited entry trawl fishery for Dover sole, other flatfish, and petrale sole to reduce the bycatch of canary rockfish must be implemented in a timely manner by May 1, 2008, so that the total

catch of canary rockfish stays within its 2008 OY, as defined in the rebuilding plan for this species. Changes to cumulative limits in the limited entry trawl fishery for sablefish, shortspine thornyheads, and slope rockfish must be implemented in a timely manner by May 1, 2008, to: relieve a restriction and to allow fisheries to approach, but not exceed, the 2008 OY for darkblotched rockfish; and to induce a shift in effort to offshore areas where incidental catch of canary rockfish is lower, so that the total catch of canary rockfish stays within its 2008 OY. A change to the non-tribal whiting fishery bycatch limit for darkblotched rockfish must be implemented as close as possible to the start of the California whiting fishery, on April 1, 2008. Ensuring that the increase in the darkblotched rockfish bycatch limit is in place by the season start date provides an opportunity for participants in this fishery to catch the available whiting quota without reaching or exceeding the bycatch limit of widow rockfish or its OY, prematurely closing the fishery.

Changes to the California recreational groundfish RCA must be implemented in a timely manner by May 1, 2008, in order to eliminate confusion for the public, and to improve enforcement by ensuring that Federal and state recreational regulations conform to each other.

These revisions are needed to protect overfished groundfish species and to keep the harvest of other groundfish species within the harvest levels projected for 2008, while allowing fishermen access to healthy stocks. Without these measures in place, the fisheries could risk exceeding harvest levels early in the year, causing early and unanticipated fishery closures and economic harm to fishing communities. Delaying these changes would keep management measures in place that are not based on the best available data and which could lead to early closures of the fishery if harvest of groundfish exceeds

levels projected for 2008. Such delay would impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year. In addition, it is also in the public interest to implement the recreational measures in this document as soon as possible to improve enforcement and eliminate confusion for the public by removing differences between different regulations that affect the same waters and fisheries.

List of Subjects in 50 CFR Part 660

Fishing, Fisheries, and Indian Fisheries.

Dated: April 14, 2008.

Alan D. Risenhoover,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.373, paragraph (b)(4) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(4) *Bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock, under routine management measure authority at § 660.370(c)(1)(ii). These limits are routine management measures under § 660.370(c) and, as such, may be adjusted inseason or may have new species added to the list of those with

bycatch limits. The whiting fishery bycatch limits for the sectors identified in § 660.323(a) are: 4.7 mt of canary rockfish; 275 mt of widow rockfish; and 40 mt of darkblotched rockfish.

* * * * *

■ 3. In § 660.384, paragraph (c)(3)(i)(A)(1) and (2) are revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) * * *

(1) Between 42° N. lat. (California/Oregon border) and 40°10.00' N. lat. (North Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through December 31; and is closed entirely from January 1 through April 30 (i.e., prohibited seaward of the shoreline).

(2) Between 40°10' N. lat. and 37°11' N. lat. (North Central Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20-fm (37-m) depth contour along the mainland coast and along islands and offshore seamounts from June 1 through November 30; and is closed entirely from January 1 through May 31 and from December 1 31 (i.e., prohibited seaward of the shoreline). Closures around the Farallon Islands (see paragraph (c)(3)(i)(C) of this section) and Cordell Banks (see paragraph (c)(3)(i)(D) of this section) also apply in this area.

* * * * *

■ 4. Tables 3 (North), 3 (South), 5 (North), and 5 (South) to part 660 subpart G are revised to read as follows:

BILLING CODE 3510-22-S

Table 3 (North) to Part 660, Subpart G – 2007-2008 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply – Read § 660.301 - § 660.399 before using this table

031708

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{6/}:							
1	North of 48°10.00' N. lat.	shore - modified 200 fm ^{7/}	shore - 200 fm	shore - 150 fm			shore - modified 200 fm ^{7/}
2	48°10.00' N. lat. - 46°38.17' N. lat.	75 fm - modified 200 fm ^{7/}	60 fm - 200 fm	60 fm - 150 fm			75 fm - modified 200 fm ^{7/}
3	46°38.17' N. lat. - 46°16.00 N. lat.		60 fm - 200 fm		60 fm - 150 fm		
4	46°16.00 N. lat. - 45°46.00' N. lat.		75 fm - 200 fm	75 fm - 150 fm		75 fm - 200 fm	
5	45°46.00' N. lat. - 43°20.83' N. lat.		75 fm - 200 fm				
6	43°20.83' N. lat. - 42°40.50' N. lat.	shore - modified 200 fm ^{7/}	shore - 200fm				shore - modified 200 fm ^{7/}
7	42°40.50' N. lat. -40°10.00' N. lat.	75 fm - modified 200 fm ^{7/}	75 fm - 200 fm	60 fm - 200 fm			75 fm - modified 200 fm ^{7/}

Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

8	Minor slope rockfish ^{2/} & Darkblotched rockfish	1,500 lb/ 2 months		
9	Pacific ocean perch	1,500 lb/ 2 months		
10	DTS complex			
11	Sablefish			
12	large & small footrope gear	14,000 lb/ 2 months	19,000 lb/ 2 months	14,000 lb/ 2 months
13	selective flatfish trawl gear	5,000 lb/ 2 months		
14	multiple bottom trawl gear ^{8/}	5,000 lb/ 2 months		
15	Longspine thomyhead			
16	large & small footrope gear	25,000 lb/ 2 months		
17	selective flatfish trawl gear	3,000 lb/ 2 months		
18	multiple bottom trawl gear ^{8/}	3,000 lb/ 2 months		
19	Shortspine thomyhead			
20	large & small footrope gear	12,000 lb/ 2 months	25,000 lb/ 2 months	
21	selective flatfish trawl gear	3,000 lb/ 2 months		
22	multiple bottom trawl gear ^{8/}	3,000 lb/ 2 months		
23	Dover sole			
24	large & small footrope gear	80,000 lb/ 2 months		
25	selective flatfish trawl gear	40,000 lb/ 2 months	50,000 lb/ 2 months	40,000 lb/ 2 months
26	multiple bottom trawl gear ^{8/}	40,000 lb/ 2 months	50,000 lb/ 2 months	40,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

27	Whiting				
28	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.			
29	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.			
30	Flatfish (except Dover sole)				
31	Arrowtooth flounder				
32	large & small footrope gear	150,000 lb/ 2 months			
33	selective flatfish trawl gear	10,000 lb/ 2 months			
34	multiple bottom trawl gear ^{8/}	10,000 lb/ 2 months			
35	Other flatfish ^{3/} , English sole, starry flounder, & Petrale sole				
36	large & small footrope gear for Other flatfish ^{3/} , English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months
37	large & small footrope gear for Petrale sole	40,000 lb/ 2 months	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	40,000 lb/ 2 months
38	selective flatfish trawl gear for Other flatfish ^{3/} , English sole, & starry flounder	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
39	selective flatfish trawl gear for Petrale sole	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
40	multiple bottom trawl gear ^{8/}	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
41	Minor shelf rockfish ^{1/}, Shortbelly, Widow & Yelloweye rockfish				
42	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.			
43	large & small footrope gear	300 lb/ 2 months			
44	selective flatfish trawl gear	300 lb/ month	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month	300 lb/ month
45	multiple bottom trawl gear ^{8/}	300 lb/ month	300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month	300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

Table 3 (North): Continued

46	Canary rockfish			
47	large & small footrope gear	CLOSED		
48	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month
49	multiple bottom trawl gear ^{8/}	CLOSED		
50	Yellowtail			
	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.		
51				
52	large & small footrope gear	300 lb/ 2 months		
53	selective flatfish trawl gear	2,000 lb/ 2 months		
54	multiple bottom trawl gear ^{8/}	300 lb/ 2 months		
	Minor nearshore rockfish & Black rockfish			
55				
56	large & small footrope gear	CLOSED		
57	selective flatfish trawl gear	300 lb/ month		
58	multiple bottom trawl gear ^{8/}	CLOSED		
59	Lingcod ^{4/}			
60	large & small footrope gear		4,000 lb/ 2 months	
61	selective flatfish trawl gear	1,200 lb/ 2 months	1,200 lb/2 months	
62	multiple bottom trawl gear ^{8/}	1,200 lb/ 2 months		
	Pacific cod	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months
63				
64	Spiny dogfish	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months
65	Other Fish ^{5/}	Not limited		

TABLE 3 (North) con't

TABLE 3 (North) cont

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.

2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.302 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.

7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.

8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

031708

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{6/}:						
1 South of 40°10' N. lat.	100 fm - 150 fm ^{7/}					
All trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2 Minor slope rockfish^{2/} & Darkblotched rockfish						
3 40°10' - 38° N. lat.	15,000 lb/ 2 months					
4 South of 38° N. lat.	55,000 lb/ 2 months					
5 Splitnose						
6 40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
7 South of 38° N. lat.	40,000 lb/ 2 months					
8 DTS complex						
9 Sablefish	14,000 lb/ 2 months		19,000 lb/ 2 months			14,000 lb/ 2 months
10 Longspine thornyhead	25,000 lb/ 2 months					
11 Shortspine thornyhead	12,000 lb/ 2 months		25,000 lb/ 2 months			
12 Dover sole	80,000 lb/ 2 months					
13 Flatfish (except Dover sole)						
14 Other flatfish ^{3/} , English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
15 Petrale sole	50,000 lb/ 2 months					50,000 lb/ 2 months
16 Arrowtooth flounder	10,000 lb/ 2 months					
17 Whiting						
18 midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
19 large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 3 (South)

Table 3 (South). Continued

20	Minor shelf rockfish ^{1/} , Chilipepper, Shortbelly, Widow, & Yelloweye rockfish			
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month		
22	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED		
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month		
25	small footrope trawl for Chilipepper	2,000 lb/ 2 months		
26	Bocaccio			
27	large footrope or midwater trawl	300 lb/ 2 months		
28	small footrope trawl	CLOSED		
29	Canary rockfish			
30	large footrope or midwater trawl	CLOSED		
31	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month
32	Cowcod	CLOSED		
33	Minor nearshore rockfish & Black rockfish			
34	large footrope or midwater trawl	CLOSED		
35	small footrope trawl	300 lb/ month		
36	Lingcod ^{4/}			
37	large footrope or midwater trawl	1,200 lb/ 2 months	4,000 lb/ 2 months	
38	small footrope trawl	1,200 lb/ 2 months		
39	Pacific cod	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months
40	Spiny dogfish	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months
41	Other Fish ^{5/} & Cabezon	Not limited		

TABLE 3 (South) cont

1/ Yellowtail is included in the trip limits for minor shelf rockfish.

2/ POP is included in the trip limits for minor slope rockfish

3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.

7/ South of 34°27' N. lat., the RCA is 100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

031708

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA) ^{6/} :						
1	North of 46°16' N. lat.		shoreline - 100 fm			
2	46°16' N. lat. - 40°10' N. lat.		30 fm - 100 fm			
See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.						
See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	Minor slope rockfish ^{1/} & Darkblotched rockfish		Per trip, no more than 25% of weight of the sablefish landed			
4	Pacific ocean perch		100 lb/ month			
5	Sablefish		300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,200 lb/ 2 months		
6	Thornyheads		CLOSED			
7	Dover sole		3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.			
8	Arrowtooth flounder					
9	Petrable sole					
10	English sole					
11	Starry flounder					
12	Other flatfish ^{2/}					
13	Whiting		300 lb/ month			
14	Minor shelf rockfish ^{1/} , Shortbelly, Widow, & Yellowtail rockfish		200 lb/ month			
15	Canary rockfish		CLOSED			
16	Yelloweye rockfish		CLOSED			
17	Minor nearshore rockfish & Black rockfish					
18	North of 42° N. lat.		5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish ^{3/}			
19	42° - 40°10' N. lat.		6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish ^{3/}			
20	Lingcod ^{4/}		CLOSED		400 lb/ month	
21	Pacific cod		1,000 lb/ 2 months			
22	Spiny dogfish		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months
23	Other Fish ^{5/}		Not limited			

TABLE 5 (North)

Table 5 (North). Continued

24	PINK SHRIMP NON-GROUNDFISH TRAWL (not subject to RCAs)	
25	North	TABLE 5 (North) con't
26	SALMON TROLL	
27	North	

Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish.

Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.302 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length south of 42° N. lat.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

031708

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA) ^{5/} :							
1	40°10' - 34°27' N. lat.	30 fm - 150 fm					
2	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
3	Minor slope rockfish ^{1/} & Darkblotched rockfish						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	Splitnose	200 lb/ month					
7	Sablefish						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,200 lb/ 2 months			
9	South of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 700 lb					
10	Thornyheads						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	Arrowtooth flounder						
15	Petrale sole						
16	English sole						
17	Starry flounder						
18	Other flatfish ^{2/}						
19	Whiting	300 lb/ month					
20	Minor shelf rockfish ^{1/} , Shortbelly, Widow & Chilipepper rockfish						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months	300 lb/ 2 months		
22	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months			
23	Canary rockfish	CLOSED					
24	Yelloweye rockfish	CLOSED					
25	Cowcod	CLOSED					
26	Bocaccio						
27	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months	200 lb/ 2 months		
28	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			

TABLE 5 (South)

TABLE 5 (South)

Table 5 (South). Continued

29	Minor nearshore rockfish & Black rockfish						
30	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
31	Deeper nearshore						
32	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months
33	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
34	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months
35	Lingcod ^{3/}	CLOSED		400 lb/ month			CLOSED
36	Pacific cod	1,000 lb/ 2 months					
37	Spiny dogfish	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
38	Other Fish ^{4/} & Cabezon	Not limited					
39	RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL						
40	NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:						
41	40°10' - 38° N. lat.	100 fm - modified 200 fm ^{6/}	100 fm - 150 fm				100 fm - modified 200 fm ^{6/}
42	38° - 34°27' N. lat.	100 fm - 150 fm					
43	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
44		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
45	PINK SHRIMP NON-GROUNDFISH TRAWL GEAR (not subject to RCAs)						
46	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 5 (South) cont

TABLE 5 (South) cont

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ The size limit for lingcod is 24 inches (61 cm) total length.

4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.

6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Proposed Rules

Federal Register

Vol. 73, No. 76

Friday, April 18, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0446; Directorate Identifier 2008-CE-021-AD]

RIN 2120-AA64

Airworthiness Directives; Lindstrand Balloons Ltd. Models 42A, 56A, 60A, 69A, 77A, 90A, 105A, 120A, 150A, 180A, 210A, 240A, 260A, and 310A Balloons

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

ACTION: Notice of proposed rulemaking (NPRM).

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

Defective burner hoses have been identified which might develop a leak. A significant leak, if it was ignited, could hazard the balloon and occupants.

Since the issue of AD G-2003-0010 there have been occurrences of hose failure in batches not identified in the earlier bulletins. LHAB Service Bulletin (SB) No. 11 supersedes the earlier SBs and revises the applicability as required.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 19, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations,

M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4138; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0446; Directorate Identifier 2008-CE-021-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On March 12, 2008, we issued AD 2008-06-15, Amendment 39-15427 (73 FR 13113). That AD required actions

intended to address an unsafe condition on the products listed above.

AD 2008-06-15 was issued as an interim action in order to address the need for the immediate inspection and pressure test of applicable burner hoses for leaks and replacement of hoses and end fittings if found defective.

The United Kingdom Civil Aviation Authority, which is the aviation authority for the United Kingdom, has issued Emergency Airworthiness Directive AD No. G-2008-0001, dated January 9, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products.

The MCAI allows for repetitive inspections of applicable burner hoses at intervals not to exceed ten hours time in service. The MCAI also requires replacing applicable burner hoses and end fittings before the next annual inspection.

The Administrative Procedure Act does not permit the FAA to "bootstrap" a long-term requirement into an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. The short-term action and the long-term action were analyzed separately for justification to bypass prior public notice.

We are issuing this proposed AD to address the mandatory replacement of the burner hose and end fitting.

Relevant Service Information

Lindstrand Balloons Ltd. has issued Lindstrand Hot Air Balloons Ltd. Service Bulletin No. 11, Issue 1, dated September 24, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this proposed AD will affect 422 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$33,760, or \$80 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing \$200, for a cost of \$280 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15427 (73 FR 13113), and adding the following new AD:

Lindstrand Balloons Ltd.: Docket No. FAA–2008–0446; Directorate Identifier 2008–CE–021–AD.

Comments Due Date

- (a) We must receive comments by May 19, 2008.

Affected ADs

- (b) This AD supersedes AD 2008–06–15, Amendment 39–15427.

Applicability

- (c) This AD applies to Models 42A, 56A, 60A, 69A, 77A, 90A, 105A, 120A, 150A, 180A, 210A, 240A, 260A, and 310A balloons that are:
 - (i) Certificated in any category; and
 - (ii) Equipped with burners with serial numbers BU502 through BU792, except BU507, BU511, BU512, BU614, BU643, BU655, BU656, BU719, BU723, BU746, BU749, BU752, BU754, BU762, BU779, BU781, BU785, BU787, and BU789.

Subject

- (d) Air Transport Association of America (ATA) Code 28: Fuel.

Reason

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

Defective burner hoses have been identified which might develop a leak. A significant leak, if it was ignited, could hazard the balloon and occupants.

Since the issue of AD G–2003–0010 there have been occurrences of hose failure in batches not identified in the earlier bulletins. LHAS Service Bulletin (SB) No. 11 supersedes the earlier SBs and revises the applicability as required.

The MCAI requires you inspect the hose and to identify whether the hose is from the affected batch of hoses and to inspect and replace any defective hose and end fitting from the affected batch.

Actions and Compliance

- (f) Do the following unless already done:

- (1) Before further flight as of April 1, 2008 (the compliance date retained from AD 2008–06–15), inspect the balloon burner to determine whether it has a hose from the affected batch of hoses following Lindstrand Hot Air Balloons Ltd. Service Bulletin No. 11, Issue 1, dated September 24, 2007.

- (2) If as a result of the inspection required by (f)(1) of this AD you find a hose from the affected batch, before further flight, inspect for leaks and conduct a pressure test following Lindstrand Hot Air Balloons Ltd. Service Bulletin No. 11, Issue 1, dated September 24, 2007, and repetitively thereafter inspect and conduct a pressure test at intervals not to exceed 10 hours time-in-service.

- (3) If as a result of any inspection or test required by (f)(2) of this AD you find a defective hose, before further flight, replace it and the end fitting with a new hose and new end fitting following the maintenance manual. This action terminates the repetitive requirement in (f)(2) of this AD.

- (4) Unless already done, within 12 months after the effective date of this AD, replace any hose from the affected batch with a new hose and end fitting. After doing this replacement, no further action is required by this AD.

Note 1: At any time after the effective day of this AD, you may replace the hose and end fitting to terminate the repetitive inspection and testing requirements of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

- (1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329-4138; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI United Kingdom Civil Aviation Authority Emergency Airworthiness Directive AD No. G-2008-0001, dated January 9, 2008; and Lindstrand Hot Air Balloons Ltd. Service Bulletin No. 11, Issue 1, dated September 24, 2007, for related information.

Issued in Kansas City, Missouri, on April 11, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-8361 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0444; Directorate Identifier 2008-CE-024-AD]

RIN 2120-AA64

Airworthiness Directives; Viking Air Limited Models DHC-2 Mk. I, DHC-2 Mk. II, and DHC-3 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

A complete loss of both ignition systems occurred on a DHC-3 Otter when the lock wire hole in the ignition connector plug on the firewall broke out, allowing the plug to vibrate loose. A maintenance safety feature grounds out both magneto systems through a spring-loaded safety pin incorporated into the Cannon plug. The DHC-2 system is similar in design.

Subsequent to the issuance of AD CF-2001-36 a complete loss of both ignition systems occurred on a DHC-2 Beaver resulting in engine failure and subsequent forced approach and landing. Investigation by the Transportation Safety Board determined the internal failure of the magneto firewall connector resulted in both magneto "P" leads shorting to ground. A maintenance "safety" feature through a spring-loaded safety pin incorporated in the firewall connector on many DHC-2 aircraft grounds out both magneto systems when the connector is disconnected. This connector type is readily identified when disconnected by the existence of three internal pins on the firewall and magneto harness side, one of which is shorted directly to ground.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 19, 2008.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (202) 493-2251.
- Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Fabio Buttitta, Aerospace Engineer, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410,

Westbury, New York 11590; telephone: (516) 228-7303; fax: (516) 794-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0444; Directorate Identifier 2008-CE-024-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On October 12, 2004, we issued AD 2004-21-06, Amendment 39-13827 (69 FR 61758, October 21, 2004). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2004-21-06, the manufacturer has developed a modification kit to replace the magneto firewall connector with parts of improved design.

Transport Canada, which is the aviation authority for Canada, has issued AD No. CF-2001-36R1, dated January 21, 2008, and AD No. CF-2001-37R, dated January 21, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A complete loss of both ignition systems occurred on a DHC-3 Otter when the lock wire hole in the ignition connector plug on the firewall broke out, allowing the plug to vibrate loose. A maintenance safety feature grounds out both magneto systems through a spring-loaded safety pin incorporated into the Cannon plug. The DHC-2 system is similar in design.

Subsequent to the issuance of AD CF-2001-36 a complete loss of both ignition systems occurred on a DHC-2 Beaver resulting in engine failure and subsequent forced approach and landing. Investigation by the Transportation Safety Board determined the internal failure of the magneto firewall connector resulted in both magneto "P" leads shorting to ground. A maintenance "safety" feature through a spring-loaded safety pin incorporated in the firewall connector on many DHC-2 aircraft ground out both magneto systems when the

connector is disconnected. This connector type is readily identified when disconnected by the existence of three internal pins on the firewall and magneto harness side, one of which is shorted directly to ground.

These connectors are no longer in production.

Since no effective Instructions for Continued Airworthiness exist to ensure the safety feature of these connectors will operate correctly when disconnected, or will ensure the internal integrity of the connector while in service, this directive is revised to mandate replacement of connectors with a different design.

Viking Air Limited has developed SB V2/0001 to provide for the installation of a replacement connector, similar in design to magneto systems in service today. This modification incorporates a "straight through" type connector, ensuring magneto circuit integrity should the connection open.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Viking Air Limited has issued the following service bulletins:

- Viking DHC-2 Beaver Service Bulletin Number V2/0001, dated June 27, 2007; and
- Viking DHC-3 Otter Service Bulletin Number V3/0001, dated June 27, 2007.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those

in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

We estimated that this proposed AD will affect 159 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$881 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$267,279, or \$1,681 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39-13827 (69 FR 61758; October 21, 2004), and adding the following new AD:

Viking Air Limited: Docket No. FAA-2008-0444; Directorate Identifier 2008-CE-024-AD.

Comments Due Date

(a) We must receive comments by May 19, 2008.

Affected ADs

(b) This AD supersedes AD 2004-21-06, Amendment 39-13827.

Applicability

(c) This AD applies to the following model and serial number airplanes certificated in any category:

Model	Serial No.
DHC-2 Mk. I	All.
DHC-2 Mk. II	All.
DHC-3	All serial numbers with piston engines.

Subject

(d) Air Transport Association of America (ATA) Code 26: Fire Protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states: A complete loss of both ignition systems occurred on a DHC-3 Otter when the lock wire hole in the ignition connector plug on the firewall broke out, allowing the plug to vibrate loose. A maintenance safety feature grounds out both magneto systems through a spring-loaded safety pin incorporated into the Cannon plug. The DHC-2 system is similar in design.

Subsequent to the issuance of AD CF-2001-36 a complete loss of both ignition systems occurred on a DHC-2 Beaver resulting in engine failure and subsequent forced approach and landing. Investigation by the Transportation Safety Board

determined the internal failure of the magneto firewall connector resulted in both magneto "P" leads shorting to ground. A maintenance "safety" feature through a spring-loaded safety pin incorporated in the firewall connector on many DHC-2 aircraft ground out both magneto systems when the connector is disconnected. This connector type is readily identified when disconnected by the existence of three internal pins on the firewall and magneto harness side, one of which is shorted directly to ground.

These connectors are no longer in production.

Since no effective Instructions for Continued Airworthiness exist to ensure the safety feature of these connectors will operate correctly when disconnected, or will ensure the internal integrity of the connector while in service, this directive is revised to mandate replacement of connectors with a different design.

Viking Air Limited has developed SB V2/0001 to provide for the installation of a replacement connector, similar in design to magneto systems in service today. This modification incorporates a "straight through" type connector, ensuring magneto circuit integrity should the connection open.

Actions and Compliance

(f) Inspect the connector plugs on the fore side of the firewall for security and the connector plug lockwire to ensure it is intact and the holes in the plugs are not broken out or cracked. Initially inspect within the next 100 hours time-in-service (TIS) after December 6, 2004 (the compliance date retained from AD 2004-21-06). Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the modification required in paragraph (h) of this AD is done. Do the inspections following deHavilland Beaver Alert Service Bulletin Number A2/53, Revision B, dated May 28, 2004; and deHavilland Otter Alert Service Bulletin Number A3/53, Revision B, dated May 28, 2004, as applicable.

(g) During any inspection required in paragraph (f) of this AD, if the lockwire holes or the lockwire is found damaged, install Modification Kit Number C2VMK0001-1 or Modification Kit Number C3VMK0001-1, as applicable. Install the modification kit before further flight following the Accomplishment Instructions in Viking DHC-2 Beaver Service Bulletin Number V2/0001, dated June 27, 2007; and Viking DHC-3 Otter Service Bulletin Number V3/0001, dated June 27, 2007, as applicable. Installing the modification kit terminates the repetitive inspections required in paragraph (f) of this AD.

(h) Unless already done, replace the magneto firewall connector by installing Modification Kit Number C2VMK0001-1 or Modification Kit Number C3VMK0001-1, as applicable. Install the modification kit within the next 6 months after the effective date of this AD following the Accomplishment Instructions in Viking DHC-2 Beaver Service Bulletin Number V2/0001, dated June 27, 2007; and Viking DHC-3 Otter Service Bulletin Number V3/0001, dated June 27, 2007, as applicable. Installing the modification kit terminates the repetitive

inspections required in paragraph (f) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: AD 2004-21-06 required incorporating repetitive inspections of the connector plugs and the connector plug lockwire on the fore side of the firewall into the maintenance program while the MCAI required incorporating Temporary Revision No. 14, dated August 24, 2001, into the applicable maintenance manual in order to incorporate the repetitive inspections into the maintenance program.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Fabio Buttitta, Aerospace Engineer, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228-7303; fax: (516) 794-5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(j) Refer to MCAI Transport Canada AD No. CF-2001-36R1, dated January 21, 2008; and AD No. CF-2001-37R, dated January 21, 2008; and Viking Air Limited DHC-2 Beaver Service Bulletin Number V2/0001, dated June 27, 2007; and Viking Air Limited DHC-3 Otter Service Bulletin Number V3/0001, dated June 27, 2007; for related information.

Issued in Kansas City, Missouri, on April 11, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-8365 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 740, 742, 744, 748, 752, 760, and 772

[Docket No. 080220216-8518-01]

RIN 0694-AD59

Conforming Changes to Certain End-User/End-Use Based Controls in the EAR; Clarification of the Term "Transfer" and Related Terms as Used in the EAR

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) by making conforming changes in certain end-user/end-use controls in the EAR to ensure that the terminology used to describe each type of end-user/end-use control is consistent, to the fullest extent possible, with the terminology in other such controls in the EAR. The proposed amendments would clarify that a party cannot proceed with an export, reexport, or transfer (in-country) that is in transit at the time the party is informed by BIS that a license is required (in accordance with certain end-user/end-use controls in the EAR), unless that party first obtains a license from BIS authorizing the completion of the transaction. These proposed changes to part 744 are intended to enhance the ability of BIS to stop items subject to the EAR, including items not on the Commerce Control List, from being exported, reexported or transferred (in-country) when there is an unacceptable risk that such items will be used in, or diverted to, any of the proliferation activities specified in §§ 744.2, 744.3, 744.4 and 744.6 of the EAR. This rule also proposes to amend the EAR by revising the definition of the term "transfer" and certain related terms, to provide greater clarity regarding these provisions.

DATES: Comments must be received by June 17, 2008.

ADDRESSES: Written comments on this rule may be sent to the **Federal Register eRulemaking Portal:** <http://www.regulations.gov>, or by e-mail to publiccomments@bis.doc.gov. Include RIN 0694-AD59 in the subject line of the message. Comments may be submitted by mail or hand delivery to Timothy Mooney, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. &

Pennsylvania Avenue, NW., Room H2705, Washington, DC 20230, ATTN: RIN 0694-AD59; or by fax to (202) 482-3355.

Send comments regarding the collection of information to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room H2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce; by telephone: (202) 482-2440; or by fax: 202-482-3355.

SUPPLEMENTARY INFORMATION:

Background

Conforming Changes to Certain End-User/End-Use Based Controls in the EAR

Part 744 of the EAR deals with the end-user and end-use based control policy under the EAR. Section 744.3 prohibits exports, reexports and transfers (in-country) of items subject to the EAR to certain missile-related end-uses. Section 744.4 prohibits exports, reexports and transfers (in-country) of items subject to the EAR to certain chemical and biological proliferation activities. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses. Section 744.2 presently prohibits exports and reexports of items subject to the EAR to certain nuclear proliferation activities. This rule proposes to add transfer (in-country) to the scope of the prohibition set forth in § 744.2 to ensure that the language in that section conforms with the language in §§ 744.3, 744.4 and 744.6.

Within each of these sections of part 744, there is a paragraph b that includes “is informed” provisions that set out the requirements of what persons need to do once they are informed by BIS that their transactions would be subject to the prohibitions set forth in §§ 744.2, 744.3, 744.4 or 744.6. Under the current EAR, there are minor differences in the terminology used to describe the end-user/end-use controls in each of these sections. This rule proposes to amend the end-user/end-use controls in these sections of part 744 to ensure that the terminology used in any one of these sections conforms, to the fullest extent possible, with the terminology used in the other sections. These proposed changes are intended to make the end-

user/end-use controls in part 744 of the EAR more consistent as well as transparent, so that members of the public can more clearly understand their obligations under the EAR.

In addition, this rule proposes to add new provisions to § 744.1 to clarify that a party cannot proceed with an export, reexport, or transfer (in-country) that is in transit at the time the party is informed by BIS that a license is required (in accordance with the end-user/end-use controls in §§ 744.2, 744.3, 744.4 or 744.6 of the EAR), unless that party first obtains a license from BIS authorizing the completion of the transaction. This rule proposes that once a person “is informed” by BIS that a transaction is subject to one of the prohibitions in §§ 744.2, 744.3, 744.4 or 744.6, a person would be required to apply for authorization from BIS before proceeding with the transaction. This rule further proposes to amend the EAR to clearly explain the steps a person must take if an item included in such a transaction is already in transit when a person “is informed” by BIS.

These proposed changes to part 744 are intended to enhance the ability of BIS to stop items subject to the EAR, including items not on the Commerce Control List, from being exported, reexported or transferred (in-country) when there is an unacceptable risk that such items will be used in, or diverted to, any of the proliferation activities specified in §§ 744.2, 744.3, 744.4 and 744.6 of the EAR.

This clarification is consistent with UN Security Council Resolution 1540 (2004), which includes binding obligations on all UN Member States to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials. UNSCR 1540 stipulates that States are to establish, develop, review and maintain appropriate effective national export and transshipment controls over such items, including appropriate laws and regulations to control export, transit, transshipment and re-export; and to establish and enforce appropriate criminal or civil penalties for violations of such export control laws and regulations.

Through this clarification, the United States is continuing to carry out its commitment to the Proliferation Security Initiative (PSI) Statement of Interdiction Principles, which states that PSI partners will work to strengthen their relevant national legal authorities where necessary and not to allow any persons subject to their jurisdiction to transport or assist in the transport of any

cargoes of weapons of mass destruction (WMD), their delivery systems, or related materials to or from states or non-state actors of proliferation concern. The PSI is a global effort that aims to stop shipments of WMD, their delivery systems, and related materials flowing to or from states or non-state actors of proliferation concern. Announced by President Bush on May 31, 2003, the PSI stems from the National Strategy to Combat Weapons of Mass Destruction issued in December 2002. That strategy recognizes the need for more robust tools to defeat the proliferation of WMD around the world, and specifically identifies interdiction as an area where greater focus will be placed. The PSI is a set of activities, not a formal treaty-based organization, that focuses on establishing greater coordination among its partner states when a particular action is needed.

This rule makes the following specific revisions to the EAR:

1. In § 744.1 (General Provisions), this rule proposes to amend paragraph (a)(1) (Introduction), by adding “transfer (in-country)” to specify clearly that the prohibitions in §§ 744.2, 744.3, 744.4 and 744.6 also apply to such scenarios. This rule also proposes to amend paragraph (b)(2) (Determine Applicability), by adding a sentence at the end of that paragraph that states “For exports, reexports or transfers (in-country) that are in transit at the time you are informed by BIS that a license is required in accordance with §§ 744.2(b), 744.3(b), 744.4(b) or 744.6(b) of the EAR, you may not proceed any further with the transaction, unless you first obtain a license from BIS (see part 748 of the EAR for instructions on how to apply for a license).” This rule also proposes to amend paragraph (a)(1) by adding “transfer (in-country)” to specify clearly that the prohibition specified in § 744.5 also applies to such scenarios.

2. In § 744.2 (Restrictions on Certain Nuclear End-Uses), this rule proposes to amend paragraph (a) (General Prohibition) by clarifying that this prohibition in § 744.2 also applies to transfers (in-country) to conform with the language used in §§ 744.3, 744.4 and 744.6. In paragraph (b) (Additional Prohibition), this rule proposes to amend the heading to clarify that this paragraph applies an additional prohibition “on persons informed by BIS”. Also in paragraph (b), this rule proposes to amend the “is informed” provisions to conform with the “is informed” provisions in §§ 744.3, 744.4 and 744.6. Specifically, the proposed rule would remove the phrase “exporters or reexporters”, replace it

with the term “persons” in three locations, and add the phrase “transfer (in-country)” to clarify that this prohibition also applies to transfers (in-country). Also in paragraph (b), this rule proposes to add the phrase “or for the export, reexport, or transfer (in-country)” before the phrase “of specified items” in the first sentence, among other minor changes, to conform with §§ 744.3, 744.4 and 744.6.

3. In § 744.3 (Restrictions on Certain Rocket Systems (Including Ballistic Missile Systems and Space Launch Vehicles and Sounding Rockets) and Unmanned Air Vehicles (Including Cruise Missile Systems, Target Drones and Reconnaissance Drones) End-Uses), this rule proposes to amend paragraph (a) (General Prohibition) by inserting the word “that” after the phrase, “* * * or transfer you know” and by deleting the word “the” in the phrase “at the time of export” to conform with §§ 744.2, 744.4 and 744.6. In paragraph (b) (Additional Prohibition), this rule proposes to amend the heading to clarify that this paragraph applies an additional prohibition “on persons informed by BIS”. Also in paragraph (b), this rule proposes to amend the “is informed” provisions by adding the word “persons” in two locations, by adding the phrase “(in-country)” after the word transfer and by adding the phrase “or for the export, reexport, or transfer (in-country)” before the phrase “of specified items” in the first sentence, among other minor changes, to conform with §§ 744.2, 744.4 and 744.6.

4. In § 744.6 (Restrictions on Certain Activities of U.S. Persons), this rule proposes to amend paragraph (a) (General Prohibition) to conform with §§ 744.2, 744.3 and 744.4 by adding the phrase “(in-country)” after the word “transfer” in paragraphs (a)(1)(i) and (a)(1)(ii) and in paragraph (a)(3) to clarify that this prohibition in § 744.6 also applies to transfers (in-country). In paragraph (b) (Additional Prohibitions on U.S. persons informed by BIS) this rule proposes to update the “is informed” provisions to conform with §§ 744.2, 744.3 and 744.4; specifically by adding the phrase “by specific notice” after the word “individually” in the first sentence and by removing the term “exporter” and replacing it with the term “U.S. persons” in the last sentence.

5. In § 744.5 (Restrictions on Certain Maritime Nuclear Propulsion End-Uses), this rule proposes to amend paragraph (a) (General Prohibition) by clarifying that this prohibition in § 744.5 also applies to transfers (in-country). With this proposed rule, this paragraph (a)

would prohibit the exports, reexports, and transfers (in-country) of items subject to the EAR to defined nuclear maritime end-uses in § 744.5.

Revisions to Definitions of Transfer and Related Terms

In § 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule proposes to revise the term “transfer” to clarify that the term merely refers to a conveyance of items. This rule proposes to further clarify the definition by including the definition of “in-country transfer/transfer (in-country)” as an ancillary definition to the term “transfer”, referring to the conveyance of items within a single foreign country. These proposed revisions will provide greater clarity regarding the meaning of these defined terms under the EAR. In a note at the end of these definitions, this rule adds cross references to §§ 750.7(c) (Changes to a license) and 764.2(e) (Acting with knowledge of a violation). The term “transfer” may also be included on licenses issued by BIS. In that regard, these cross references are a reminder to persons involved with items authorized by a BIS license that changes that can be made to a BIS license are the non-material changes described in § 750.7(c). In addition, persons should be aware that any person that knowingly makes a material change to a BIS license without proper authorization would violate § 764.2(e) of the EAR.

This rule also proposes to correct several places in the EAR where the term “transfer” is used, but the intended meaning is “transfer (in-country)” or “in-country transfer”. Specifically, references to the term “transfer” in § 736.2, General Order No. 2 to Supp. No. 1 to part 736, §§ 740.5, 740.7, 740.9, 740.11, 740.17, 742.15, 744.3, 744.4, 744.6, Supp. No. 2 to part 748, §§ 752.5, 752.8, 752.16, and Supplement No. 3 to part 752 are proposed to be clarified with this rule. This rule also proposes to clarify that the term “retransfer” means “in-country transfer” by replacing the term “retransfer” with the term “transfer (in-country)” in §§ 740.11, 740.17, 742.15, 752.5, and Supp. No. 3 to part 752. This rule also proposes to clarify that the terms “transferred” and “transfer”, in the context of §§ 760.1 and 760.3, mean “assigned to” and “assignment”, respectively.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2007, 72 FR 46137

(August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This proposed rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes for a manual or electronic submission. This proposed rule is expected to have a minimal increase on the total number of license applications submitted to BIS. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. However, in order to obtain the benefit of a variety of viewpoints before publishing any final rule, BIS is issuing this proposed rule with request for comments. Comments must be received by BIS no later than

June 17, 2008. In developing a final rule, BIS will consider all comments received on or before that date. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying at the Federal eRulemaking Portal at <http://www.regulations.gov> and on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. BIS does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-0500 for assistance.

List of Subjects

15 CFR Part 736 and 772

Exports.

15 CFR Part 740, 748, and 752

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 760

Boycotts, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 736, 740, 742, 744, 748, 752, 760, and 772 of the Export Administration Regulations (15 CFR parts 730-774) are proposed to be amended as follows:

PART 736—[AMENDED]

1. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Pub. L. 108-175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27,

2006, 71 FR 64109 (October 31, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

2. Section 736.2 is amended by revising the first sentence of paragraph (b)(10) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(10) * * * You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. * * *

3. General Order No. 2 to Supplement No. 1 to part 736, is amended by revising the last sentence of paragraph (b) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

General Order No. 2

* * * * *

(b) * * * License conditions requiring written U.S. Government authorization for the reexport, transfer (in-country), or resale of items already exported or reexported remain in effect, and requests for BIS authorization to reexport, transfer (in-country), or sell such items will require interagency approval.

* * * * *

PART 740—[AMENDED]

4. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901-911, Pub. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

5. Section 740.5 is amended by revising paragraph (b)(1) to read as follows:

§ 740.5 Civil end-users (CIV).

* * * * *

(b) *Restrictions.*—(1) *Restricted end-users and end-uses.* You may not use CIV if you “know” the item will be or is intended to be exported, reexported, or transferred (in-country) to military uses or military end-users. Such exports, reexports, and transfers (in-

country) will continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR.

* * * * *

6. Section 740.7 is amended:

a. By revising the first sentence of paragraph (b)(3); and

b. By revising paragraph (b)(5) to read as follows:

§ 740.7 Computers (APP).

* * * * *

(b) * * *

(3) Computers and software eligible for License Exception APP may not be reexported or transferred (in-country) without prior authorization from BIS, *i.e.*, a license, a permissive reexport, another License Exception, or “No License Required”. * * *

(4) * * *

(5) License Exception APP does not authorize exports, reexports and transfers (in-country) for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such exports, reexports and transfers (in-country) will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in-country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

* * * * *

7. Section 740.9 is amended by revising paragraph (a)(2)(ix)(A) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * *

(2) * * *

(ix) *Temporary exports to a U.S. subsidiary, affiliate or facility in Country Group B.*

(A) Components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country listed in Country Group B (see Supplement No. 1 to this part) that is owned or controlled by the U.S. person, if the components, part, tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred (in-country) or reexported from such subsidiary, affiliate or facility without prior authorization by BIS.

* * * * *

8. Section 740.11 is amended by revising paragraph (c)(3) to read as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(c) * * *

(3) *Confidentiality.* The application of the provisions of this paragraph (c) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and transfer of U.S. goods and services.

* * * * *

9. Section 740.17 is amended by revising the second sentence of the introductory text of paragraph (a)(1) to read as follows:

§ 740.17 Encryption commodities and software (ENC).

* * * * *

(a) * * *

(1) * * * Any encryption item produced or developed with an item exported or reexported under this paragraph (a)(1) is subject to the EAR and requires review and authorization before any sale or transfer outside of the private sector end-user that developed it.

* * * * *

PART 742—[AMENDED]

10. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

11. Section 742.15 is amended by revising the second sentence of paragraph (b)(3)(i) to read as follows:

§ 742.15 Encryption items.

* * * * *

(b) * * *

(3) * * *

(i) * * *

All items produced or developed by U.S. subsidiaries with encryption commodities, software and technology

exported under this paragraph are subject to the EAR and require review and authorization before any sale or transfer outside of the U.S. company.

* * * * *

PART 744—[AMENDED]

12. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

13. Section 744.1 is amended by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 744.1 General provisions.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Five (End-use/End-users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, 744.4 prohibit exports, reexports and transfers (in-country) of items subject to the EAR to defined nuclear, missile, and chemical and biological proliferation activities. Section 744.5 prohibits exports, reexports and transfers (in-country) of items subject to the EAR to defined nuclear maritime end-uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses. Section 744.7 prohibits exports and reexports of certain items for certain aircraft and vessels. Section 744.9 prohibits U.S. persons from providing technical assistance to certain foreign persons seeking to develop or manufacture certain encryption commodities or software. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in Supplement No. 4 of this part. Sections 744.12, 744.13 and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated

Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.19 sets forth BIS's licensing policy for applications for exports or reexports when a party to the transaction is an entity that has been sanctioned pursuant to any of three specified statutes that require certain license applications to be denied. Section 744.20 requires a license, to the extent specified in Supplement No. 4 to this part, for exports and reexports of items subject to the EAR destined to certain sanctioned entities listed in Supplement No. 4 to this part. Section 744.15 describes restrictions on exports and reexports to persons named in general orders. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain transfers of items subject to the EAR to denied parties.

* * * * *

(b) * * *

(2) *Determine applicability.* Second, determine whether any of the end-use and end-user prohibitions described in this part are applicable to your planned export, reexport, transfer (in-country) or other activity. See Supplement No. 1 to part 732 for guidance. For exports, reexports or transfers (in-country) that are in transit at the time you are informed by BIS that a license is required in accordance with §§ 744.2(b), 744.3(b), 744.4(b) or 744.6(b) of the EAR, you may not proceed any further with the transaction unless you first obtain a license from BIS (see part 748 of the EAR for instructions on how to apply for a license). The provisions of § 748.4(d)(2) shall not apply to license applications submitted pursuant to a notification from BIS that occurs while an export, reexport, or transfer (in-country) is in transit.

* * * * *

14. Section 744.2 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 744.2 Restrictions on certain nuclear end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) to any destination, other than countries in Supplement No. 3 to this part, an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) you know¹ that

¹ Part 772 of the EAR defines “knowledge” for all of the EAR except part 760, Restrictive Trade

the item will be used directly or indirectly in any one or more of the following activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

* * * * *

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

* * * * *

15. Section 744.3 is amended:

- a. By revising paragraph (a) introductory text;
- b. By revising paragraph (b); and
- c. By revising paragraph (d)(1) to read as follows:

§ 744.3 Restrictions on certain rocket systems (including ballistic missile systems and space launch vehicles and sounding rockets) and unmanned air vehicles (including cruise missile systems, target drones and reconnaissance drones) end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport or transfer (in-country) you know that the item:

* * * * *

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport or transfer (in-country) or for the export, reexport, or

transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraphs (a)(1) or (a)(2) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

* * * * *

(d) *License review standards.*

(1) Applications to export, reexport or transfer (in-country) the items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport or transfer (in-country) would make a material contribution to the proliferation of certain rocket systems, or unmanned air vehicles. When an export, reexport or transfer (in-country) is deemed to make a material contribution, the license will be denied.

* * * * *

16. Section 744.4 is amended:

- a. By revising paragraph (a); and
- b. By revising paragraph (d)(1) to read as follows:

§ 744.4 Restrictions on certain chemical and biological weapons end-uses.

(a) *General prohibition.*

In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) you know that the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

* * * * *

(d) *License review standards.*

(1) Applications to export, reexport, or transfer (in-country) items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport, or transfer (in-country) would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export, reexport, or transfer (in-country) is deemed to make such a contribution, the license will be denied.

* * * * *

17. Section 744.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 744.5 Restrictions on certain maritime nuclear end-uses.

(a) In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) certain technology subject to the EAR without a license if at the time of the export, reexport, or transfer (in-country) you know the item is for use in connection with a foreign maritime nuclear propulsion project.

* * *

* * * * *

18. Section 744.6 is amended:

- a. By revising paragraph (a)(1)(i) introductory text;
- b. By revising paragraph (a)(1)(ii);
- c. By revising paragraph (a)(3); and
- d. By revising paragraph (b) to read as follows:

§ 744.6 Restrictions on certain activities of U.S. persons.

(a) * * *

(1) * * *

(i) No U.S. person as defined in paragraph (c) of this section may, without a license from BIS, export, reexport, or transfer (in-country) an item where that person knows that such item:

(ii) No U.S. person shall, without a license from BIS, knowingly support an export, reexport, or transfer (in-country) that does not have a license as required by this section. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer (in-country).

(2) * * *

(3) Whole plant requirement. No U.S. person shall, without a license from BIS, participate in the design, construction, export, reexport, or transfer (in-country) of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in countries other than those listed in Country Group A:3 (Australia Group) (See Supplement No. 1 to part 740 of the EAR).

(b) Additional prohibitions on U.S. persons informed by BIS. BIS may inform U.S. persons, either individually by specific notice or through amendment to the EAR, that a license is required because an activity could involve the types of participation and support described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant

Practices and Boycotts. The definition, which includes variants such as "know" and "reason to know", encompasses more than positive knowledge. Thus, the use of "know" in this section in place of the former wording "know or have reason to know" does not lessen or otherwise change the responsibilities of persons subject to the EAR.

Secretary for Export Administration. However, the absence of any such notification does not excuse the U.S. person from compliance with the license requirements of paragraph (a) of this section.

* * * * *

PART 748—[AMENDED]

19. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

20. Supplement No. 2 to part 748 is amended by revising paragraph (c)(2) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(c) * * *

(2) Security Safeguard Plan requirement. The United States requires security safeguards for exports, reexports, and transfers (in-country) of High Performance Computers (HPCs) to ensure that they are used for peaceful purposes. If you are submitting a license application for an export, reexport, or in-country transfer of a high performance computer to or within a destination in Computer Tier 3 (see § 740.7(c)(1) of the EAR) or to Cuba, Iran, North Korea, Sudan, or Syria you must include with your license application a security safeguard plan signed by the end-user, who may also be the ultimate consignee. This requirement also applies to exports, reexports, and transfers (in-country) of components or electronic assemblies to upgrade existing “computer” installations in those countries. A sample security safeguard plan is posted on BIS’s Web page at <http://www.bis.doc.gov/hpcs/SecuritySafeguardPlans.html>.

* * * * *

PART 752—[AMENDED]

21. The authority citation for 15 CFR part 752 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

22. Section 752.5 is amended by revising the undesignated paragraph at the end of (c)(8)(ii) to read as follows:

§ 752.5 Steps you must follow to apply for an SCL.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

No chemicals or chemical equipment received under this Special Comprehensive License will be transferred, resold, or reexported to a destination or end-user that requires a license, unless the new end-user has been approved by the Bureau of Industry and Security, and in no case will the items be transferred, resold, or reexported to a party who is not the end-user.

* * * * *

23. Section 752.8 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 752.8 SCL application review process.

(a) * * * In reviewing and approving a specific SCL request, BIS retains the right to limit the eligibility of items or to prohibit the export, reexport, or transfer (in-country) of items under the SCL to specific firms, individuals, or countries.

* * * * *

24. Section 752.16 is amended by revising paragraph (a)(1)(v) to read as follows:

§ 752.16 Administrative actions.

(a)(1) * * *

(v) Require that certain exports, reexports, or transfers (in-country) be individually authorized by BIS;

* * * * *

25. Supplement No. 3 to part 752 is amended by revising Block (8) paragraph (iv) to read as follows:

Supplement No. 3 to Part 752—Instructions on Completing Form BIS-752 “Statement by Consignee in Support of Special Comprehensive License”

* * * * *

Block 8: Disposition or Use of Items.

* * * * *

(iv) Item (d): Complete this Block if your company plans to transfer or resell within the country of import. State the end-use of your customers. If you plan to transfer to end-users that require prior approval by BIS, complete and attach Form BIS-748P-B, End-User Appendix.

* * * * *

PART 760—[AMENDED]

26. The authority citation for 15 CFR part 760 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

27. Section 760.1 is amended by revising the first and second sentences of paragraph (b)(4)(viii) to read as follows:

§ 760.1 Definitions.

* * * * *

(b) * * *

(4) * * *

(viii) At the request of country Y, A, an individual employed by U.S. company B, is assigned to company C as an employee. C is a foreign company owned and controlled by country Y. A, a U.S. national who will reside in Y, has agreed to the assignment provided he is able to retain his insurance, pension, and other benefits. * * *

* * * * *

28. Section 760.3 is amended by revising the first sentence of paragraph (f)(4)(i) to read as follows:

§ 760.3 Exceptions to prohibitions.

* * * * *

(f) * * *

(4) * * *

(i) A, a U.S. individual employed by B, a U.S. manufacturer of sporting goods with a plant in boycotting country Y, wishes to obtain a work visa so that he may be assigned to the plant in Y. * * *

* * * * *

PART 772—[AMENDED]

29. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

30. Section 772.1 is amended by revising the definition of “transfer.”

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Transfer. A shipment, transmission, or release to any person of items subject to the EAR either within the United States or outside the United States.

(a) *In-country transfer/transfer (in-country).* The shipment, transmission, or release of items subject to the EAR from one person to another person that occurs outside the United States within a single foreign country.

(b) Reserved.

Note to the definition of transfer: This definition of transfer does not apply to § 750.10 or Supplement No. 8 to part 760 of the EAR. The term “transfer” may also be included on licenses issued by BIS. In that regard, the changes that can be made to a BIS license are the non-material changes described in § 750.7(c). Any other change to a BIS license without authorization is a

violation of the EAR. See §§ 750.7(c) and 764.2(e).

* * * * *

Dated: April 9, 2008.

Matthew S. Borman,
*Acting Assistant Secretary for Export
Administration.*

[FR Doc. E8-8197 Filed 4-17-08; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF JUSTICE

28 CFR Part 28

[OAG 119; AG Order No. 2957-2008]

RIN 1105-AB24

DNA-Sample Collection Under the DNA Fingerprint Act of 2005 and the Adam Walsh Child Protection and Safety Act of 2006

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is publishing this proposed rule to implement amendments made by section 1004 of the DNA Fingerprint Act of 2005 and section 155 of the Adam Walsh Child Protection and Safety Act of 2006 to section 3 of the DNA Analysis Backlog Elimination Act of 2000. This rule directs agencies of the United States that arrest or detain individuals, or that supervise individuals facing charges, to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States. Unless otherwise directed by the Attorney General, the collection of DNA samples may be limited to individuals from whom an agency collects fingerprints. The Attorney General also may approve other limitations or exceptions. Agencies collecting DNA samples are directed to furnish the samples to the Federal Bureau of Investigation, or to other agencies or entities as authorized by the Attorney General, for purposes of analysis and entry into the Combined DNA Index System.

DATES: Written comments must be submitted on or before May 19, 2008.

ADDRESSES: Comments may be mailed to David J. Karp, Senior Counsel, Office of Legal Policy, Room 4509, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530. To ensure proper handling, please reference OAG Docket No. 119 on your correspondence. You may submit comments electronically or view an electronic

version of this proposed rule at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:
David J. Karp, Senior Counsel, Office of Legal Policy. Telephone: (202) 514-3273.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. If you wish to submit a comment, the public posting will include voluntarily submitted personal identifying information (such as your name, address, etc.).

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must identify prominently any confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be redacted effectively, all or part of that comment might not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

All 50 States authorize the collection and analysis of DNA samples from convicted state offenders, and enter resulting DNA profiles into the Combined DNA Index System ("CODIS"), which the Federal Bureau of Investigation ("FBI") has established pursuant to 42 U.S.C. 14132. In addition to collecting DNA samples from convicted state offenders, several states

authorize the collection of DNA samples from individuals they arrest.

Until recently, federal DNA-sample collection was more limited. The DNA Analysis Backlog Elimination Act of 2000 (the "Act") authorized DNA-sample collection by federal agencies only from persons convicted of certain "qualifying" federal, military, and District of Columbia offenses. Public Law 106-546 (2000). The Act also addressed the responsibility of the Federal Bureau of Prisons ("BOP") and federal probation offices to collect DNA samples from convicted offenders in their custody or under their supervision, and the responsibility of the FBI to analyze and index DNA samples. On June 28, 2001, the Department of Justice published an interim rule to implement these provisions. 66 FR 34363. The rule, in part, specified the qualifying federal offenses for which DNA samples could be collected and addressed responsibilities of BOP and the FBI under the Act.

After publication of the interim rule, Congress enacted the USA PATRIOT Act, Public Law 107-56. Section 503 of the USA PATRIOT Act added three additional categories of qualifying federal offenses for purposes of DNA-sample collection: (1) Any offense listed in section 2332b(g)(5)(B) of title 18, United States Code; (2) any crime of violence (as defined in section 16 of title 18, United States Code); and (3) any attempt or conspiracy to commit any of the above offenses. The Department of Justice published a proposed rule in the **Federal Register** on March 11, 2003, to implement this expanded DNA-sample collection authority. 68 FR 11481. On December 29, 2003, the Department published a final rule implementing this authority. 68 FR 74855.

After publication of that final rule, the DNA-sample collection categories again were expanded by Congress pursuant to section 203(b) of the Justice for All Act of 2004, Public Law 108-405. The Justice for All Act expanded the definition of qualifying federal offenses to include any felony, thereby permitting the collection of DNA samples from all convicted federal felons. The Department published an interim final rule implementing this reform on January 31, 2005. 70 FR 4763.

More recently, section 1004 of the DNA Fingerprint Act of 2005 ("DNA Fingerprint Act"), Public Law 109-162, broadened the categories of persons subject to DNA-sample collection to authorize such collection from "individuals who are arrested or from non-United States persons who are detained under the authority of the United States." Before publication of a

rule implementing this new authority, the DNA-sample collection provisions were amended further by section 155 of the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"), Public Law 109-248. The amendments made by that Act left the statute in its current form: "The Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested, facing charges, or convicted or from non-United States persons who are detained under the authority of the United States." 42 U.S.C.

14135a(a)(1)(A). This statute also provides that the Attorney General may "direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section." *Id.*

Purposes

DNA analysis provides a powerful tool for human identification. DNA samples collected from individuals or derived from crime scene evidence are analyzed to produce DNA profiles that are entered into CODIS. These DNA profiles, which embody information concerning 13 "core loci," amount to "genetic fingerprints" that can be used to identify an individual uniquely, but do not disclose an individual's traits, disorders, or dispositions. See *United States v. Kincade*, 379 F.3d 813, 818-19 (9th Cir. 2004) (en banc); *Johnson v. Quander*, 440 F.3d 489, 498 (DC Cir. 2006). Hence, collection of DNA samples and entry of the resulting profiles into CODIS allow the government to "ascertain[] and record[] the identity of a person." *Jones v. Murray*, 962 F.2d 302, 306 (4th Cir. 1992). The design and legal rules governing the operation of CODIS reflect the system's function as a tool for law enforcement identification, and do not allow DNA samples or profiles within the scope of the system to be used for unauthorized purposes. See 42 U.S.C. 14132, 14133(b)-(c), 14135e.

The practical uses of the DNA profiles ("genetic fingerprints") in CODIS are similar in general character to those of actual fingerprints, but the collection of DNA from individuals in the justice system offers important information that is not captured by taking fingerprints alone. Positive biometric identification, whether by means of fingerprints or by means of DNA profiles, facilitates the solution of crimes through database searches that match crime scene evidence to the biometric information that has been collected from individuals. Solving crimes by this

means furthers the fundamental objectives of the criminal justice system, helping to bring the guilty to justice and protect the innocent, who might otherwise be wrongly suspected or accused, through the prompt and certain identification of the actual perpetrators. DNA analysis offers a critical complement to fingerprint analysis in the many cases in which perpetrators of crimes leave no recoverable fingerprints but leave biological residues at the crime scene. Hence, there is a vast class of crimes that can be solved through DNA matching that could not be solved in any comparable manner (or could not be solved at all) if the biometric identification information collected from individuals were limited to fingerprints.

In addition, as with taking fingerprints, collecting DNA samples at the time of arrest or at another early stage in the criminal justice process can prevent and deter subsequent criminal conduct—a benefit that may be lost if law enforcement agencies wait until conviction to collect DNA. Indeed, recognition of the added value of early DNA-sample collection in solving and preventing murders, rapes, and other crimes was a specific motivation for the enactment of the legislation that this rule implements. See 151 Cong. Rec. S13756-58 (daily ed. Dec. 16, 2005) (remarks of Sen. Kyl, sponsor of the DNA Identification Act) (explaining the value of including all arrestees in the DNA database). Moreover, in relation to aliens who are illegally present in the United States and detained pending removal, prompt DNA-sample collection could be essential to the detection and solution of crimes they may have committed or may commit in the United States. Since in most cases such aliens are not prosecuted for their immigration offenses, there is usually no later opportunity to collect a DNA sample premised on a criminal conviction. Hence, the individual's detention pending removal constitutes a unique opportunity to obtain this critical biometric information—and by that means to solve and hold the individual accountable for any crimes committed in the United States—before the individual's removal from the United States places him or her beyond the ready reach of the United States justice system.

As with fingerprints, the collection of DNA samples at or near the time of arrest also can serve purposes relating directly to the arrest and ensuing proceedings. For example, analysis and database matching of a DNA sample collected from an arrestee may show that the arrestee's DNA matches DNA

found in crime scene evidence from a murder, rape, or other serious crime. Such information helps authorities to assess whether an individual may be released safely to the public pending trial and to establish appropriate conditions for his release, or to ensure proper security measures in the case of his continued detention. The collection of a DNA sample may also provide an alternative means of directly ascertaining or verifying an arrestee's identity, where fingerprint records are unavailable, incomplete, or inconclusive. Hence, conducted incident to arrest, DNA-sample collection offers a legitimate means to obtain valuable information regarding the arrestee. See *Anderson v. Virginia*, 650 S.E.2d 702, 706 (2006) (upholding a state statute authorizing DNA-sample collection from arrestees based on "the legitimate interest of the government in knowing for an absolute certainty the identity of the person arrested, in knowing whether he is wanted elsewhere, and in ensuring his identification in the event he flees prosecution" (internal citation omitted)).

In sum, this rule implements new statutory authority that will further the government's legitimate interest in proper identification of persons "lawfully confined to prison" or "arrested upon probable cause." *Jones*, 962 F.2d at 306. By expanding CODIS pursuant to statutory authority to include persons arrested, facing charges, or convicted, and non-United States persons detained, this rule enhances the accuracy and efficacy of the United States criminal justice system.

Practical Implementation

The rule allows DNA samples generally to be collected, along with a subject's fingerprints, as part of the identification process. As discussed above, the uses of DNA for law enforcement identification purposes are similar in general character to the uses of fingerprints, and these uses will be greatly enhanced as a practical matter if DNA is collected regularly in addition to fingerprints. Law enforcement agencies routinely collect fingerprints from individuals whom they arrest. See *Anderson*, 650 S.E.2d at 706 ("Fingerprinting an arrested suspect has long been considered a part of the routine booking process."); *Kincade*, 379 F.3d at 836 n.31 ("[E]veryday 'booking' procedures routinely require even the merely accused to provide fingerprint identification, regardless of whether investigation of the crime involves fingerprint evidence."); *Jones*, 962 F.2d at 306 (noting "universal

approbation of 'booking' procedures * * * whether or not the proof of a particular suspect's crime will involve the use of fingerprint identification"). In addition, agencies that detain non-United States persons (*i.e.*, persons who are not U.S. citizens or lawful permanent residents),¹ such as the Department of Homeland Security ("DHS"), often collect fingerprints from such individuals.

Accordingly, the Attorney General is directing all agencies of the United States that arrest or detain individuals or supervise individuals facing charges to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States, pursuant to 42 U.S.C. 14135a(a)(1)(A), if the agency takes fingerprints from such individuals.

The Department recognizes, however, that there may be some circumstances in which agencies collect fingerprints but in which the collection of DNA samples would not be warranted or feasible. For example, in relation to non-arrestees, DHS will not be required to collect DNA samples from aliens who are fingerprinted in processing for lawful admission to the United States, or from aliens from whom DNA-sample collection is otherwise not feasible because of operational exigencies or resource limitations. If any agency believes that such circumstances exist within its sphere of operations, the agency should bring these circumstances to the attention of the Department, and exceptions to the DNA-sample collection requirement may be allowed with the approval of the Attorney General.

The Department also recognizes that some federal agencies exercising law enforcement authority do not collect fingerprints routinely from all individuals at a stage comparable to the arrest phase. For example, military personnel involved in court martial proceedings may not be fingerprinted because their fingerprints already are on file. In addition, persons facing federal charges in the District of Columbia may not be fingerprinted by any federal

agency if they are fingerprinted by the Metropolitan Police Department. Nonetheless, the collection of DNA samples from such individuals serves the same purposes, and is warranted to the same degree, as DNA-sample collection from other federal arrestees and defendants. Therefore, if directed by the Attorney General, certain agencies will be required to collect DNA samples from individuals from whom they would not otherwise collect fingerprints.

Agencies will be authorized to enter into agreements with other federal agencies, with state and local governments, and with private entities to carry out the required DNA-sample collection. Agencies that arrest, detain, or supervise individuals will not be required to duplicate DNA-sample collection if arrangements have been made to have the collection done by another authorized agency or entity, but will be responsible for ensuring that the DNA samples are collected and submitted for analysis and entry into CODIS. For example, an agency that arrests and fingerprints an individual and then transfers the individual to another agency (such as the United States Marshals Service) for detention cannot transfer responsibility for DNA-sample collection to the detention agency unless that agency agrees to assume responsibility for that function.

The Department of Justice understands that agencies will need to revise their current procedures in order to implement these new DNA-sample collection requirements. In addition, sample-collection kits will need to be distributed to the agencies and agency personnel will need to be trained in the proper collection techniques. Therefore, although the Attorney General is directing all agencies to implement DNA-sample collection as soon as feasible, agencies not able to collect samples from all covered individuals immediately may phase in their DNA-sample collection activities as resources allow. Agencies must implement fully their collection programs by December 31, 2008. However, if sample-collection kits authorized by the Attorney General have not been made available to an agency in sufficient numbers to allow collection of DNA samples from all covered individuals, the Attorney General will grant an exception allowing the agency to limit its DNA-sample collection program to the extent necessary.

The collection of DNA samples by agencies will be performed in accordance with procedures and standards established by the Attorney General.

Under the pre-existing DNA-sample collection program for federal convicts, BOP and federal probation offices have taken blood samples for this purpose, utilizing sample-collection kits provided by the FBI. In earlier stages of the program, these samples generally were obtained through venipuncture (blood drawn from the arm), but currently the FBI provides kits that allow a blood sample to be collected by means of a finger prick. However, the states that collect DNA samples from arrestees typically do so by swabbing the inside of the person's mouth ("buccal swab"), and many states use the same method to collect DNA samples from convicts. Therefore, although even blood tests "are a commonplace in these days of periodic physical examinations and experience with them teaches * * * that for most people the procedure involves virtually no risk, trauma, or pain," *Schmerber v. California*, 384 U.S. 757, 771 (1966) (footnote omitted), the rule permits and facilitates the use of buccal swabs to collect DNA samples.

Revisions to Existing Regulations

The proposed rule would revise a section of the existing regulations, 28 CFR 28.12, to reflect the expansion of DNA-sample collection to include persons arrested, facing charges, or convicted, and non-United States persons detained under the authority of the United States.

Section 28.12, in paragraph (a), is revised to require BOP to collect DNA samples from all federal (including military) convicts in its custody, as well as from individuals convicted of qualifying District of Columbia offenses. The expansion of DNA-sample collection to include all federal or military convicts in BOP custody, whether or not they fall within the previously covered categories of persons convicted of qualifying federal or military offenses, is based on the Attorney General's authority under 42 U.S.C. 14135a(a)(1)(A). The requirement for BOP to collect samples from individuals convicted of qualifying District of Columbia offenses appears in 42 U.S.C. 14135b(a)(1).

A new paragraph (b) will be inserted in section 28.12 to implement the new authority to collect DNA samples from federal arrestees, defendants, and detainees. As discussed above, agencies of the United States that arrest or detain individuals or supervise individuals facing charges will be required to collect DNA samples if they collect fingerprints from such individuals, subject to any limitations or exceptions the Attorney General may approve. This paragraph

¹ Defining the scope of "non-United States persons" to mean persons who are not U.S. citizens or lawful permanent residents follows the common understanding of this term in other provisions of law. See, e.g., 10 U.S.C. 2241 note, Pub. L. 108-7, div. M, § 111(e)(2)-(3), Feb. 20, 2003, 117 Stat. 536 (defining "non-United States person" as "any person other than a United States person" and "United States person" in the manner set forth in 50 U.S.C. 1801(i)); 50 U.S.C. 1801(i) (defining "United States person," in relation to individuals, as "a citizen of the United States * * * [or] an alien lawfully admitted for permanent residence").

also specifies certain categories of aliens from whom DHS will not be required to collect DNA samples, even if DHS collects fingerprints. A new paragraph (c) is added that specifies a time frame for the implementation of the expanded DNA-sample collection program.

Current paragraph (c) is redesignated as paragraph (d) and is revised to reflect the expansion of the categories of individuals from whom DNA samples will be collected and the agencies that conduct DNA-sample collection. *See* 42 U.S.C. 14135a(a)(1)(A), 14135a(a)(4)(A). The current version of that paragraph only refers to the collection of DNA samples from persons convicted of qualifying offenses by BOP.

A new paragraph (e), replacing current paragraphs (b) and (d), provides in part that agencies required to collect DNA samples under the section may enter into agreements with other federal agencies, in addition to units of state or local governments or private entities, to carry out DNA-sample collection. The authority to make such arrangements with state and local governments and with private entities is explicit in 42 U.S.C. 14135a(a)(4)(B), and the Attorney General is delegating this authority to other federal agencies pursuant to 42 U.S.C. 14135a(a)(1)(A). The latter provision (42 U.S.C. 14135a(a)(1)(A)) also sufficiently supports allowing such arrangements between federal agencies, since it authorizes the Attorney General to delegate DNA-sample collection to any Department of Justice component and to any other federal agency that arrests or detains individuals or supervises individuals facing charges.

The new paragraph (e) also identifies three circumstances in which an agency need not collect a sample. The first is when arrangements have been made for some other agency or entity to collect the sample under that paragraph. The second is when CODIS already contains a DNA profile for the individual, an exception expressly authorized by 42 U.S.C. 14135a(a)(3). The third is when waiver of DNA-sample collection in favor of collection by another agency is authorized by 42 U.S.C. 14135a(a)(3) or 10 U.S.C. 1565(a)(2), statutes that provide that BOP and the Department of Defense need not duplicate DNA-sample collection with respect to military offenders.

Current paragraph (e) is redesignated as paragraph (f) and is revised to require agencies subject to the rule to carry out DNA-sample collection utilizing buccal-swab collection kits provided by the Attorney General or other means authorized by the Attorney General. The samples then must be sent to the FBI, or to another agency or entity authorized

by the Attorney General, for purposes of analysis and indexing in CODIS. This paragraph also is amended to require taking of another sample if the original sample is flawed and hence cannot be analyzed to derive a DNA profile that satisfies the requirements for entry into CODIS.

A new paragraph (g) is added to clarify that the authorization of DNA-sample collection under this rule pursuant to the DNA Analysis Backlog Elimination Act does not limit DNA-sample collection by an agency pursuant to any other authority.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the following reason: The regulation concerns the collection, analysis, and indexing by federal agencies of DNA samples from certain individuals. *See* 5 U.S.C. 605(b).

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b) (“The Principles of Regulation”). The Department of Justice has determined that this rule is a “significant regulatory action” under Executive Order 12866, § 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

The cost of buccal swab kits is expected to be similar to the cost of finger-prick kits, which the FBI has provided in the existing program for the collection of DNA samples from federal convicts. Resulting per-sample analysis and storage costs also are expected to be similar. A finger-prick DNA-sample collection kit costs approximately \$7.50, and it costs the FBI approximately \$28.50 to analyze the DNA sample and \$1.50 to store the sample (for a total of \$37.50). The individuals from whom DNA-sample collection is authorized under the proposed rule, not covered by previous law and practice, generally fall into two broad categories: (1) Persons arrested for or charged with (but not yet convicted of) federal crimes; and (2) illegal aliens arrested or detained by DHS. According to the Department of Justice’s 2004 Compendium of Federal Justice Statistics, over 140,000 suspects were arrested for federal offenses in fiscal year 2004. *See* Bureau of Justice Statistics, U.S. Dep’t of Justice, Office of Justice Programs, Compendium of Federal Justice Statistics, 2004,

available at <http://ojp.usdoj.gov/bjs/abstract/cfjs04.htm>, at 1, 13, & 18.

According to the DHS 2006 Yearbook of Immigration Statistics, 1,206,457 aliens were apprehended. Based on these figures, the Department estimates that on an annual basis the number of individuals from whom DNA-sample collection is authorized under this rule will be approximately 1.2 million. The actual number of individuals from whom DNA samples are collected will be less to the extent that the Attorney General grants exceptions or the Secretary of Homeland Security exercises his discretion to limit DNA-sample collection in accordance with proposed 28 CFR 28.12(b), and to the extent that individuals entering the system through arrest or detention previously have had DNA samples collected and repetitive collection is not required.

Executive Order 13132—Federalism

This regulation 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not 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, 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 rule is not a major rule as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the

ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 28

Crime, Information, Law enforcement, Prisoners, Prisons, Probation and parole, Records.

For the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR part 28 as follows:

PART 28—DNA IDENTIFICATION SYSTEM

1. The authority citation for part 28 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 42 U.S.C. 14132, 14135a, 14135b; 10 U.S.C. 1565; Public Law 106–546, 114 Stat. 2726; Public Law 107–56, 115 Stat. 272; Public Law 108–405, 118 Stat. 2260; Public Law 109–162, 119 Stat. 2960; Pub. L. 109–248, 120 Stat. 587.

2. Section 28.12 is revised to read as follows:

§ 28.12 Collection of DNA samples.

(a) The Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of—

(1) A Federal offense (including any offense under the Uniform Code of Military Justice); or

(2) A qualifying District of Columbia offense, as determined under section 4(d) of Public Law 106–546.

(b) Any agency of the United States that arrests or detains individuals or supervises individuals facing charges shall collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States. For purposes of this paragraph, “non-United States persons” means persons who are not United States citizens and who are not lawfully admitted for permanent residence as defined in 8 CFR 1.1(p). Unless otherwise directed by the Attorney General, the collection of DNA samples under this paragraph may be limited to individuals from whom the agency collects fingerprints and may be subject to other limitations or exceptions approved by the Attorney General. The DNA-sample collection requirements for the Department of Homeland Security in relation to non-arrestees do not include, except to the extent provided by the Secretary of Homeland Security, collecting DNA samples from:

(1) Aliens lawfully in, or being processed for lawful admission to, the United States;

(2) Aliens held at a port of entry during consideration of admissibility and not subject to further detention or proceedings;

(3) Aliens held in connection with maritime interdiction; or

(4) Other aliens with respect to whom the Secretary of Homeland Security, in consultation with the Attorney General, determines that the collection of DNA samples is not feasible because of operational exigencies or resource limitations.

(c) The DNA-sample collection requirements under this section shall be implemented by each agency as soon as feasible, and in any event shall be implemented fully by each agency no later than December 31, 2008.

(d) Each individual described in paragraph (a) or (b) of this section shall cooperate in the collection of a DNA sample from that individual. Agencies required to collect DNA samples under this section may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual described in paragraph (a) or (b) who refuses to cooperate in the collection of the sample.

(e) Agencies required to collect DNA samples under this section may enter into agreements with other agencies described in paragraph (a) or (b) of this section, with units of state or local governments, and with private entities to carry out the collection of DNA samples. An agency may, but need not, collect a DNA sample from an individual if—

(1) Another agency or entity has collected, or will collect, a DNA sample from that individual pursuant to an agreement under this paragraph;

(2) The Combined DNA Index System already contains a DNA analysis with respect to that individual; or

(3) Waiver of DNA-sample collection in favor of collection by another agency is authorized by 42 U.S.C. 14135a(a)(3) or 10 U.S.C. 1565(a)(2).

(f) Each agency required to collect DNA samples under this section shall—

(1) Carry out DNA-sample collection utilizing sample-collection kits provided or other means authorized by the Attorney General, including approved methods of blood draws or buccal swabs;

(2) Furnish each DNA sample collected under this section to the Federal Bureau of Investigation, or to another agency or entity as authorized by the Attorney General, for purposes of analysis and entry of the results of the analysis into the Combined DNA Index System; and

(3) Repeat DNA-sample collection from an individual who remains or becomes again subject to the agency’s jurisdiction or control if informed that a sample collected from the individual does not satisfy the requirements for analysis or for entry of the results of the analysis into the Combined DNA Index System.

(g) The authorization of DNA-sample collection by this section pursuant to Public Law 106–546 does not limit DNA-sample collection by any agency pursuant to any other authority.

Dated: April 11, 2008.

Michael B. Mukasey,
Attorney General.

[FR Doc. E8–8339 Filed 4–17–08; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 930

[SATS No. ND–050–FOR; Docket ID OSM–2008–0004; North Dakota Amendment No. XXXVIII]

North Dakota Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes revisions to rules that would change self-bonding requirements, update terminology used for describing native grasslands, and correct a cross reference error. At its own initiative, it intends to revise its program to improve operational efficiency.

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. May 19, 2008. If requested, we will hold a public hearing on the amendment on May 13, 2008. We will

accept requests to speak until 4 p.m., m.d.t. on May 5, 2008.

ADDRESSES: You may submit comments, identified by "SATS No. ND-050-FOR" and/or Docket ID OSM-2008-0004" by any of the following methods:

- *E-mail:* [JFleischman@osmre.gov]. Include OSM-2008-0004 in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Jeffrey W. Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, Wyoming 82601-1018, 307/261-6550, JFleischman@osmre.gov.

- *Fax:* 307/261-6552.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM-2008-0004. If you would like to submit comments through the Federal eRulemaking Portal, go to www.regulations.gov and do the following. Click on the "Advanced Docket Search" button on the right side of the screen. Type in Docket ID OSM-2008-0004 and click the "Submit" button at the bottom of the page. The next screen will display Docket Search Results for the rulemaking. If you click on OSM-2008-0004 you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

Instructions: All submissions received must include the agency name and OSM-2008-0004. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to viewing the Docket and obtaining copies of documents at <http://www.regulations.gov>,

you may also review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement (OSM's) Casper Field Office.

Jeffrey W. Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, Wyoming 82601-1018, 307/261-6550, JFleischman@osmre.gov

James R. Deutsch, North Dakota Public Service Commission, Capitol

Building, Bismarck, North Dakota 58505, Tel: 701-328-2251, E-mail: jrd@oracle.psc.state.nd.us

FOR FURTHER INFORMATION CONTACT:

Jeffrey W. Fleischman, Telephone: 307-261-6550. Internet: JFleischman@osmre.gov

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980 **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, and 934.30.

II. Description of the Proposed Amendment

By letter dated March 12, 2008, North Dakota sent us a proposed amendment (Amendment number North Dakota XXXVIII) to its program, under SMCRA (30 U.S.C. 1201 *et seq.*). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, North Dakota proposes to: (1) Revise its self bonding provisions under North Dakota Administrative Code (NDAC) Article 69-5.2-12-05.1 to allow the North Dakota Public Service Commission to accept bond ratings from other nationally recognized rating organizations in addition to Moody's Investors Service and Standards and Poor's ratings, for companies that guarantee self bonds; (2) update, under NDAC 69-05.2-08-08, premine land use and vegetation requirements, and some terminology used for native

grassland descriptions to reflect what is used by USDA's Natural Resource Conservation Service; and (3) correct a cross reference error in NDAC 69-05.2-10-03.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office, or <http://www.regulations.gov>, may not be logged in.

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 view, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on May 5, 2008. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak

has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section.

However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the

roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Paperwork Reduction Act

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulations were not considered major.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 930

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 2, 2008.

Billie E. Clark,

Acting Regional Director, Western Region.

[FR Doc. E8-8408 Filed 4-17-08; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG-2008-0207]

RIN 1625-AA09

Drawbridge Operation Regulations; Potomac River, Oxon Hill, MD and Alexandria, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations governing the operation of the new Woodrow Wilson Memorial (I-95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This action is necessary to finalize construction of the drawbridge. While construction continues, this proposal would allow the drawbridge to remain closed-to-navigation each day from 10 a.m. to 2 p.m. beginning May 31, 2008 until and including March 1, 2009.

DATES: Comments and related material must reach the Coast Guard by June 2, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-0207 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: <http://www.regulations.gov>.

(2) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) Hand delivery: Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) Fax: 202-493-2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard

District, at (757) 398-6222. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0207), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2008-0207) in the Search box, and click "Go>." You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays or at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 233704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

Currently, no public meeting is scheduled. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On March 5, 2008, we published a notice of temporary deviation from the regulations entitled "Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia" in the **Federal Register** (73 FR 13127).

The Maryland State Highway Administration and the Virginia Department of Transportation, co-owners of the drawbridge, requested an extension of the aforementioned temporary deviation for a longer period of time in an effort to minimize the potential for major regional traffic impacts and consequences during bridge openings while construction continues. Bridge owners requested that the drawbridge not be available for openings for vessels each day between the hours of 10 a.m. to 2 p.m. from Saturday, May 31, 2008 through Sunday, March 1, 2009 or until the bridge is properly commissioned, whichever comes first. Construction will continue during this time period and the normal vehicular traffic pattern with five lanes operating in each direction is not anticipated until near the end of the time period.

From a river-user standpoint, the coordinators for the construction of the new Woodrow Wilson Bridge Project have received no requests from boaters or mariners to open during the 10 a.m.

to 2 p.m. timeframe since the first temporary deviation was issued in late June 2006. In fact, no requests have been received for an opening of the new bridge at all since July 3, 2006. Finally, the coordinators have received no complaints on the 10 a.m. to 2 p.m. restriction. This proposal will affect only vessels with mast heights of 75 feet or greater. Furthermore, all operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the “off-peak” vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a).

Discussion of Proposed Rule

The Coast Guard proposes to temporarily amend the operating regulations at 33 CFR § 117.255 by inserting new paragraphs (a)(2)(iii) and (a)(4)(iv) to read as follows: From May 31, 2008 to March 1, 2009, from 10 a.m. to 2 p.m., the draw of the Woodrow Wilson Memorial (I–95) Bridge, at mile 103.8, between Alexandria, Virginia and Oxon Hill, Maryland, need not be opened.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. All operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the “off-peak” vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a), and mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, all operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the “off-peak” vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a), and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

From May 31, 2008, to March 1, 2009, from 10 a.m. to 2 p.m., in § 117.255 add new paragraphs (a)(2)(iii) and (a)(4)(iv) to read as follows:

§ 117.255 Potomac River.

* * * * *

(a)(2)(iii) From May 31, 2008 to March 1, 2009, from 10 a.m. to 2 p.m., the draw need not be opened.

* * * * *

(a)(4)(iv) From May 31, 2008 to March 1, 2009, from 10 a.m. to 2 p.m., the draw need not be opened.

* * * * *

Dated: April 7, 2008.

Fred M. Rosa, Jr.,

*Rear Admiral, United States Coast Guard,
Commander, Fifth Coast Guard District.*

[FR Doc. E8–8514 Filed 4–17–08; 8:45 am]

BILLING CODE 4910–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

RIN 3014–AA22

Emergency Transportable Housing Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing. This notice announces the dates and times of upcoming committee conference calls.

DATES: The conference calls are scheduled for May 16, 2008; May 29, 2008; July 9, 2008; and July 28, 2008. All calls will begin at 10 a.m. and will conclude no later than 2 p.m. (Eastern time).

ADDRESSES: Individuals can participate in the conference calls by dialing a teleconference number which will be posted on the Access Board's Web site at <http://www.access-board.gov/eth/>.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0020 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: mazz@access-board.gov.

SUPPLEMENTARY INFORMATION: On August 23, 2007, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing (72 FR 48251; August 23, 2007).

The committee will hold conference calls on May 16, 2008, May 29, 2008, July 9, 2008, and July 28, 2008 to discuss a variety of outstanding issues yet to be resolved. Information about the committee, and the agenda, instructions (including information on captioning), and dial in telephone numbers for the conference calls are available at <http://www.access-board.gov/eth/>. The conference calls are open to the public and interested persons can dial in and communicate their views during a public comment period scheduled during each conference call. Participants may call in from any location of their choosing.

The committee may cancel one or more of the conference calls depending on the needs of the committee and its progress in discussing and resolving outstanding issues. If a conference call is canceled, a notice will be posted at <http://www.access-board.gov/eth/>.

Persons wishing to provide handouts or other written information to the committee are requested to provide them in an electronic format to Marsha Mazz preferably by e-mail so that alternate formats such as large print can be distributed to committee members.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E8–8420 Filed 4–17–08; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[Docket No. FRA–2006–26175, Notice No. 3]

RIN 2130–AB84

Electronically Controlled Pneumatic Brake Systems

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

ACTION: Proposed rule; partial reopening of comment period.

SUMMARY: This document announces an additional 15-day period to file comments in this proceeding. This extension provides interested parties an opportunity to comment on recently revised or new standards developed by the Association of American Railroads (AAR) that are related to the notice of proposed rulemaking (NPRM) in this proceeding.

DATES: Written comments must be received by May 5, 2008. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

ADDRESSES: *Comments:* Comments related to Docket No. FRA-2006-26175, may be submitted by any of the following methods:

1. *Web site:* Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the Web site's online instructions for submitting comments.

2. *Fax:* 202-493-2251.

3. *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

4. *Hand Delivery:* Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Wilson, Office of Safety Assurance and Compliance, Motive Power and Equipment Division, RRS-14, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202-493-6259); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal

Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202-493-6032).

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 2007, FRA published in the **Federal Register** an NPRM seeking comments on proposed rules relating to the implementation and use of electronically controlled pneumatic (ECP) brake systems on freight trains and freight cars. See 72 FR 50820. The NPRM proposed incorporation by reference of existing AAR *Standards and Recommended Practices* related to ECP brake systems. At the time FRA published the NPRM, those standards, collectively known as the AAR S-4200 Series Standards, included the following:

(1) AAR S-4200, ECP Cable-Based Brake Systems—Performance Requirements (2004);

(2) AAR S-4210, ECP Cable-Based Brake System Cable, Connectors, and Junction Boxes—Performance Specifications (2002);

(3) AAR S-4220, ECP Cable-Based Brake DC Power Supply—Performance Specification (2002);

(4) AAR S-4230, Intratrain Communication (ITC) Specification for Cable-Based Freight Train Control System (2004);

(5) AAR S-4250, Performance Requirements for ITC Controlled Cable-Based Distributed Power Systems (2004); and

(6) AAR S-4260, ECP Brake and Wire Distributed Power Interoperability Test Procedures (2007).

In the NPRM, FRA noted that the AAR S-4200 Series do not provide requirements for hardware and software configuration management plans and acknowledged that AAR was in the process of developing standards related to ECP brake system configuration management. The NPRM further noted that if a configuration management standard were to be adopted and published by the AAR subsequent to the closing of the NPRM's comment period, FRA would consider other forums for receiving comments, including, but not limited to, issuing a supplemental notice informing interested parties of the standard's availability.

Subsequent to the closing of the comment period in this proceeding, AAR made changes to the S-4200 Series Standards by modifying individual standards S-4200 and S-4210 and by proposing a new standard S-4270. FRA has preliminarily reviewed these changes and notes that they are in each case either (i) more protective of safety or (ii) safety neutral but designed to

make ECP brake systems more practical for field application. Accordingly, FRA presents the proposed changes for comment with a view toward potential incorporation in the final rule.

After a period for comment by AAR members, AAR published a revised S-4200 standard and postponed the implementation date from February 16, 2008, to June 1, 2008. See AAR Circular Letters C-10686 and C-10697; AAR Standard S-4200 (2008). AAR Circular Letter C-10686 summarized the changes to the S-4200 standard as follows:

Section 4.2.2.1 Description of Setup: This section was revised to limit changes of the empty/load setting to changes of E/L from empty to loaded only.

Section 4.2.2.2.4 Empty/Load: A sentence was added to stipulate that the engineer shall not be allowed to change the train's empty/load setting from loaded to empty while the train is in motion.

Section 4.2.2.2.4.1 Empty Load Selection While the Train is Enroute: A sentence was revised to require that the train be stopped with a full service brake application or a full service brake application must have been commanded for at least 2 minutes in order to change the train's empty/load setting from loaded to empty.

Section 4.2.2.2.5 Train Net Braking Ratio: This section was revised to require that, if the OEM provides the optional ability to change the train NBR, the engineer will not be given the opportunity to change the setting.

Section 4.2.2.2.6 Configuration Confirmation: Empty/load value was added to brake pipe pressure setpoint for which the HEU shall display the entered values and request a confirmation from the engineer.

Section 4.3.12 Mechanical Brake Cylinder and Reservoir Venting: This section was revised to require a means to manually vent pressure from the brake cylinder and reservoir at every CCD location from both sides of the car without reliance on electronic activation or control.

Note 1 has been revised to require that the brake cylinder release valve be capable of releasing air pressure from all brake cylinders; regardless of the charge status of the brake pipe.

Note 3 is new.

Note 4 is old Note 3 revised.

Note 6 is old Note 7 revised.

Note 7 is new (pneumatic backup functionality when brake cylinder release valve has been activated)

Section 4.4.2.1.1.1 Recovering from a Missed EOT Beacon Fault: A sentence has been added requiring re-initialization of the train if the EOT beacon is lost for more than 15 seconds while in RUN mode.

Section 4.4.16 Recovery from Emergency, Fault-Induced, or Penalty Brake Applications: When recovering from an emergency brake application, the operator will position the brake lever to 100% brake application to release the interlock.

Section 6.0 Approval Procedure: This detailed section has been replaced with a cross reference to AAR Standard S-4240 (adopted January 16, 2007, Circular Letter C-10454).

After a period for comment by AAR members, AAR also issued revisions to its S-4210 standard. See AAR Circular Letter C-10650; AAR Standard S-4210 (2007). While the standard was apparently implemented in November 2007, its accompanying AAR Circular Letter C-10650 was issued on December 6, 2007. AAR Circular Letter C-10650 summarized the changes to the S-4210 standard as follows:

Section 3.1 General Characteristics: The overall outside dimension of the cable was changed from 0.70 inch minimum/0.75 inch maximum to 0.675 inch minimum/0.725 inch maximum.

Section 6.0 CONNECTOR ASSEMBLIES: This revised section covers the intercar connector, cable, strength member (lanyard), and car body junction box plug connector.

Section 7.0 INTERCAR CONNECTOR PERFORMANCE AND TESTING DESCRIPTIONS: This section has been significantly expanded.

Section 8.0 This is a new section with a TESTING SEQUENCE:

Section 9.0 CAR BODY CONNECTIONS: The car body connector mounting envelope has been clarified and expanded with a figure added. Figures for the various end air hose mounting arrangements and brackets have been added. The length of the entire connector assembly would be revised to 36 inches + or - 1 inch for conventional cars versus 40 inches now.

AAR has also proposed a new standard S-4270 to address ECP brake

system configuration management plans. According to AAR Circular Letter C-10750, this specification describes how the industry will control and track hardware and software changes to the ECP equipped interchange car fleet. AAR is currently seeking comment on proposed standard S-4270.

To ensure that the final rule in this proceeding does not rely on outdated information or technical standards, FRA is proposing to replace the NPRM's references to S-4200 and S-4210 with the aforementioned updated versions of those standards. Parties may be reluctant to adopt technology whose standards may be soon outdated or obsolete. Thus, implementation of a final rule relying on outdated standards or procedures may further delay the proliferation, implementation, and use of ECP brake systems.

For these same reasons, FRA also seeks comments on the proposed draft standard S-4270. In the NPRM, FRA proposed the incorporation by reference of standard S-4270 if the standard was adopted by AAR prior to the date necessary for its inclusion in the final rule. However, FRA will not include S-4270 in the final rule if substantial changes are made from the current draft or AAR's adoption of S-4270 is not complete in the near future.

Accordingly, FRA is hereby reopening and extending the comment period in

this proceeding for an additional 15 days from the date of this notice. During this additional comment period, FRA is seeking comments solely on the updated versions of S-4200 and S-4210 and the new standard S-4270, subject to the caveats explained above. FRA will not consider comments relating to any issues outside of this narrow scope. FRA has placed the revised and new standards and their concomitant circular letters referenced herein in the public docket to this proceeding.

Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on April 14, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8-8432 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-06-P

Notices

Federal Register

Vol. 73, No. 76

Friday, April 18, 2008

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 14, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR part 3565, "Guaranteed Rural Rental Housing Program" and its Supporting Handbook.

OMB Control Number: 0575-0174.

Summary of Collection: On March 26, 1996, the Housing Opportunity Program Extension Act of 1996 was signed. One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program (GRRHP), adding the program to the Housing Act of 1949. The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Rural Housing Service (RHS), private lenders and public agencies. RHS will approve qualified lenders to participate and monitor lender performance to ensure program requirements are met. RHS will collect information from lenders on the eligibility cost, benefits, feasibility, and financial performance of the proposed project.

Need and Use of the Information: RHS will collect information from lenders to manage, plan, evaluate, and account for Government resources and from time to time, propose demonstration programs that use loan guarantees or interest credit. The GRRHP regulation and handbook will provide lenders and agency staff with guidance on the origination and servicing of GRRHP loans and the approval of qualified lenders. RHS will use the information to evaluate a lender's request and make determination that the interests of the government are protected. Failure to collect information could have an adverse impact on the agency ability to monitor lenders and assess program effectiveness and effectively guarantee loans.

Description of Respondents: Business or other for-profit; Not-for-profit Institutions.

Number of Respondents: 150.

Frequency of Responses: Reporting: Quarterly; Monthly; Annually.

Total Burden Hours: 1,393.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8-8337 Filed 4-17-08; 8:45 am]

BILLING CODE 3410-XT-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2008-0040]

National Poultry Improvement Plan; General Conference Committee Meeting and Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of meetings of the General Conference Committee of the National Poultry Improvement Plan and of the Biennial Conference.

DATES: The General Conference Committee will meet on June 5, 2008, from 8 a.m. to 11 a.m. The Biennial Conference will be held on June 6, 2008, from 8 a.m. to 5 p.m., and on June 7, 2008, from 8 a.m. to noon.

ADDRESSES: The meetings will be held at the Portland Marriott at Sable Oaks, 200 Sable Oaks Drive, South Portland, ME.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922-3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP) is the Secretary's Advisory Committee on poultry health. The Committee represents cooperating State agencies and poultry industry members, and serves an essential program function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, the Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meetings include:

1. H5/H7 low pathogenic avian influenza (LPAI) program for commercial layers, broilers, and turkeys;

2. Compartmentalization of notifiable avian influenza free zones;
3. H5/H7 LPAI program for raised-for-release upland gamebird flocks;
4. Evaluation of rapid detection assays for Salmonella; and
5. Evaluation of antigen detection assays for avian influenza.

The meetings will be open to the public. The sessions held on June 6 and 7, 2008, will include delegates to the NPIP Biennial Conference. However, due to time constraints, the public will not be allowed to participate in the discussions during either of the meetings. Written statements on meeting topics may be filed with the Committee before or after the meetings by sending them to the person listed under **FOR FURTHER INFORMATION**.

CONTACT. Written statements may also be filed at the meetings. Please refer to Docket No. APHIS-2008-0040 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act. (5 U.S.C. App. 2).

Done in Washington, DC, this 14th day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8-8417 Filed 4-17-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: National Survey of WIC Participants II

AGENCY: Food and Nutrition Service (FNS).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection.

DATES: Written comments on this notice must be received on or before *June 17, 2008*.

ADDRESSES: Comments are invited on:
(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
(b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
(c) 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Director, Office of Research, Nutrition, and Analysis, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at (703) 305-2576, or via e-mail to Steven.Carlson@fns.usda.gov.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1014.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson (703) 305-2017.

SUPPLEMENTARY INFORMATION:
Title: National Survey of WIC Participants II.

OMB Number: Not yet assigned.

Expiration Date: To be determined.

Type of Request: New collection of information.

Abstract: In accordance with the Improper Payments Information Act of 2002 (Public Law No. 107-300), which seeks to improve the integrity of the government's payments and the efficiency of programs and activities,

including the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), FNS is seeking to carry out a Second National Survey of WIC Participants (NSWP II). Ten years have elapsed since the first NSWP survey was conducted. That study provided national estimates of the case error rate and dollar error for the WIC program. It also collected demographic information about WIC participants and their families. The NSWP II study seeks to: (1) Estimate the annual cost of erroneous payments in the WIC program by examining erroneous payments caused by WIC certification error among applicants; and (2) provide information on the policies, procedures, operations, and staff of WIC State agencies and explore the characteristics and experiences of WIC applicants and participants. In addition, the study will develop a model for updating estimates of erroneous payments due to certification error in the WIC program that will allow the Food and Nutrition Service to calculate erroneous payments for the next 10 years before the next major NSWP study.

Affected Public: State WIC Agency officials, Local WIC Agency directors and WIC participants.

Proposed Collection: State WIC Agency Survey: Public burden is estimated at 66 minutes for one response each with a total of 99 hours for 90 respondents.

Local WIC Agency Survey: Public burden is estimated at 40 minutes for one response each with a total of 334 hours for 500 respondents.

WIC Participants Data Collection (telephone interview only): Public burden is estimated at 24 minutes for one response each with a total of 480 hours for 1200 respondents.

WIC Participants Data Collection (telephone and in-home interviews): Public burden is estimated at 60 minutes (24 minutes telephone and 36 minutes in-home) for one response each with a total of 1200 hours for 1200 respondents.

WIC Denied/Terminated Applicants Data Collection: Public burden is estimated at 6 minutes for one response each with a total of 64 hours for 640 respondents.

REPORTING BURDEN

Respondent	Estimated number of respondents	Responses annually per respondent	Total annual responses (col. b × c)	Estimated avg. number of hours per response	Estimated total hours (col. d × e)
WIC Participants—telephone interviews only	1,200	1.00	1,200	0.40080	480.960
WIC Participants—telephone and home interview	1,200	1.00	1,200	1.00000	1,200.000
WIC Denied/Terminated Applicants Data Collection	640	1.00	640	0.10020	64.128

REPORTING BURDEN—Continued

Respondent	Estimated number of respondents	Responses annually per respondent	Total annual responses (col. b × c)	Estimated avg. number of hours per response	Estimated total hours (col. d × e)
State WIC Agency Survey	90	1.00	90	1.10220	99.198
Local WIC Agency Survey	500	1.00	500	0.66800	334.000
Total	3,630		3,630		2,178.286

Estimated Number of Respondents: 3,630.

Estimated Number of Responses per Respondent: 1 (average).

Estimated Total Annual Responses: 3,630.

Estimated Time Per Response: 0.6 hours.

Estimated Total Annual Burden Hours Requested: 2,178.286 hours.

Dated: April 14, 2008.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E8-8457 Filed 4-17-08; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices in the Southwestern Region, Which Includes Arizona, New Mexico, and Parts of Oklahoma and Texas

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Grasslands, Forests, and the Regional Office of the Southwestern Region to give legal notice for the availability for comments on projects under 36 CFR 215, notice of decisions that may be subject to administrative appeal under 36 CFR parts 215 or 217, and for opportunities to object to proposed authorized hazardous fuel reduction projects under 36 CFR 218.4. This notice also lists newspapers of record for notices pertaining to plan amendments and revisions under 36 CFR 219. Newspaper publication is in addition to mailings and direct notice made to those who have participated in the planning of projects or plan revisions and amendments by submitting comments and/or requesting notice.

DATES: Use of these newspapers for the purpose of publishing legal notice for a plan amendment decision that is subject to appeal under 36 CFR part 217, for a comment and project decision that may

be subject to appeal under 36 CFR part 215, for opportunity to object under 36 CFR 218 and for planning notices on a plan revision or plan amendment under 36 CFR part 219 shall begin on the date of this publication and continue until further notice.

ADDRESSES: Southwestern Region, ATTN: Regional Appeals Assistant, 333 Broadway, SE., Albuquerque, NM 87102-3498.

FOR FURTHER INFORMATION CONTACT: Connie Smith, 505-842-3223.

SUPPLEMENTARY INFORMATION: Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper of record of which publication date shall be used for calculating the time period to file comment, appeal or an objection.

Southwestern Regional Office

Regional Forester

Notices of Availability for Comment and Decisions and Objections affecting New Mexico Forests: “*Albuquerque Journal*”, Albuquerque, New Mexico, for National Forest System Lands in the State of New Mexico and for any projects of Region-wide impact. Regional Forester Notices of Availability for Comment and Decisions and Objections affecting Arizona Forests: “*The Arizona Republic*”, Phoenix, Arizona, for National Forest System lands in the State of Arizona and for any projects of Region-wide impact. Regional Forester Notices of Availability for Comment and Decisions and Objections affecting National Grasslands in New Mexico, Oklahoma, and Texas are listed by Grassland and location as follows: Kiowa National Grassland notices published in: “*Union County Leader*”, Clayton New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma notices published in: “*Boise City News*”, Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas notices published in: “*The Dalhart Texan*”, Dalhart, Texas. Black Kettle National Grassland in Roger Mills County, Oklahoma notices published in: “*Cheyenne Star*”, Cheyenne, Oklahoma.

Black Kettle National Grassland in Hemphill County, Texas notices published in: “*The Canadian Record*”, Canadian, Texas. McClellan Creek National Grassland in Gray County, Texas notices published in: “*The Pampa News*”, Pampa, Texas.

Arizona National Forests

Apache-Sitgreaves National Forests

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Alpine Ranger District, Black Mesa Ranger District, Lakeside Ranger District, and Springerville Ranger District are published in: “*The White Mountain Independent*”, Show Low and Navajo County, Arizona.

Clifton Ranger District Notices are published in: “*Copper Era*”, Clifton, Arizona.

Coconino National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Mogollon Rim Ranger District, Mormon Lake Ranger District, and Peaks Ranger District are published in: “*Arizona Daily Sun*”, Flagstaff, Arizona.

Red Rock Ranger District Notices are published in: “*Red Rock News*”, Sedona, Arizona.

Coronado National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and Santa Catalina Ranger District are published in: “*The Arizona Daily Star*”, Tucson, Arizona.

Douglas Ranger District Notices are published in: “*Daily Dispatch*”, Douglas, Arizona. Nogales Ranger District Notices are published in: “*Nogales International*”, Nogales, Arizona.

Sierra Vista Ranger District Notices are published in: “*Sierra Vista Herald*”, Sierra Vista, Arizona.

Safford Ranger District Notices are published in: “*Eastern Arizona Courier*”, Safford, Arizona.

Kaibab National Forest

Notices for Availability for Comments, Decisions and Objections by

Forest Supervisor, North Kaibab Ranger District, Tusayan Ranger District, and Williams Ranger District Notices are published in: "*Arizona Daily Sun*", Flagstaff, Arizona.

Prescott National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Bradshaw Ranger District, Chino Valley Ranger District and Verde Ranger District are published in: "*Prescott Courier*", Prescott, Arizona.

Tonto National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor are published in: "*East Valley Tribune*", Mesa and "*Scottsdale Tribune*", Scottsdale, Arizona. Cave Creek Ranger District Notices are published in: "*Scottsdale Tribune*", in Scottsdale, Arizona.

Globe Ranger District Notices are published in: "*Arizona Silver Belt*", Globe, Arizona. Mesa Ranger District Notices are published in: "*East Valley Tribune*", Mesa, Arizona. Payson Ranger District, Pleasant Valley Ranger District and Tonto Basin Ranger District Notices are published in: "*Payson Roundup*", Payson, Arizona.

New Mexico National Forests

Carson National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Camino Real Ranger District, Tres Piedras Ranger District and Questa Ranger District are published in: "*The Taos News*", Taos, New Mexico.

Canjilon Ranger District and El Rito Ranger District Notices are published in: "*Rio Grande Sun*", Espanola, New Mexico.

Jicarilla Ranger District Notices are published in: "*Farmington Daily Times*", Farmington, New Mexico.

Cibola National Forest and National Grasslands

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor affecting lands in New Mexico, except the National Grasslands are published in: "*Albuquerque Journal*", Albuquerque, New Mexico.

Forest Supervisor Notices affecting National Grasslands in New Mexico, Oklahoma and Texas are published by grassland and location as follows: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico, published in: "*Union County Leader*", Clayton, New Mexico. Rita Blanca National Grassland in

Cimarron County, Oklahoma published in: "*Boise City News*", Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas published in: "*The Daihart Texan*", Daihart, Texas. Black Kettle National Grassland, in Roger Mills County, Oklahoma published in: "*Cheyenne Star*", Cheyenne, Oklahoma. Black Kettle National Grassland, in Hemphill County, Texas published in: "*The Canadian Record*", Canadian, Texas. McClellan Creek National Grassland published in: "*The Pampa News*", Pampa, Texas.

Mt. Taylor Ranger District Notices are published in: "*Cibola Gount Beacon*", Grants, New Mexico.

Magdalena Ranger District Notices are published in: "*Defensor-Chieftain*", Socorro, New Mexico.

Mountainair Ranger District Notices are published in: "*Mountain View Telegraph*", Moriarity, New Mexico.

Sandia Ranger District Notices are published in: "*Albuquerque Journal*", Albuquerque, New Mexico.

Kiowa National Grassland Notices are published in: "*Union County Leader*", Clayton, New Mexico.

Rita Blanca National Grassland Notices in Cimarron County, Oklahoma are published in: "*Boise City News*", Boise City, Oklahoma while Rita Blanca National Grassland Notices in Dallam County, Texas, are published in: "*Dalhart Texan*", Daihart, Texas.

Black Kettle National Grassland Notices in Roger Mills County, Oklahoma are published in: "*Cheyenne Star*", Cheyenne, Oklahoma, while Black Kettle National Grassland Notices in Hemphill County, Texas are published in: "*The Canadian Record*", Canadian, Texas. McClellan Creek National Grassland Notices are published in: "*The Pampa News*", Pampa, Texas.

Gila National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Quemado Ranger District, Reserve Ranger District, Glenwood Ranger District, Silver City Ranger District and Wilderness Ranger District are published in: "*Silver City Daily Press*", Silver City, New Mexico.

Black Range Ranger District Notices are published in: "*The Herald*", Truth or Consequences, New Mexico.

Lincoln National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and the Sacramento Ranger District are published in: "*Alamogordo Daily News*", Alamogordo, New Mexico.

Guadalupe Ranger District Notices are published in: "*Carlsbad Current Argus*", Carlsbad, New Mexico.

Smokey Bear Ranger District Notices are published in: "*Ruidoso News*", Ruidoso, New Mexico.

Santa Fe National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Coyote Ranger District, Cuba Ranger District, Espanola Ranger District, Jemez Ranger District and Pecos-Las Vegas Ranger District are published in: "*Albuquerque Journal*", Albuquerque, New Mexico.

Dated: April 7, 2008.

Faye Krueger,

Deputy Regional Forester, Southwestern Region.

[FR Doc. E8-8223 Filed 4-17-08; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Revised Proposed Policy for Outfitting and Guiding Land Use Fees in the Alaska Region

AGENCY: Forest Service, USDA.

ACTION: Notice of revised proposed policy; request for comment.

SUMMARY: The Alaska Region of the Forest Service is proposing a revised regional flat fee policy in place of the proposal published in the **Federal Register** on September 15, 2006 (71 FR 54454). The revised policy differs enough from the original proposed policy to merit public notice and comment.

ADDRESSES: Send comments to the Regional Forester, Attention: Recreation, Lands and Minerals Staff, P.O. Box 21628, Juneau, Alaska 99802-1628; via electronic mail to comments-alaska-regional-office@fs.fed.us; or via facsimile to (907) 586-7866. Please confine comments to issues pertinent to the revised proposed fee policy. Comments that were submitted previously in response to the September 15, 2006, **Federal Register** notice are addressed in the response to comments section of this preamble. The public is not required to send duplicate comments via regular mail when submitting comments by e-mail. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this revised proposed policy in Room 519D of the

Federal Office Building, 709 West 9th Street, Juneau, Alaska, between 9 a.m. and 4 p.m. on business days.

DATES: Comments must be received in writing by June 2, 2008.

FOR FURTHER INFORMATION CONTACT: Neil Hagadorn, (907) 586-9336.

SUPPLEMENTARY INFORMATION: This notice supplements and incorporates to the extent it is consistent with the September 15, 2006, notice of the proposed long-term flat fee policy for outfitting and guiding in the Alaska Region, including the December 15, 2006, extension of the comment period for that proposed policy.

Background

In *The Tongass Conservancy v. Glickman*, No. J97-029-CV, slip op. (D. Alaska Sept. 19, 1998), the court held that the Forest Service's land use fee system must be fair to the plaintiff outfitter and guide, as well as based on the market value of the use of National Forest System (NFS) lands. In addition, based on a concern that different fees were being charged for the same type of commercial use of NFS lands, the court held that there was "insufficient evidence in the record to support a conclusion that the fees charged to the plaintiff were both fair and based upon the value of the use of Forest Service lands available to the plaintiff." *The Tongass Conservancy*, slip op. at 2. The court ordered the Alaska Region of the Forest Service to undertake actions consistent with the court's ruling and applicable law.

In response, on July 21, 1999, the Alaska Region published in the **Federal Register** for public notice and comment a proposed interim flat fee policy for all outfitting and guiding in the Alaska Region (Alaska Region Interim Flat Fee Policy or ARIFFP) (64 FR 39114, July 21, 1999). The notice for the final interim ARIFFP was published in the **Federal Register**, and went into effect on February 14, 2000 (65 FR 1846, January 12, 2000).

On September 15, 2006, the Alaska Region published a notice of a proposed regional flat fee policy in the **Federal Register** (71 FR 54454) with a 90-day comment period. The agency received two requests for an extension of the comment period. The Forest Service extended the comment period until March 15, 2007 (71 FR 74896). The Alaska Region received 40 comments from individuals, outfitters and guides, the travel industry, and the Southeast Alaska Conservation Council.

Based on review of the comments, the Alaska Region is revising its proposed flat fee policy. The revised proposal in

this notice replaces the initial proposal published on September 15, 2006.

In August 2003, the Anchorage-based appraisal firm Black-Smith and Richards, Inc. (BSR) completed its phase II market study (Final Phase II Report) on development of a land use fee system for outfitting and guiding in the Alaska Region that is both fair to the outfitters and guides and based on the fair market value of the use of NFS lands for outfitting and guiding. The Final Phase II Report identified two possible methods for land use fee schedule development in this context: (1) The modified ARIFFP, which relates fees to gross revenues from outfitting and guiding conducted on NFS lands, and (2) the bottom-up pricing method (BUPM), which ties outfitting and guiding land use fees to fees charged for comparable unguided recreational uses on non-federal lands (Final Phase II Report at 19).

The initial proposal published on September 15, 2006, was based on the modified ARIFFP. The Alaska Region developed this revised proposal based on review of comments received on the initial proposal; BSR market survey data; the work group recommendations; the need to simplify administration of the land use fee program in the Alaska Region; and the application of sound business management principles.

Comments Supporting Revision of the Proposed Flat Fee Policy

Comment. Some respondents recommended adopting the BUPM since the approach would be simpler and result in more consistent fees. Some respondents thought that the BUPM better supports Alaska outfitting and guiding land use fees than the modified ARIFFP because the BUPM reflects changing market conditions.

One respondent suggested that all commercial activities conducted in a remote setting be assessed the same fee as remote-setting nature tours. Several respondents thought that remote-setting nature tours are overcharged relative to other activities. Some respondents commented that remote-setting nature tours and road-based tours involve the same activities, such as hiking, nature viewing, and photography, and should be charged the same fee. One respondent stated that the original proposed fee schedule appears to charge different fees for the same or similar uses of NFS lands. Another respondent believed that the complexity in the original proposed fee schedule probably would result in operators reporting different uses and paying different fees for the same activities. Another respondent stated that BSR's Phase I

Report concluded that the value of the use of NFS lands for nature viewing in roaded areas was the same as for nature viewing in remote areas. Another respondent stated that the original proposed fee schedule does not group similar activities together. One respondent said their business is a combination of road-based and remote-setting experiences and questioned how fees for their permit would be determined.

One respondent asked why the original proposed fee schedule has two categories for helicopter tours and none for motorized water-borne tours. One respondent questioned why a motorized water tour in a remote-setting differs from flight-seeing or helicopter landing tours. Another respondent questioned why under the original proposed policy fees are higher for remote-setting nature tours than for other categories and noted that fees for other categories are not increasing in the same proportion as fees for remote-setting nature tours. Another respondent stated that certain activities, such as helicopter tours, are being unfairly targeted under the original proposed fee policy, since their fees would increase from \$2.83 to \$8.12.

Some respondents requested a separate fee for their activity, including tours on kayak motherships; water-based tours with occasional stops on NFS lands; and environmental education tours. Some respondents stated that flat fees based upon the average of all outfitters' and guides' use days are unfair to small operators because they do not have a high volume of business. Several respondents commented that the original proposed fee schedule is fragmented into unrealistically narrow categories. One respondent commented that there is overlap among the activities in the original proposed fee schedule. Another respondent noted that the categories in the original proposed fee schedule are arbitrary and are not based on a meaningful distinction regarding use of NFS lands. Another respondent commented that the long-term flat fee policy would substantially expand the number of activities that a flight-seeing or helicopter landing tour operator would be required to track.

One respondent suggested basing outfitting and guiding permit fees in the Alaska Region on a percentage of gross revenue.

Several respondents stated that gross revenues are not an appropriate basis for calculating the value of special use privileges. One respondent stated that the assumption that gross revenues of a business conducted on NFS lands are an accurate reflection of the value of a

business's use of those lands is flawed because net revenues can vary widely among businesses with similar gross revenues. Two respondents noted that the fees in the original proposed fee schedule are based on operating costs, which are not related to use of NFS lands. Another respondent questioned how the agency could obtain a meaningful average for purposes of establishing flat fees in the modified ARIFFP by combining revenues from a high-end operator charging \$500 per day and revenues from an operator charging \$50 per day. Another respondent stated that the Alaska Region did not exclude high-cost operators in developing the original proposed fee schedule, as was done in developing the ARIFFP. Another respondent stated that a flat fee proposal that bases fees in each category on the average revenue for all client days is unfair to small operators because they do not operate for the average number of days and do not have enough income to justify paying the applicable flat fee in the original proposed fee schedule. Two respondents stated that the cost of a tour is driven by the mode of access, which should have no bearing on the fees charged for the use that occurs after the land is accessed. One respondent noted that his business's revenue data were not considered in establishing the original proposed policy because his business started in 2004. Another respondent stated that the original proposed fee policy would impose a cumbersome administrative burden on outfitters and guides.

Response. The Alaska Region has revised the proposed policy by applying market survey information from the Final Phase II Report to develop the BUPM and applying sound business management principles to simplify land use fee administration for outfitters and guides and the Alaska Region. The Final Phase H Report recognized that both the modified ARIFFP and the BUPM could be used to develop an outfitting and guiding permit fee system for the Alaska Region in compliance with the ruling in *The Tongass Conservancy v. Glickman* (Final Phase II Report at 9).

The September 15, 2006, **Federal Register** notice states, "The data are too limited to develop unique values in the bottom-up pricing method for the diverse activities recognized in the Alaska Region" (71 FR 54459) (citing the Final Phase II Report at 59–60). In the discussion of the BUPM, the BSR report observes that the broader market recognizes only a few general categories of related uses (Final Phase II Report at 21). However, by reducing the 30 activities in the initial proposal to 9 activities in this revised proposal,

sufficient market data are available to develop a land use fee schedule based on fees paid to non-federal land owners for comparable unguided land uses. The resulting fee schedule is more closely tied to the market than the original fee schedule.

The large number of activities in the original proposed fee policy was carried over from the original flat fee schedule recommended for consideration by a working group from federal and state agencies assisting the Alaska Land Use Council (71 FR 54454–54455; Sept. 15, 2006). Road-based nature tours, remote-setting nature tours, flight seeing landing tours, helicopter landing tours, non-motorized freshwater boat trips, dog sled tours, camping, and road-based wildlife viewing activities are combined in this revised policy in one general recreation activity. These activities were combined because the market does not appear to differentiate between those types of unguided recreation activities. This new activity is consistent with the ruling in *The Tongass Conservancy v. Glickman*, which holds that to be fair to outfitters and guides, the Alaska Region's outfitting and guiding land use fee system must establish similar fees for similar uses of NFS lands. *The Tongass Conservancy*, slip op. at 8.

Updating the fee schedule under the initial proposal would require periodic compilation of gross revenue and the number of client days and clients per hunt. The Final Phase H report states: In the bottom-up pricing method, flat fees are derived from a survey and correlation of actual market data. The only permit holder data required are the annual reports of client volumes. There is no percentage component (Final Phase II Report at 59). Updating the fee schedule under the revised proposal therefore would be less burdensome to the permit holders and the Alaska Region, since it would merely involve adjusting fees in accordance with the Implicit Price Deflator-Gross Domestic Product (IPD) and periodic market surveys of unguided land use fees.

In addition, combining the 8 activities from the original proposal into one general recreation category in the revised proposal reduces the potential for charging for the level of service provided and mode of transportation used to access NFS lands, and would assure greater fairness and equity to a larger segment of the outfitters and guides. Thus periodic updates of the fee schedule would be less burdensome and expensive than the process required to update the modified ARIFFP.

The Forest Service disagrees with the comment that gross revenues are not an appropriate basis for calculating the

value of special use privileges. Generally, the gross revenues of a business conducted on NFS lands are an accurate reflection of the value of the business's use of those lands, regardless of whether the business involves improvements on NFS lands. Gross revenues derived from use or occupancy of NFS lands are an accurate indicator of the value of that use or occupancy because generation of the income depends on use of NFS lands: without it, the business would not exist. This conclusion is supported by the 1996 Government Accountability Office (GAO) report, "Fees for Recreation Special-Use Permits Do Not Reflect Fair Market Value" (1996 GAO report), which compares land use fees for outfitting and guiding based on a percentage of gross revenues that are charged by the Forest Service with land use fees charged by the State of Idaho for outfitting and guiding based on a percentage of gross revenues (GAO Report, RCED-97-16 (Sept. 1996) at 7)).

Nevertheless, as stated in the original flat fee proposal (71 FR 54454), the agency believes that flat fees for outfitting and guiding are appropriate in the Alaska Region because many outfitters and guides in Alaska base a significant percentage of their client charges on activities that occur off NFS lands. In contrast to the original flat fee proposal, which was based on an average of revenues generated by outfitters and guides conducting activities on NFS lands, the revised flat fee proposal is completely divorced from gross revenues of outfitters and guides because it is based on the fees charged for comparable unguided uses on non-federal lands. Therefore, the comments on the original flat fee proposal regarding gross revenues do not apply to the revised flat fee proposal.

Other Comments

Short-Stop Fees

Comment. One respondent said that there should be an incidental use category. Some respondents thought they should be charged a short-stop fee because their clients are not on NFS lands a high percentage of their tour. Another respondent suggested establishing a category for water-based tours with occasional stops on NFS lands. One respondent stated that the original proposed policy would result in land use fees based on the cost of delivering guests and other services, not on the value of the use of NFS lands. One respondent noted that in setting the fee for remote setting nature tours, the agency failed to ensure that fees are

impermissibly based on revenues derived from services provided off NFS lands.

Response. Short-stop fees are charged for trips that use NFS lands incidental to the purpose of the trip (FSH 2709.11, sec. 37.05). For example, both the initial and revised fee policies include short-stop flat fees that had been developed for Forest Service visitor centers in Alaska. The attraction of the Chugach and Tongass National Forests is not considered incidental to the purpose of outfitted and guided trips in Alaska. In general, non-federal landowners charge the same rate for unguided recreational uses, regardless of the time per day spent on their lands. Therefore, other than for visitor centers in Alaska, the Alaska Region believes that a short-stop fee is not appropriate for the outfitting and guiding uses in Alaska.

Category for Nonprofit Educational Organizations

Comment. One respondent asked the Alaska Region to consider adding a category for nonprofit educational organizations.

Response. The Forest Service's regulations define a commercial use or activity as any use or activity on NFS lands where an entry or participation fee is charged or where the primary purpose is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit (36 CFR 251.51). The Forest Service's regulations define guiding as providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups on NFS lands (36 CFR 251.51). The Forest Service's regulations define outfitting as renting or delivering to NFS lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment (36 CFR 251.51). Under these regulations, an entity that is conducting outfitting or guiding, regardless of whether it is intended to produce a profit, is engaging in a commercial activity that is subject to land use fees. Thus, it would not be appropriate to establish a separate category for nonprofit educational institutions in the Alaska Region's outfitting and guiding flat fee policy.

Off-Forest Discount

Comment. Some respondents commented that they spend a small portion of their time on NFS lands and should receive an 80 percent discount

on fees derived as a percentage of gross revenue. One respondent stated that in setting fees, the agency must consider actual use or commercial dependency of outfitters and guides.

Response. The revised proposed policy is not based on gross revenue or the amount of time spent on NFS lands. Fees would be charged per client per day or per client per hunt, regardless of the amount of time per day spent on NFS lands or the length of the hunt. In contrast to the fees in the initial proposed policy, i.e., in the modified ARIFFP, which were developed by determining the average price charged each client per day or per hunt for each category of outfitting and guiding conducted on NFS lands, the fees in the revised proposed policy were developed using data for fees charged for comparable unguided activities on non-federal lands. Thus, in contrast to the original proposed policy, the revised proposed policy is not derived from gross revenue of outfitters and guides operating on NFS lands. The market observations show that private and other government entities do not give discounts and that it is not necessary to apply a discount for revenue derived from use off NFS lands. Flat fees are derived from a survey and correlation of actual market data. There is no percentage component (Final Phase II Report at 59).

Independent Offices Appropriations Act of 1952 (IOAA)

Comment. Some respondents commented that the IOAA requires agency fees to be based on public policy, the value of the benefit to the recipient, and the cost to the government. One respondent stated that the IOAA does not mandate that permit fees serve as a revenue source for federal agencies. This same respondent stated that fees may be based on market prices and yield net revenues when the government is acting in a proprietary capacity, i.e., leasing or selling goods, but not where, as here, the government is acting in a proprietary capacity in providing access to federal lands.

Response. Consistent with the IOAA and OMB Circular No. A-25, Forest Service regulations at 36 CFR 251.57(a)(1) provide that land use fees for special use authorizations shall be based on the fair market value of the rights and privileges authorized, as determined by appraisal or other sound business management principles. Likewise, the court in *The Tongass Conservancy* case held that while the land use fee must be fair to the plaintiff, the fee must also be based on the value

of the use of NFS lands. *The Tongass Conservancy*, slip op. at 7.

Therefore, land use fees for special uses, including outfitting and guiding, must be charged for the use of NFS lands, rather than for access to NFS lands.

OMB Circular No. A-25 provides that user charges are based on recovery of full agency costs when an agency is acting in a sovereign capacity, e.g., when a land management agency is charging recreation fees for facilities and sites managed by that agency. OMB Circular No. A-25, sec. 6a(2)(a). However, when an agency is acting in a propriety capacity, e.g., when an agency is leasing or selling goods or resources, user charges are based on market prices. Id., at sec. 6a(2)(b). Here, issuance of an outfitting and guiding permit authorizing use of NFS lands is analogous to authorizing use of federal lands under a lease. Therefore, under OMB Circular No. A-25, the proper standard is market value, rather than agency costs.

Fees Based on Impacts to the Land

Comment. Some respondents commented that the proposed fee policy does not take into account the impacts of outfitting and guiding activities on NFS lands. Others stated that camping trips have a much greater impact on the environment than boat tours and questioned why the fees are higher for boat tours than for camping. One respondent stated that fees should not be higher for non-consumptive uses of NFS lands.

Response. Under the IOAA, OMB Circular No. A-25, and Forest Service regulations, the standard for determining land use fees charged by the Forest Service is the market value of the use of NFS lands, not the impact of the use on NFS lands. Therefore, it would not be appropriate to take into account the impacts of outfitting and guiding activities in setting their land use fees.

Objectivity of BSR

Comment. One respondent questioned BSR's objectivity based on BSR's acceptance of the Forest Service's conclusion that current land use fees for outfitting and guiding in the Alaska Region do not reflect fair market value; BSR's use of the word "arguably" to justify a result favorable to the Alaska Region; and BSR's statement that the initial proposed fee policy "best meets the needs of the Alaska Region."

Response. The Alaska Region believes that BSR did not show any actual or apparent bias in any aspect of the outfitter and guide use evaluation. Both

the Phase I and Phase II Reports contain certifications stating that BSR has no present or prospective interest in Forest Service special use authorizations; that BSR has no personal interest or bias with respect to the parties involved in the outfitting and guiding use valuation; that BSR's employment was not conditioned on, nor its compensation contingent upon, the reporting of a predetermined objective or direction that favors the cause of the Forest Service or any other party, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event; and that BSR's analyses, opinions, and conclusions were developed, and the reports were prepared, in conformity with the Uniform Standards of Professional Appraisal Practice and the Uniform Standards for Federal Land Acquisitions (Phase I Report at 4; Final Phase II Report at 5). These certifications attest to BSR's lack of actual or apparent bias.

The Forest Service's conclusion that current land use fees do not reflect fair market value is supported by BSR's data and analysis (see, e.g., Phase I Report at 48) and the 1996 GAO report, which specifically addresses outfitting and guiding land use fees. In particular, the 1996 GAO report states:

In an effort to compare state and federal fees for commercial recreational activities, we compared some Forest Service-authorized commercial recreational uses and fees in national forests that we visited to similar uses and fees on state lands. We found some similar comparisons in three of the five states we visited. In those instances—in California, Idaho, and Colorado—the states' fees for commercial recreation uses ranged from 6 to 15 percent of gross sales or revenues, while the Forest Service's fees averaged less than 3 percent. * * *. Idaho's fee for 12 of these [outfitting and guiding] activities is 5 percent of gross sales or \$250 annually, whichever is greater. In comparison, the Forest Service's fee for outfitters and guides is a maximum of 3 percent of gross revenues or \$70, whichever is greater.

(GAO Report, RCED-97-16 (Sept. 1996) at 7).

Use of the word "arguably" does not show bias; rather, use of the word "arguably" qualifies a statement, i.e., shows that it is open to argument.

Likewise, the statement that the initial proposed policy "best meets the needs of the Alaska Region" does not show bias because meeting the needs of the Alaska Region includes being fair to outfitters and guides. Specifically, the request for proposals (RFP) for the outfitter and guide use valuation in the Alaska Region requires BSR to develop an outfitting and guiding fee system (1) that is fair to outfitters and guides in charging similar fees for similar uses

(see, e.g., Phase I Report at 49, evaluating the ability of each methodology to develop market prices that are fair to permit holders), as well as fair to the government in yielding fees that are based on the market value of the use of NFS lands; (2) that will result in stable fees that do not vary widely over time; (3) that will not require competitive award of permits except in circumstances of limited new outfitting and guiding opportunities where demand to provide services exceeds supply; and (4) that will be simple to administer and that will not result in an undue reporting or record-keeping burden on permit holders (RFP at 11).

Minimum Fees

Comment. Some respondents commented that there is a need for a standard minimum fee for small operators.

Response. The minimum fee for all outfitters and guides, regardless of the size of their business, is \$100 and would stay the same in the revised proposed policy.

Use of Proposed Fee Increases

Comment. Some respondents questioned whether the increase in fees would be used to benefit outfitters and guides and visitors to the national forests.

Response. Forest Service outfitting and guiding permits are issued under the Federal Lands Recreation Enhancement Act (REA) (16 U.S.C. 6801-6814). REA requires the Forest Service to retain and spend at least 80 percent of the funds collected under that statute, including land use fees from permits, at the site where the funds are collected, for enhancement and administration of the special uses program. Therefore, any increase in fees would benefit outfitters and guides and visitors to the national forests in the Alaska Region.

Fees Charged When Multiple Activities Are Involved

Comment. One respondent questioned which fee takes precedence if two or more activities are involved in a tour. Another respondent was concerned that the agency would charge the higher fee if both activities are conducted the same day.

Response. Currently, when an outfitter or guide conducts more than one authorized activity on a given day, the Alaska Region charges the highest fee from the fees for those activities. The revised proposed policy would eliminate this practice for any activities that are combined in the general

recreation category. However, if an outfitter or guide conducts activities that fall into more than one category in the revised proposed policy, the outfitter or guide would pay the fee for the primary activity authorized in the corresponding permit. The actual use report would determine the fee that would be charged.

Regulatory Flexibility Act

Comment. One respondent commented that the Forest Service has failed to support its certification that a Regulatory Flexibility Act (RFA) analysis is not required. Specifically, this respondent noted that there are no cost estimates as to any potential economic impact of the increased land use fees on outfitters and guides or the tourism industry.

Other respondents commented generally on potential economic impacts. One respondent stated that it is difficult to absorb the rapidly rising costs of doing business. Another stated that the proposed increases in fees will be difficult to absorb. One respondent stated that it seems as if the proposed fees are geared toward eliminating the small eco-tour operator. Another respondent expressed a concern that the trend established in part by the proposed policy is for the big companies to take over tours in the Alaska Region. That same respondent stated that she would not be able to pass this increase on to cruise lines with whom she contracts. Another respondent stated that the increase in fees would cause hardship to his business. Another respondent stated that additional economic burdens will discourage many businesses from continuing to offer services to the public. One respondent stated that small operators may be disadvantaged under the original proposed fee policy. One respondent noted that as a small business owner, he cannot justify raising his rates to include the proposed fee increase, yet cannot absorb the proposed increase without raising his rates. Another respondent stated that outfitters and guides cannot increase the volume of their business to cover increased fees. One respondent noted that he cannot absorb the large proposed increase for trips such as hunting that are booked 2 or 3 years in advance.

Response. The Forest Service has conducted a threshold RFA analysis of the revised proposed policy. Based on this analysis, the agency has concluded that the revised proposed policy would not have a significant economic impact on a substantial number of small entities as defined by the RFA because the revised proposed policy would not

impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities, and it would not affect their cash flow, liquidity, or ability to remain in the market. A copy of the threshold RFA analysis is included in the record for the revised proposed policy.

Process Used To Develop the Proposed Policy

Comment. One respondent stated that the process used to develop the initial proposed fee policy was flawed because it did not involve the visitor services industry or outfitters and guides.

Response. In developing policy subject to public notice and comment under the Administrative Procedure Act or the National Forest Management Act, the Forest Service must observe applicable procedural requirements regarding public involvement, including forming a federal advisory committee to conduct negotiated rulemaking with affected parties or publishing a proposal in the **Federal Register** for public notice and comment. The Alaska Region has met these requirements by publishing both the initial and revised proposed policies in the **Federal Register** for public notice and comment.

Comments Beyond the Scope of the Proposed Flat Fee Policy

Comment. One respondent assumed that if the proposed fees go into effect,

the respondent's request for authorization to install a sanitary removable outhouse, a yurt, and a yurt pad would be allowed. Another respondent noted that the Forest Service does not support brown bear research being conducted by the State of Alaska. One respondent stated that the Forest Service must address unreported and unauthorized outfitting and guiding conducted on NFS lands. One respondent stated that the initial proposed policy would impose air carrier requirements on entities that conduct air tours under Federal Aviation Administration regulations.

Response. The initial and revised proposed policies would establish a long-term flat fee system for outfitting and guiding conducted on NFS lands in the Alaska Region. Neither proposed policy would address authorization of installation of improvements on NFS lands: research conducted by the State of Alaska; unreported or unauthorized use of NFS lands; or air carrier requirements.

Revised Proposed Alaska Region Long-Term Flat Fee Policy

The Alaska Region developed the revised proposed long-term flat fee policy in response to many comments on the initial proposed policy. The Alaska Region reduced the number of activities from 30 to 9, resulting in a

simpler, less expensive system to administer and update and greater predictability and consistency in implementation. The revised proposed policy is also easier and less expensive to administer and update because it does not include a market-based percentage rate, and the only permit holder data required are annual reports of client volumes. In compliance with the court order in *The Tongass Conservancy case*, under the revised proposal, similar fees would be charged for similar activities, consistent with the broader market, and the fees would yield a fair return to the government.

The fees in the revised proposal are based on the review of comments received on the initial proposal; BSR market survey data; the work group recommendations; the need to simplify administration of the land use fee program in the Alaska Region; and the application of sound business management principles. The BUPM prices outfitter and guide use in terms of the value of comparable unguided use evidenced in the market place and develops flat fees based on these comparable unguided use values (Final Phase II Report at 8 and 59).

Table 1 displays the revised proposed fees for outfitting and guiding in the Alaska Region.

TABLE 1.—ALASKA REGION REVISED PROPOSED OUTFITTING AND GUIDING LAND USE FEES

Activity	Proposed daily flat fee
VISITOR CENTERS (per client/per day):	
Visitor Centers	* \$1.50
GENERAL RECREATION (per client/per day):	
All General Recreation Activities**	5.00
HELI-SKIING & OVER-SNOW VEHICLE TOURS (per client/per day):	
Over-snow Vehicle Tours	10.00
Heli-skiing Tours	
FRESH WATER FISHING AND SMALL GAME HUNTING (per client/per day):	
Freshwater Fishing and Waterfowl	10.00
Small Game Hunting (Including Wolf)	
BIG GAME HUNTING (per client/per hunt):	
Brown Bear	330.00
Mountain Goats/Dall Sheep/Moose/Elk	200.00
Black Bear	150.00
Deer	100.00
EQUIPMENT SERVICES (per day):	
Delivery and/or Pick-Up of Motorized and Nonmotorized Equipment, Such as Kayaks, Over-Snow Vehicles, and Camping Equipment, to National Forest System Lands for Clients	10.00

* Visitor center flat fees do not include fees paid by visitors authorized under the Federal Lands Recreation Enhancement Act.

** General recreation includes road-based nature tours, remote-setting nature tours, flight-seeing landing tours, helicopter landing tours, non-motorized freshwater boat trips, dog-sled tours, camping, and road-based wildlife viewing activities that are in the current fee schedule.

The land use fees charged for each category are described below.

Visitor Centers

The visitor center fee does not include the standard amenity recreation fee that is charged for these sites under REA.

General Recreation Activities

According to the BSR market survey, the market place does not recognize a high level of stratification in setting fees for general recreation (Final Phase II

Report at 21). Consequently, in the revised proposed policy, activities such as road-based nature tours, remote-setting nature tours, and flight-seeing landing tours are grouped in the general recreation category. Based on the reconciliation of available market data for unguided uses, the BSR market survey concludes that a fee of \$5.00 per day is appropriate for general recreation use. The report further observes that the market does not distinguish between partial days and whole days, the point of origin, or the mode of transportation used to conduct the activity (Final Report Phase H at 22).

Helicopter Skiing and Over-Snow Vehicle Tours

A higher fee for helicopter skiing and over-snow vehicle tours compared to general recreation is justified in comparison with NFS lands suitable for general recreation, NFS lands suitable for safe helicopter skiing and over-snow vehicle tours are much more limited, yet the demand for these activities is equally strong. Additionally, the average time per day spent on NFS lands for helicopter skiing is considerably longer than for helicopter landing tours.

Fresh Water Fishing and Small Game Hunting

Compared to general recreational activities such as remote-setting nature tours, commercial fishing and small game hunting require special habitats that are more limited. Habitats that contain fish-bearing fresh water streams are both limited in supply and high in demand. Setting a higher fee for fishing and small game hunting than for general recreation is therefore justified and consistent with the BSR market survey (Final Phase 11 Report at 27 and 29).

Big Game Hunting

There are four activities for big game hunting: (1) Brown bear; (2) mountain goat, Dall sheep, moose, and elk; (3) black bear and (4) deer. The BSR market survey estimates the value of an unguided, typical multi-day deer hunt without camping at approximately \$100. To adjust for Alaska conditions, the fees for the remaining big game hunt categories are derived by applying ratios similar to those between tag fees charged by the Alaska Department of Fish and Game for the different species, and reflected in the BSR market survey. (Final Phase II Report at 41–53). The

fees charged for big game hunting reflect the availability and character of the habitat for the different big game species. For example, habitat suitable for deer is more plentiful than habitat suitable for mountain goats and coastal brown bears. In addition, the revised proposed fee schedule tracks the broader market in not distinguishing between hunts with and without camping (Final Phase II Report at 41).

Equipment Services

This activity allows an outfitter to deliver and pick up equipment and vehicles on NFS lands for clients, including kayaks, snowmobiles, bicycles, camping gear, etc. for one flat fee per day.

Comparison of the Initial and Revised Proposed Fee Policies

Table 2 displays the Alaska Region activities in column 1. Column 2 shows the 2006 fees that were charged for the current activities. Fees that would have been charged under the initial proposed fee policy are shown in column 3. The BUPM fees from the BSR market study are shown in column 4. The revised proposed fees are shown in column 5.

TABLE 2.—COMPARISON OF INITIAL AND REVISED PROPOSED OUTFITTING AND GUIDING LAND USE FEES FOR THE ALASKA REGION

Activities	2006 fees	2006 modified ARIFFP fees	BUPM fees	Revised proposed fees
Fees for recreation use are charged per client day				
General Recreation:				
Road-Based Nature Tours	\$0.57	\$2.16	\$5.00	\$5.00
Remote-Setting Nature Tours	2.83	13.80	5.00	5.00
Flight-Seeing Landing Tours	2.26	6.76	5.00	5.00
Helicopter Landing Tours	2.83	8.12	5.00	5.00
Dog Sled Tours	2.83	4.87	5.00	5.00
Camping	4.52	5.68	5.00	5.00
Road-Based Wildlife Viewing	0.57	2.16	5.00	5.00
Remote Wildlife Viewing	2.83	8.12	5.00	5.00
Visitor Centers*	0.57	1.62	4.00	1.50
Over-Snow Vehicle Tours	4.52	4.87	10.00	10.00
Heli-Skiing Tours	8.76	22.19	5.00	10.00
Freshwater Fishing	2.83	9.74	10.00	10.00
Waterfowl and Small Game Hunting (including wolf)	5.65	12.99	10.00	10.00
Fees for big game hunting are charged by the hunt				
Brown Bear:				
Day Use	158.27	389.63	625.00	330.00
Camping	220.43	497.86	665.00	330.00
Black Bear:				
Day Use	79.12	119.05	185.00	150.00
Camping	135.66	211.05	205.00	150.00
Elk:				
Day Use	N/A	119.05	220.00	200.00
Camping		211.05	245.00	200.00
Moose:				
Day Use	N/A	119.05	270.00	200.00
Camping		211.05	300.00	200.00
Mountain Goats and Dali:				
Sheep:				
Day Use	118.70	248.93	220.00	200.00

TABLE 2.—COMPARISON OF INITIAL AND REVISED PROPOSED OUTFITTING AND GUIDING LAND USE FOES FOR THE ALASKA REGION—Continued

Activities	2006 fees	2006 modified ARIFFP fees	BUPM fees	Revised proposed fees
Camping	146.95	319.28	245.00	200.00
Deer:				
Day Use	33.91	70.35	105.00	100.00
Camping	79.12	92.00	125.00	100.00
Equipment services are charged per day				
Delivery and/or Pick-Up of Motorized and Nonmotorized Equipment, such as Kayaks, Over-Snow Vehicles, and Camping Equipment, to National Forest System Lands	6.25	6.76	10.00	10.00

* Visitor center flat fees do not include fees paid by visitors authorized under the Federal Lands Recreation Enhancement Act.

Implementation

The Alaska Region intends to conduct a market review every five years to update the land use fees for outfitting and guiding in the Region based on a market survey of fees charged by non-federal landowners for unguided recreational activities that are comparable to those conducted by outfitters and guides in the Alaska Region. As part of the market survey, the Alaska Region will evaluate market data regarding comparable unguided recreational activities conducted on non-federal land that are submitted by the outfitting and guiding industry and outfitters and guides in the Alaska Region.

Regulatory Certifications

Environmental Impact

This proposed policy would establish administrative fee categories and procedures for calculating permit fees for outfitters and guides operating in the Alaska Region of the Forest Service. Section 31.12 (formerly section 31.1b) of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement “rules, regulations or policies to establish Service-wide administrative procedures, program processes or instructions.” The Alaska Region’s preliminary assessment is that this proposed policy falls within this category of actions and that no extraordinary circumstances exist, which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made on adoption of the final policy.

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this not a significant

policy. The proposed policy could not and might not reasonably be anticipated to lead to an annual effect of \$100 million or more on or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; raise novel legal or policy issues; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of beneficiaries of those programs. Accordingly, this proposed policy is not subject to OMB review under Executive Order 12866, as amended by Executive Order 13422.

This proposed policy has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*). The revised proposed flat fee policy would affect a substantial number of small entities. However, the impact on those entities would not be significant. The proposed fee increases are not significant when compared to the amounts charged by these entities to their clients and could readily be absorbed. Accordingly, the revised proposed flat fee policy would not affect the competitive position of small entities in relation to large entities, nor would the revised proposed flat fee policy substantially affect small entities’ cash flow, liquidity, or ability to remain in the market. In addition, the revised proposed flat fee policy would not impose new record-keeping requirements on small business holders of special use authorizations. To the contrary, the greater efficiency and consistency achieved by the revised proposed policy in simplifying the fee categories and the method for updating fees would benefit both outfitters and guides in the Alaska Region and the Forest Service. Therefore, no further

analysis is required under the Regulatory Flexibility Act.

No Takings Implications

This proposed policy has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the proposed policy would not pose the risk of a taking of private property.

Civil Justice Reform

This proposed policy has been reviewed under Executive Order 12988 on civil justice reform. If this proposed policy were adopted, (1) all state and local laws and regulations that are in conflict with this proposed policy or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed policy; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) which the President signed into law on March 22, 1995, the Alaska Region has assessed the effects of the proposed policy on state, local, and tribal governments and the private sector. This proposed policy would not compel the expenditure of \$100 million or more by any state, local, or tribal government or anyone in the private sector. Therefore, a statement under Section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Alaska Region has considered this proposed policy directive under the requirements of Executive Order 13132 on federalism and has determined that the proposed policy would conform with the federalism principles set out in

this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Alaska Region has determined that no further assessment of federalism implications is necessary.

Moreover, this proposed policy would not have Tribal implications as defined by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," and therefore advance consultation with Tribes is not required.

Energy Effects

This proposed policy has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." It has been determined that this proposed policy would not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

This proposed policy does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. The information collection being requested as a result of this action has been approved by OMB. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Dated: April 10, 2008.

Paul K. Brewster,

Deputy Regional Forester, Alaska Region.

[FR Doc. E8-8239 Filed 4-17-08; 8:45 am]

BILLING CODE 3410-11-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* May 18, 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: On February 8 and February 22, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 7521; 9766) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.
2. The action will result in authorizing small entities to furnish the product 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 product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Tray, Mess, Compartmented

NSN: 7350-01-012-8787.

NPA: The Lighthouse f/t Blind in New Orleans, New Orleans, LA.

Coverage: B-List for the broad Government requirement as specified by the General Services Administration.

Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX.

Services

Service Type/Location(s): Administrative & Mailroom Support Services, U.S. Department of Housing and Urban Development (5 Locations):

Fort Worth Regional Office, 801 Cherry Street, Room 2500, Fort Worth, TX.

Lubbock Office, 1205 Texas Avenue, Suite 511, Lubbock, TX.

Memphis Field Office, 200 Jefferson Avenue, Suite 300, Memphis, TN.

San Antonio Field Office, One Alameda Center, 106 S. St. Mary's Street, Suite 405, San Antonio, TX.

Shreveport Field Office, 401 Edwards Street, Suite 1510, Shreveport, LA.

NPA: Nobis Enterprises, Inc., Marietta, GA.

Contracting Activity: U.S. Department of Housing and Urban Development, Office of Field Administrative Resources (OFAR), Atlanta, GA.

Service Type/Location: Base Supply Center, Base Supply Center, Naval Station Newport, Newport, RI.

NPA: Central Association for the Blind & Visually Impaired, Utica, NY.

Contracting Activity: Fleet and Industrial Supply Center (FISC), Norfolk Contracting Department, Groton, CT.

Service Type/Location: Custodial Services, U.S. Army Corps of Engineers, Lake Michigan Area Office, 307 South Harbor Street, Grand Haven, MI.

NPA: Goodwill Industries of West Michigan, Inc., Muskegon, MI.

Contracting Activity: U.S. Army Corps of Engineers—Detroit, Detroit, MI.

Service Type/Location: Laundry Services, Blanchfield Army Community Hospital (BACH), Fort Campbell, KY.

NPA: Lakeview Center, Inc., Pensacola, FL.

Contracting Activity: Department of the Army, Southeast Regional Contracting Office (SERCO), Fort Gordon, GA.

Service Type/Location: Laundry Services, Fort Campbell, Fort Campbell, KY.

NPA: Lakeview Center, Inc., Pensacola, FL.

Contracting Activity: Department of the Army, Army Contracting Agency, Directorate of Contracting, Fort Campbell, KY.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E8-8367 Filed 4-17-08; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and a service previously furnished by such agencies.

Comments Must Be Received on or Before: May 18, 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.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for

production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center & HAZMAT, Naval Air Station—Joint Reserve Base (NASJRB), New Orleans, LA.

NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, NC.

Contracting Activity: Fleet and Industrial Supply Center—Jacksonville, Jacksonville, FL.

Service Type/Location: Custodial Services, Fort Sam Houston, Camp Bullis, Building 6116, San Antonio, TX.

NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.

Contracting Activity: Southern Region Contracting Center-West, Fort Sam Houston, TX.

Service Type/Locations: Mailroom Operations, Immigration & Customs Enforcement, 1100 Center Parkway (Camp Creek Business Center), 180 Spring Street, 2150 Park Lake Drive, Atlanta, GA.

NPA: WORKTEC, Jonesboro, GA.

Contracting Activity: U.S. Department of Homeland Security, Immigration and Customs Enforcement, Washington, DC.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action should not 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 products and 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 products and service 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 products and service are proposed for deletion from the Procurement List:

Products

Frame, Transparency Mounting
NSN: 6750-00-378-6825.

NPA: Industries of the Blind, Inc., Greensboro, NC.

Contracting Activity: General Services

Administration, Office and Photographic Equipment Division.

Hydration On-the-Move System

NSN: 8465-00-NIB-0041—Canteen, One Quart Flexible—Echo.

NSN: 8465-00-NIB-0097—Sierra Black.

NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.

Computer Accessories

NSN: 7045-01-483-7832—CD Organizer.

NSN: 7045-01-483-7837—Ergo Gel Keyboard and Monitor Platform.

NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, WI.

Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Service

Service Type/Location: Janitorial/Custodial, Social Security Administration, 142 Auburn Street, Pontiac, MI.

NPA: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI.

Contracting Activity: General Services Administration, Region 5, Chicago, IL.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E8-8366 Filed 4-17-08; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Docket 20-2008

Foreign-Trade Zone 122 – Corpus Christi, Texas, Application for Subzone, Haliburton Energy Services, Inc., (Barite Grinding and Milling), Corpus Christi, Texas, Correction

The **Federal Register** notice (73 FR 20246, 4/15/08) describing the application submitted by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for Haliburton Energy Services, Inc. (HESI) in Corpus Christi, is corrected as follows:

In the heading of the notice, third line, the correct docket number for the case should read "Docket 20-2008."

Dated: April 15, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8-8436 Filed 4-17-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration****A-602-806****Postponement of Final Determination of Antidumping Duty Investigation: Electrolytic Manganese Dioxide from Australia**

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

EFFECTIVE DATE: April 18, 2008.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; Telephone: (202) 482-3477 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:**Postponement of Final Determination**

On March 26, 2008, the Department of Commerce (the Department) published the preliminary determination of the antidumping duty investigation of electrolytic manganese dioxide from Australia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Electrolytic Manganese Dioxide from Australia*, 73 FR 15982 (March 26, 2008). The preliminary determination notice stated that the Department would issue its final determination within 75 days after the date of the preliminary determination, in accordance with section 735(a)(1) of the Tariff Act of 1930, as amended (the Act).

On March 25, 2008, the respondent, Delta EMD Australia Pty Ltd. (Delta), made a timely request pursuant to section 735(a)(2)(A) of the Act for a postponement of the final determination. On March 27, 2008, the petitioner, Tronox, LLC, stated that it supports the proposed extension of the deadline for the final determination.

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of an affirmative preliminary determination if a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Delta accounts for a significant portion of exports of the subject merchandise. *See Memorandum to Laurie Parkhill, "Antidumping Duty Investigation on Electrolytic Manganese Dioxide from*

Australia – Respondent Identification" (October 25, 2007). Section 351.210 (e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. In its March 25, 2008, submission, Delta requested the extension of provisional measures from a four-month period to not longer than six months. Therefore, we have extended the deadline for issuance of the final determination to August 8, 2008, which is 135 days after the date of publication of the preliminary determination in the **Federal Register**. In addition, we have also extended provisional measures to not longer than six months.

This notice is issued and published pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii).

Dated: April 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-8421 Filed 4-17-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration****[Application No. 08-00005]****Export Trade Certificate of Review**

ACTION: Notice of Application for an Export Trade Certificate of Review From Redberri Global Corporation.

SUMMARY: Export Trading Company Affairs ("ETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review ("Certificate"). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal

government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 08-00005." A summary of the application follows.

Summary of the Application

Applicant: Redberri Global Corporation ("Redberri"), 3152 Cherokee Street, Saint Louis, Missouri 63118.

Contact: Dr. Deepak K. Vyas, Chief Executive Officer, Telephone: (314) 776-8927.

Application No.: 08-00005.

Date Deemed Submitted: April 7, 2008.

Members (in addition to applicant): None.

Redberri seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade**A. Products**

All Products, with emphasis on products that incorporate technologies

such as bio-technology, software, nanotechnology, telemedicine, and other related technologies.

B. Services

All Services.

C. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to product and services.

D. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services include professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; export trade negotiations; joint ventures; logistical support; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; and transfer of technology.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. Redberri, on its own behalf or on behalf of any or all of its clients may:

a. *Sales Prices:* Establish sale prices, minimum sale prices, target sale prices and/or minimum target sale prices, and other terms of sale, in the Export Markets;

b. *Marketing and Distribution:* Conduct marketing and distribution of Products in the Export Markets.

c. *Promotion:* Conduct promotion of Products, Services, and Technology Rights in the Export Markets;

d. *Quantities:* Agree on quantities of Products to be sold, provided that each client shall be required to dedicate only such quantity or quantities as each such client shall independently determine.

e. *Market and Customer Allocation:* Allocate geographic areas or countries in the Export Markets and/or customers in the Export Markets;

f. *Refusals to Deal:* Refuse to quote prices for Products and Services or to market or sell Products and Services, to or for any customers in the Export Markets, or any countries or geographical areas in the Export Markets;

g. *Exclusive and Nonexclusive Export Intermediaries:* Enter into exclusive and nonexclusive agreements appointing one or more Export Intermediaries, including regional representatives in the Export Markets, for the sale of Products and Services with price, quantity, territorial and/or customer restrictions as provided above;

2. Redberri may exchange and discuss the following information with Suppliers and Export Intermediaries on an individual, one-to-one basis:

a. Information about sale and marketing efforts for the Export Markets, activities and opportunities for sales of Products in the Export Markets, selling strategies for the Export Markets, sales for the Export Markets, contract and spot pricing in the Export Markets, projected demands in the Export Markets for Products, customary terms of sale in the Export Markets, prices and availability of Products from competitors for sale in the Export Markets, and specifications for Products by customers in the Export Markets;

b. Information about the price, quality, quantity, source, and delivery dates of Products available from Suppliers for export;

c. Information about terms and conditions of contracts for sale in the Export Markets to be considered and/or bid on by Redberri;

d. Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among clients;

e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans- or intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations, including federal marketing order programs, affecting sales for the Export Markets;

g. Information about Redberri's export operations, including without limitation, sales and distribution networks established by Redberri or its clients in the Export Markets (including export price information); and

h. Information about export customer credit terms and credit history.

3. Redberri and its clients may meet to engage in the activities described in paragraphs 1 and 2 above.

4. Redberri and its clients may jointly participate in international trade shows and technology summits.

5. Redberri may market Products, Services, and Technology Rights under Aquaglobex, Redberri, BIE, USTOOLCITI, Toolciti, Aquaglobal, Medicalciti or U.S. Pneumatic and other brands to optimize its brand name recognition.

6. Redberri Global Corporation intends to develop world class infrastructure to develop international trade for U.S.-made products and optimize global sales of American products through innovative incubation, brand development, market management, and technology development.

7. Form and operate electronic portals to promote Products, Services, and Technology Rights through a virtual marketplace for buyers and sellers, and provide access to export trade opportunities, including publicly available overseas government tenders and non-governmental organization tenders.

8. With respect to the sale of Products and Services, licensing of Technology Rights and provision of Export Trade Facilitation Services, Redberri may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or nonexclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to the Export Markets;

d. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

e. Allocate export orders among Suppliers;

f. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in the Export Markets; and

g. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

Definition

"Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, import agent, broker, or who performs similar functions including providing or

arranging for the provision of Export Trade Facilitation Services.

“Supplier” means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Dated: April 15, 2008.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E8-8520 Filed 4-17-08; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Manufacturing & Services' Sustainable Manufacturing Initiative; Update

ACTION: Notice of updates and e-mail list sign-up.

SUMMARY: The International Trade Administration's Manufacturing & Services Unit held a Sustainable Manufacturing Initiative event on September 27, 2007. Manufacturing & Services is notifying the public of outcomes of the September 2007 event and of this initiative's dynamic Web presence and e-mail list sign-up.

DATES: N/A.

ADDRESSES: N/A.

FOR FURTHER INFORMATION CONTACT: Matthew Howard in Manufacturing & Services' Office of Trade Policy Analysis, 202-482-3703.

SUPPLEMENTARY INFORMATION:

Sustainable manufacturing practices in the United States have become increasingly popular in recent years as companies look for new ways to make more efficient use of resources, ensure compliance with domestic and international regulations related to environment and health, and enhance the marketability of their products and services. As the trend towards sustainable manufacturing practices grows, so do its implications for U.S. global competitiveness and firm profitability.

At the Department of Commerce, one of our main goals is to foster domestic and international conditions for doing business that allow U.S. firms to successfully compete internationally. Evidence has shown that firms incorporating both environmentally and economically sustainable manufacturing processes can gain competitive advantages by achieving inherent cost savings (i.e., improving their energy efficiency, minimizing raw materials usage, etc.) while at the same time reaping societal benefits for being good stewards of the environment. Many U.S. firms have demonstrated that being

environmentally sustainable can also mean being profitable.

In order to provide effective and continued support to U.S. companies in their sustainable manufacturing efforts, Commerce's Manufacturing & Services (MAS) unit has launched a Sustainable Manufacturing Initiative and Public-Private Dialogue that aims to (a) identify U.S. industry's most pressing sustainable manufacturing challenges and (b) coordinate public and private sector efforts to address these challenges.

MAS received a great deal of constructive individual feedback from U.S. industry at its September 27, 2007 “Enhancing U.S. Competitiveness Through Sustainable Manufacturing: A Public-Private Dialogue” event. Participants from both the public and private sectors agreed that sustainable manufacturing is an area where the United States must continue to increase its global competitive advantage, both in its ability to develop and utilize cleaner, more energy-efficient technologies and in its ability to implement manufacturing practices that are cost-effective and environmentally sound.

MAS has developed a dynamic Web presence to help keep the public informed of news on the Sustainable Manufacturing Initiative. Information on this initiative can be found at: <http://trade.gov/competitiveness/sustainablemanufacturing/index.asp>.

This Web site features an e-mail list sign-up function where interested companies and individuals may sign-up for news and other updates on Manufacturing & Services' Sustainable Manufacturing Initiative.

To help maintain and enhance forward momentum on this initiative and continue the follow-up to the September 2007 event, MAS plans to take on four specific efforts in response to U.S. industry requests for USG action on the topic of sustainable manufacturing:

1. *Establishment of an Interagency Task Force on Sustainable Manufacturing.* To help maximize the value of complementary sustainable manufacturing efforts by various federal agencies as well as ensure the continuity of the MAS Sustainable Manufacturing Initiative, MAS is proposing to establish and chair an interagency task force on sustainable manufacturing. Comprised of representatives of interested federal agencies, this task force will be responsible for carrying out projects identified through the public-private dialogue as U.S. industry priorities.

2. *Creation of a Central Online Clearinghouse of USG Programs and*

Resources That Support Sustainable Business. There are numerous U.S. government (USG) programs currently available to support sustainable business practices in the United States; however, there is currently no single portal yet available to the public that catalogs these many programs. To begin consolidating this information, Commerce will begin working with other federal agencies via the interagency task force to launch an online clearinghouse that U.S. companies can use to identify the USG programs and resources that are right for them. MAS has already begun developing the clearinghouse, which can be found at the following Web address (please note this is not the final product, but merely a starting point and it is not intended to be a comprehensive listing of all relevant USG resources in support of U.S. industry's sustainable manufacturing efforts): http://trade.gov/competitiveness/sustainablemanufacturing/USG_PRG_Sustainable_Business.asp.

3. *Leading Domestic Trade Missions to Promote Sustainable Manufacturing.* Numerous U.S. companies have voiced concerns over the lack of visibility sustainable manufacturing receives nationwide and the lack of information U.S. manufacturers possess in this field. In order to continue spreading awareness of sustainable manufacturing's benefits, both to U.S. global competitiveness and the environment, MAS proposes and is currently exploring the feasibility of a domestic trade mission in the United States, leading small and medium-size business owners on a site tour of some of the leading sustainable manufacturers in the country.

4. *Creation of Metrics for Sustainable Manufacturing.* Efforts in response to U.S. industry requests for metrics that can be used to measure the economic, environmental and social impacts of sustainable manufacturing have been underway between the U.S. Department of Commerce and the Organization for Economic Cooperation and Development (OECD) since 2005. Commerce has submitted a proposal to the OECD for a study that would propose a series of metrics to help businesses measure sustainable manufacturing's cost-effectiveness as well as its benefits to the environment and society as a whole. This proposal has been accepted by the OECD and work on this study is expected to commence in the spring of 2008. The Department of Commerce is also seeking U.S. industry representation on a newly created OECD Sustainable Manufacturing Experts Group that will

help to oversee and guide the aforementioned study. Interested companies should contact the Manufacturing & Services' Office of Trade Policy Analysis at the number listed above.

Dated: April 9, 2008.

Matthew Howard,

Office of Trade Policy Analysis.

[FR Doc. E8-8359 Filed 4-17-08; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG93

Fisheries in the Western Pacific; Marine Conservation Plan for Pacific Insular Areas; Western Pacific Sustainable Fisheries Fund

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the approval of a three-year marine conservation plan (MCP) for Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands.

DATES: This agency decision is effective April 11, 2008.

ADDRESSES: Copies of the marine conservation plan are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, NMFS Pacific Islands Regional Office, 808-944-2207.

SUPPLEMENTARY INFORMATION: Under section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, may negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA) to allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, which, by definition, does not include the State of Hawaii. Prior to entering into a PIAFA, the Council shall develop a three-year Marine Conservation Plan (MCP) providing details on uses for funds to be collected by the Secretary under the PIAFA. The Magnuson-Stevens Act

authorizes that any payment received under a PIAFA in support of conservation and management objectives in an MCP developed by the Council and, in the case of violations by foreign vessels occurring within the EEZ off any Pacific Insular Area (other than American Samoa, Guam, or the Northern Mariana Islands), any amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act, shall be deposited into the Western Pacific Sustainable Fisheries Fund for use by the Council.

The MCP to be approved by the Secretary must be consistent with the Council's fishery management plans, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects. Although no foreign fishing is being contemplated at this time, the Council has developed an MCP for the Pacific Insular Areas here defined as the EEZ around Johnston and Palmyra Atolls, Kingman Reef, and Jarvis, Howland, Baker, and Wake Islands. These areas are sometimes known as the "Pacific remote island areas" or "U.S. island possessions in the Central Pacific Ocean."

At its 139th meeting held in October 2007, the Council approved its "Western Pacific Sustainable Fisheries Fund Marine Conservation Plan," dated August 29, 2007. The MCP contains seven objectives:

1. Support quality research and obtain the most complete scientific information available to assess and manage fisheries;
2. Promote an ecosystem approach in fisheries management, including reducing waste in fisheries and minimizing impacts on marine habitats and impacts on protected species;
3. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision-making process;
4. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources, and foster opportunities for participation;
5. Promote environmentally-responsible fishing and the utilization of sustainable fisheries that provide long-term economic growth and stability;
6. Promote regional cooperation to manage domestic and international fisheries; and
7. Encourage development of technologies and methods to achieve the most effective level of monitoring, control, and surveillance, and to ensure safety at sea.

The MCP also identifies major task areas that include data collection and monitoring, management, biological research and assessment, social economic research and assessment, policy development, protected species, public outreach, etc., within which projects are ranked in order of priority.

On November 6, 2007, the Council transmitted its MCP to NMFS (designee of the Secretary) for approval. This notice announces that NMFS has determined that the Council's MCP satisfies the requirements of the Magnuson-Stevens Act, and that NMFS has approved the MCP for the three-year period from April 11, 2008, through April 10, 2011.

Dated: April 14, 2008.

Alan D. Risenhoover,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA34

Marine Mammal Stock Assessment Reports

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

ACTION: Notice; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). These reports for 2007 are now final and available to the public.

ADDRESSES: Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: <http://www.nmfs.noaa.gov/pr/sars/>. You also may send requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115.

Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037-1508.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301-713-2322, ext. 105, e-mail Tom.Eagle@noaa.gov; Robyn Angliss, Alaska Fisheries Science Center, 206-526-4032, email Robyn.Angliss@noaa.gov; Gordon Waring, Northeast Fisheries Science Center, email Gordon.Waring@noaa.gov; or Jim Carretta, Southwest Fisheries Science Center, 858-546-7171, email Jim.Carretta@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) required NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal level (PBR), estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

As required by the MMPA, NMFS updated SARs for 2007, and the revised reports were made available for public review and comment (71 FR 42815, July 28, 2006). The MMPA also specifies that the comment period on draft SARs must be 90 days. NMFS received comments on the draft SARs and has revised the reports as necessary. The final reports for 2007 are available.

Comments and Responses

During the comment period for the draft 2007 SARs, NMFS received letters from the Marine Mammal Commission, the Southwest Center for Biological Diversity, the Humane Society of the

United States, the Hawaii Longline Association, Sun Coast Calamari, and Prowler Industries. Each letter contained multiple comments.

Unless otherwise noted, comments suggesting editorial or minor clarifying changes were included in the reports. Such editorial comments and responses to them are not included in the summary of comments and responses below. Other comments recommended development of Take Reduction Plans or initiation or repetition of large data collection efforts, such as abundance surveys, observer programs, or other mortality estimates. Comments on actions not related to the SARs (e.g., convening a Take Reduction Team or listing a marine mammal species under the Endangered Species Act (ESA)) are not included below. Many comments recommending additional data collection (e.g., additional abundance surveys or observer programs) have been addressed in previous years. NMFS' resources for surveys, observer programs, or other mortality estimates are fully utilized, and no new large surveys or other programs may be initiated until additional resources are available or until ongoing monitoring or conservation efforts can be terminated so that the resources supporting them can be redirected. Such comments on the 2007 SARs and responses to them may not be included in the summary below because the responses have not changed.

In some cases, NMFS' responses state that comments would be considered for, or incorporated into, future revisions of the SAR rather than being incorporated into the final 2007 SARs. The delay is due to review of the reports by the regional SRGs. NMFS provides preliminary copies of updated SARs to SRGs prior to release for public review and comment. If a comment on the draft SAR suggests a substantive change to the SAR, NMFS may discuss the comment and prospective change with the SRG at its next meeting prior to incorporating the change.

Comments on National Issues

Comment 1: Fishery-related mortalities determined from strandings should be included in reports of total annual mortality for a stock and reported consistently within and between SARs.

Response: Mortality determined from stranded animals cannot necessarily be used or reported in a consistent manner. In some cases, stranded marine mammals with evidence of interaction with fishing gear occur when and where the death could have resulted from observed fisheries. In other cases, there

is no observed fishery that could have caused the death. For the former cases, the stranded animal should be included in the expansion of observed take to an annual estimate of mortality for the fishery. These mortalities determined from strandings should not be included in the mortality estimates. In the latter cases, the stranded animal could not have been included in an estimated take, and these should be reported in the SARs. Mortality documented through a stranding program represents a minimum estimate (at least that many deaths occurred) because some marine mammals that die off shore do not subsequently strand.

Comment 2: All regions should err on the side of precaution when assessing serious injuries of marine mammals, stock status, and assigning "undetermined" PBR levels for stocks.

Response: NMFS uses appropriate caution in preparing the reports and discusses the draft reports with regional SRGs prior to public review.

Comment 3: The quantity and quality of data on fishery-related mortality continue to be inadequate for a number of marine mammal stocks. There is concern that the SARs tend to lag approximately two years behind in incorporating available observer bycatch data. It is imperative that SARs use the most recently available data in making these determinations.

Response: NMFS is aware there is a delay between the time data are collected and when the resulting estimates are available for use in the SARs. Because these data may form the basis for management actions that affect constituents as well as marine mammals, NMFS subjects the results to stringent review, an important step requiring additional time, before including the latest results in the SAR.

Comment 4: Survey methods could be improved further by the use of acoustic, tagging, and genetics tools to complement standard survey methods, which will in turn improve the statistical confidence in survey data and the statistical power of the analytic approaches used to derive stock size, trends, and efficacy of take reduction actions.

Response: Surveys routinely include collection of information such as recommended in the comment. The amounts of additional information, as well as the extent and intensity of surveys, are subject to limitation due to resources.

Comment 5: NMFS should work with Federal and state fisheries management agencies and industry to develop a funding strategy to support stronger observer programs for collecting data on

incidental mortality and serious injury. This would include training and other support for stranding response teams that would lead to greater certainty about the cause of strandings and unusual mortality events.

Response: NMFS established a National Observer Program in 1999 to combine program-specific observer effort for efficiency and to promote sustainable funding for a comprehensive marine resource observer program. The National Observer Program has been working with fishery management agencies and the fishing industry to meet these objectives and will continue to do so. The National Observer Program, in coordination with all six NMFS regions, has initiated development of a National Bycatch Report to compile species- and fishery-specific bycatch estimates for fish, marine mammals, sea turtles, and sea birds. This initiative will incorporate the development of fishery improvement plans to improve the collection of bycatch data and bycatch estimation methodologies. These improvement plans will also provide a comprehensive assessment of resources required to improve bycatch in U.S. commercial fisheries.

Comment 6: NMFS should build on recent advances in tag technology, as used by the Tagging of Pacific Pelagics program, to better understand aspects of population dynamics that surveys alone cannot reveal.

Response: As noted in the response to comment 4, NMFS includes additional information in the analysis of marine mammal populations to the extent resources allow.

Comment 7: Methods for identifying strategic stocks should be consistent between the NMFS regions.

Response: The guidelines for preparing marine mammal stock assessment reports promote reasonable consistency in determinations; however, these guidelines also allow some level of flexibility to account for stock-specific circumstances when insufficient information results in uncertainty.

Comment 8: The planned joint SRG meeting should address the development of a more effective means of assessing trans-boundary stocks and the effects of human activities on them.

Response: The joint SRG meeting included a lengthy discussion of trans-boundary issues. If the SRGs make joint recommendations, NMFS would use these recommendations in revising its guidelines for preparing SARs.

Comment 9: A consistent process for incorporating non-fishery sources of

mortality in the SARs should be developed.

Response: NMFS has incorporated research-related mortality, as appropriate, in SARs and is exploring alternatives for addressing taking incidental to activities other than commercial fishing, which will account for mortality and serious injury incidental to these activities.

Comment 10: More than 45 stocks cannot be adequately assessed because of insufficient data on stock status and trends, mortality, or both. A concerted effort should be made between regions to use a consistent approach to determine when available data are sufficient to calculate the PBR levels and estimate mortality.

Response: As noted in the response to comment 7, related to determining status of the stocks, the guidelines are designed to promote general consistency and leave flexibility to address case-specific circumstances. Appropriate levels of consistency were included in discussions at the recent joint SRG meeting; however, clear agreements on a need for a more prescriptive approach for the guidelines was not apparent.

Comments on Alaska Regional Reports

Comment 11: The inclusion of research-related mortality is a welcome addition to the SARs, and continuation of such reporting is encouraged.

Response: Comment noted.

Comment 12: The Alaska region needs to devote resources to obtaining up-to-date and reliable estimates of subsistence hunting of pinnipeds, particularly ice seals; data for some stocks has not been updated since 2000.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 18). NMFS has insufficient resources to obtain up-to-date estimates of subsistence hunting of pinnipeds and will retain old information, with appropriate dates and caveats if necessary, to document the extent of knowledge on past harvest.

Comment 13: Previous stock assessments have provided point estimates for Alaska Native subsistence kills as well as upper and lower estimates based on the bounds of confidence. These data are no longer provided. This practice should be reinstated.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 9). These data are not available for most stocks, and, for the stocks where the information is available, the reliability is unknown. More details on

information summarized in the SARs is available in the literature cited in each SAR.

Comment 14: Data should be presented in a manner that reflects a more precautionary approach for the Steller sea lion, western U.S. stock. A graphic suggesting an overall increase in stock abundance masks a 19 percent decline in the western Aleutian range.

Response: Steller sea lion abundance data are presented in Figure 2 and illustrate the dynamics of three portions of the stock over the past 15 years. Abundance of smaller portions of the range are available in the literature cited in the SAR.

Comment 15: The PBR level for the Steller sea lion, western U.S. stock, should be listed as "undetermined" because human-related causes of mortality are a plausible causative factor for a decline, even if not a direct mortality.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 8). NMFS disagrees that the PBR level for the Steller sea lion, western stock, should be "undetermined" because the stock, while at a low level relative to historical abundance, is sufficiently large to sustain some level of human-caused mortality and because recent data from 2002, 2004, and 2006 indicate that the population may have stabilized, thus reducing the need for this precautionary interpretation.

Comment 16: Additional observer coverage is needed for the Alaska Peninsula and Aleutian Islands salmon drift gillnet fishery and other gillnet fisheries that are likely to interact with the Steller sea lion, western U.S. stock.

Response: The NMFS Alaska Region is responsible for implementing observer programs in the Alaska state fisheries and is rotating this program through various Alaska state fisheries as resources allow. To date, this program has implemented observer programs in the Prince William Sound set and drift gillnet, South Unimak drift gillnet, Cook Inlet set and drift gillnet fishery, and the Kodiak Island set gillnet fisheries. In 2007 and 2008, and with the support of the Alaska SRG, the Alaska Region is focusing on implementing an observer program for the Yakutat Bay gillnet fishery due to concerns about potential harbor porpoise and humpback whale serious injury and mortality. Once the Yakutat program is completed, the next highest priorities for observation in Alaska state-managed fisheries are the salmon drift gillnet and purse seine fisheries in Southeast Alaska.

Comment 17: Summaries of self-reported mortalities from commercial fisheries in Alaska should be reinstated.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 7). NMFS no longer includes these data in the body of the SARs because the data are unreliable and because the number of reports has declined dramatically in recent years. The data are provided in an appendix to the SARs as additional information.

Comment 18: NMFS is encouraged to consider a more real-time harvest monitoring program for the Steller sea lion, western U.S. stock. There is concern regarding a slightly upward trend in subsistence harvest of this stock which is approaching the PBR level.

Response: NMFS agrees in general that levels of human-caused serious injury and mortality approaching PBR are of concern; however, the trend in the subsistence harvest is not of concern. In the early 1990s, subsistence take of Steller sea lions, western, U.S. stock, was more than double the current levels. In the late 1990s, the annual harvest level decreased to less than 200 and was about 200 in the last 3 years reported. A more real-time harvest monitoring program is unnecessary at this time because harvest levels are reasonably consistent from year to year.

Comment 19: Information on age and sex composition should be included in the section on Subsistence Harvest for the Steller sea lion, western U.S. stock to aid SRGs in advising NMFS on issues of uncertainty relative to mortality of animals in certain age and sex classes.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 12). NMFS has eliminated this information from the SARs upon consultation with the Alaska SRG because its inclusion is of little value without modeling to show the importance of the information in the context of the stock's population dynamics. NMFS refers the reader to the cited literature if additional information is needed.

Comment 20: Given the variability in population trajectories within portions of the stock range, NMFS should consider viewing management actions for portions of the Steller sea lion, eastern U.S. stock, rather than basing them on the trajectory of the stock as a whole.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 14). The prohibitions on take in the MMPA apply

to individual animals; thus, the management focus applies smaller than the total stock. However, the SAR reports values at the stock level. Additional details regarding substock population dynamics are available in the draft revised recovery plan for Steller sea lions (available on the Internet: <http://www.fakr.noaa.gov/protectedresources/stellers/recovery.htm>).

Comment 21: Table 4 for the Steller sea lion, eastern U.S. stock, should be updated with counts post-2002.

Response: New data on the eastern U.S. stock are not available for every year at every site. Some counts from 2002 are currently being used because that was the last year that the entire region was surveyed for eastern Steller sea lions. NMFS will review available information to determine whether an update can be made and, if an update is appropriate, will include new information in the draft SARs for 2008.

Comment 22: The PBR level for the Northern fur seal should be listed as "undetermined" because there is no net productivity in a declining stock.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comments 8 and 15). NMFS disagrees that the PBR level for the northern fur seal should be listed as "undetermined" because the stock, while at a low level relative to historical abundance, is very large and can sustain some level of human-caused mortality.

Comment 23: NMFS should work with co-management partners to establish biologically meaningful stock boundaries for harbor seals in Alaska and incorporate these boundaries for prospective harbor seal stocks into the 2008 SARs. A complete revision of harbor seal stocks and recommendations regarding stock structure based on new genetic information is awaited, and further sub-division of these stocks is encouraged.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 16). As in past comments on the SARs, NMFS continues its commitment to work with its co-managers in the Alaska Native community to evaluate and revise stock structure of harbor seals in Alaska.

Comment 24: Both the Beaufort and Chukchi stocks of beluga whale should be updated and considered for strategic status due to harvest-related and incidental mortality.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 21). The

SARs for these stocks will be updated in 2008, and this comment will be considered at that time.

Comment 25: The change in PBR level to "undetermined" for beluga whale, Cook Inlet stock, is supported.

Response: Comment noted.

Comment 26: Oil and gas exploration should be added to the list of potential habitat concerns for the beluga whale, Cook Inlet stock.

Response: NMFS will update this section in the draft SAR for 2008.

Comment 27: The population estimate for the killer whale, Northern Resident stock, should be updated. NMFS should work closely with the Canadian government to obtain information on fishery-related mortality data given the low PBR level (2).

Response: The SAR is next scheduled for an update in 2008, for the 2009 SARs, and this comment will be considered at that time.

Comment 28: The Pacific white-sided dolphin, North Pacific stock SAR has not been updated, and the population estimate is based on surveys from 1990. NMFS should obtain current abundance estimates, and observers should be assigned to the fisheries that have a likelihood of interacting with this stock. It is inappropriate to reclassify this stock as non-strategic.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comments 26 and 27). NMFS agrees that the abundance estimate is old however, resources do not yet allow NMFS to obtain a new estimate. Fisheries that overlap with this stock are observed, sometimes with high levels of coverage, and no serious injuries or mortalities have been observed. In addition, no other source of information (e.g., stranding data) indicates that incidental mortalities are occurring. Accordingly, this stock should not be designated as "strategic" despite uncertainty about the abundance estimate.

Comment 29: The harbor porpoise, southeast Alaska stock, is appropriately classified as strategic; the PBR level should be "undetermined".

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comments 8 and 28). NMFS will consider whether the PBR level should be set as "undetermined" during the revisions made for the 2008 SARs.

Comment 30: NMFS should collect current abundance data for the harbor porpoise, southeast Alaska stock, rather than re-analyze data from 10 years ago.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 28). At this time, a re-analysis of past survey data is the best available information for the southeast Alaska stock of harbor porpoise. NMFS conducted surveys in southeast Alaska in 2006 and 2007 and will incorporate results from these surveys when estimates have been completed and reviewed.

Comment 31: Dall's porpoise, Alaska stock, should be listed as a strategic stock because the abundance data are outdated, and NMFS can neither estimate a minimum population or a PBR level.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comments 26 and 30). Although the abundance data are old, the last abundance estimate was very high. Because many fisheries that overlap with this stock are observed and the level of annual take is very low, it is not appropriate to list this as a strategic stock.

Comment 32: The draft SAR for gray whales, Eastern North Pacific stock, does not incorporate recently published genetic information indicating that pre-exploitation population size of the gray whale was substantially higher than current estimates. (Alter, Rynes, and Palumbi. 2007. DNA evidence for historic population size and past ecosystem impacts of gray whales. *Proceedings of the National Academy of Sciences* 104 (38): 15162–15167). In light of this information, the current population of gray whales is less than 60 percent of its historic population and should properly be declared depleted.

Response: The paper by Alter *et al.* was published after the draft reports were completed and distributed to the SRGs for independent peer review prior to public review. Therefore, the information from that paper was not included. The next revision of the gray whale SAR will include a discussion of the results presented by Alter *et al.* NMFS is evaluating the information presented by Alter *et al.* to see if future action regarding the status of the Eastern North Pacific gray whale stock is warranted. The method used by Alter and Palumbi (and previously by Roman and Palumbi) is controversial. Many scientists, including the International Whaling Commission (IWC) Scientific Committee, have questioned the results and conclusions in Alter *et al.* (e.g., Palsboll *et al.*, 2008).

The lower range of the confidence interval in Alter *et al.* is consistent with a historic abundance of about 30,000

whales each for the western and eastern North Pacific stocks of gray whales. An abundance of 30,000 gray whales in the Eastern North Pacific stock is well within the confidence limits for estimates of carrying capacity reported by Wade (2002). Accordingly, for the Eastern North Pacific stock of gray whales, the estimate of historic carrying capacity based upon the genetic analysis in Alter *et al.* is reasonably consistent with estimates of current carrying capacity based upon Wade's analysis of abundance surveys.

Finally, as stated in a legislative proposal submitted to Congress in 1992, NMFS generally relies on current carrying capacity, absent human exploitation, to determine OSP, rather than trying to reconstruct potential carrying capacities at some time in the distant past. NMFS uses current carrying capacity in stock assessment as part of managing marine mammal-fishery interactions using the PBR system. The application of the PBR system for managing marine mammal-fishery interactions implicitly incorporates environmental conditions and their associated implications for carrying capacity over the near term (e.g., one to three decades).

NMFS' use of current carrying capacity in analyses supporting management is consistent with approaches used elsewhere. For example, IWC quotas for native subsistence hunts on both eastern North Pacific gray whales and for the Bering-Chukchi-Beaufort stock of bowhead whales are set as a function of current (not historic) carrying capacity. For IWC's harvest quotas, current carrying capacity refers to the maximum number of animals the environment can support or has supported within the last 150 years.

Comment 33: Data on fishery-related mortality in the gray whale, eastern North Pacific stock, should be updated since 2003. Both gray whale and humpback whale, central North Pacific stock, SARs should include evidence from stranded or free-swimming seriously injured animals in minimum estimates of mortality and serious injury.

Response: NMFS updated only a portion of the gray whale SAR in 2007 and will conduct a thorough update in the draft SARs for humpback whales and gray whales in 2008.

Comment 34: Table 35 of the gray whale, eastern North Pacific stock, should clarify whether harpooned whales are included in the "struck and lost" section on native hunting or not.

Response: NMFS updated only a portion of the gray whale SAR in 2007

and will conduct a thorough update in the draft SARs for 2008. We do not know if the harpooned whales included in the table were also included in the "struck and lost" estimates included in the Subsistence/Native Harvest section of the SAR. The struck and lost estimate in that section was obtained from reports of aboriginal subsistence harvest in Russian waters, and the gray whales stranded or were observed in CA.

Comment 35: The humpback whale, western North Pacific stock, SAR should not provide conclusions about the adequacy of published literature without citing a source more definitive than "generally believed". This statement should be supported or removed.

Response: The final SAR was changed to note that the estimate is negatively biased because only a portion of the range was surveyed.

Comment 36: NMFS should declare all the ice-dependent seals under its jurisdiction to be strategic stocks based on observed and projected impacts of sea-ice loss on ice-dependent pinnipeds.

Response: "Strategic stocks" are defined as those where the level of human-related serious injury or mortality is greater than the PBR level, or as a stock listed as "threatened" or "endangered" under the ESA, or as "depleted" under the MMPA. None of the ice seal species meet the requirements of the definition.

Comment 37: The continuing lack of data from Arctic and Bering Sea species, particularly, ice-breeding seals, is noteworthy because major population changes are expected to occur as a result of global climate change. More information on the impact of climate change should be included in the SARs.

Response: Each of the SARs for ice-breeding seals contains a notation that loss of sea ice due to climate change is a habitat concern. One of the major strengths of the SARs is their brevity so that the status of all marine mammal stocks in a region can be included in a single document. To expand each SAR to fully discuss all potential threats or other issues would eliminate this benefit. Each SAR references documents reporting the details of information summarized in the SAR.

Comment 38: Yakutat belugas are genetically and geographically isolated from Cook Inlet belugas; therefore, they should be designated a separate stock and declared "depleted" given their small population size.

Response: In 2007, NMFS conducted a status review for Cook Inlet beluga whales and proposed to list the Cook Inlet population as "endangered" under the ESA (72 FR 19854, April 20, 2007).

In that proposed rule, Cook Inlet beluga were considered separate from the Yakutat beluga group. Should that proposed action become final, NMFS would review the depletion determination for the Cook Inlet beluga whale stock and would revise the depletion designation and SAR as appropriate, including the status of beluga whales found in Yakutat Bay.

Comment 39: The notice announcing availability of the draft SARs incorrectly refers to the “western” North Pacific stock of gray whale as being within its optimum sustainable population. Also, the eastern Pacific stock is now properly considered depleted.

Response: The reference to the “western” North Pacific stock was an error in NMFS notice reported in the **Federal Register**; it should have referred to the “eastern” North Pacific stock. NMFS disagrees that the eastern North Pacific stock should be considered “depleted”, as available information on the current dynamics of the stock indicate that it is within its optimum sustainable population, and likely near its carrying capacity. Also, see the response to Comment 32.

Comment 40: The Minerals Management Service 2007–2012 plan for outer continental slope oil and gas lease sales, which opens right whale critical habitat to oil leasing in 2011, represents a significant threat to the habitat of the North Pacific right whale, eastern North Pacific stock. The SAR should be modified to reflect this known threat to the habitat.

Response: NMFS will update the habitat section in the 2008 SAR.

Comments on Atlantic Regional Reports

Comment 41: Efforts to define latitudinal boundaries above or below which pilot whales may be assigned to the correct species would avoid continued, inappropriate, lumping of the species. We renew our request that NMFS continue its focal efforts to define the boundaries of short-finned and long-finned pilot whales which are taken in multiple fisheries and yet are managed with a single PBR as though they are a single stock. As has been presented to several take reduction teams, this sort of analysis should be discussed, or at least alluded to, in the SAR so that reviewers understand that efforts are underway to appropriately separate the two stocks. See the Alaska SAR for harbor seals for an example on how a region can discuss ongoing efforts. *Response:* As noted in the comment, NMFS is continues to conduct research to distinguish between short-finned and long-finned pilot whales in the Atlantic Ocean, and progress in this effort has been reported

in different fora. Results remain preliminary and will be included in the SARs upon peer-review of results. The SARs currently state that such research is underway; therefore, an additional discussion of the research would be unnecessary.

Comment 42: There have been increasing reports over the last several years of shooting bottlenose dolphins in the Gulf of Mexico. It would be helpful to address this in the appropriate SARs (e.g., coastal or Bays, Sounds and Estuaries).

Response: SARs for the Gulf of Mexico bottlenose dolphin, Coastal stocks and Bays, Sounds and Estuaries stocks, note gunshots as a source of mortality. The frequency of mortality for each type of human-related mortality is currently not given in these SARs, but we will evaluate whether this can be done in an efficient manner for future revisions.

Comment 43: The 2007 Atlantic Ocean SAR does not cite potential risk to Kogia species from sonar sound, even though data in published literature support concern that military sonar may affect Kogia much like it affects beaked whales, and concern has been expressed about the potential effects on Kogia of oil and gas industry activities in the Gulf of Mexico. We believe that, to be complete, NMFS should describe in the SARs those sources of undetermined effect for which there is a reasonable basis for concern, even if conclusive evidence of effect is not yet available.

Response: The two Atlantic Kogia SARs were revised to note potential, although undocumented, concerns from such sources.

Comment 44: NMFS needs to better update bottlenose dolphin stock structure in the Gulf of Mexico. Given the difficulty of in ascribing fisheries-related mortality to an individual stock, all stocks should be designated as strategic.

Response: Research concerning Gulf of Mexico bottlenose dolphin stock structure continued in 2007, and the following fieldwork was conducted:

- (1) Winter and summer aerial surveys to estimate the abundance of the northern and eastern coastal stocks;
- (2) A summer large-vessel abundance/biopsy survey of continental shelf waters to estimate the abundance of the Continental Shelf Stock and to provide samples for genetic stock structure studies; and
- (3) A summer photo-identification and biopsy survey of Choctawhatchee Bay, FL (one of 33 Gulf of Mexico Bay, Sound and Estuarine stocks) to estimate the abundance and provide samples for genetic stock studies. Data/samples from

all of these field efforts are currently being analyzed. Additional fieldwork is necessary to update all of the Gulf Bay, Sound and Estuarine stocks and Coastal stocks.

Results from these efforts will be included in SARs when the data are fully analyzed and subjected to peer review.

Comment 45: Given the increasing trend of bycatch, Atlantic white-sided dolphins should be designated as strategic.

Response: Although incidental mortality and serious injury have increased in recent years, the estimated total remains approximately 40 percent below PBR (379). The status of this stock has been reviewed with the Atlantic SRG, and based, on those discussions, a non-strategic status was deemed to be appropriate. NMFS has convened a trawl take reduction team to reduce incidental mortality and serious injury of white-sided dolphins and other small cetaceans.

Comment 46: Abundance and take estimates for short and long-finned pilot whales should be separated based on recent genetic and survey data. These stocks should both be considered strategic.

Response: Genetic sampling and analyses are ongoing. At this time the data are insufficient to allocate abundance survey sightings or unsampled bycatch to species.

The status of these stocks has been reviewed with the Atlantic SRG, and, based on those discussions, a non-strategic status was deemed to be appropriate. To deal with the uncertainty regarding species identification, identical abundance and bycatch estimates were assigned to each species.

Comments on Pacific Regional Reports

Comment 47: The draft SAR conflates genetically-distinct false killer whale stocks. There is no scientifically-recognized Hawaii stock of false killer whales. NMFS' approach is not consistent with the best available scientific information.

Response: NMFS agrees the Hawaii stock of false killer whales includes two genetically distinct populations found within the Hawaiian Exclusive Economic Zone (EEZ). Insufficient information on the distribution of each population was available at the time of draft SAR preparation to separate these two populations into different stocks. The draft SAR states that for management purposes, NMFS has provisionally lumped these two genetically distinct groups of false killer whales in the EEZ. NMFS also

recognizes a stock of false killer whales near Palmyra Atoll.

The report also notes that NMFS continues to collect and analyze information to help resolve population structure of false killer whales in the North Pacific Ocean. At the most recent SRG meeting, NMFS proposed a revision of stock structure for false killer whales within the Hawaiian EEZ and anticipates incorporating this proposal into the draft 2008 reports.

NMFS disagrees the approach used in the false killer whale SAR is inconsistent with the best available scientific information. The SAR partitions abundance, PBR and mortality/serious injury to assess the impact of removals of false killer whales incidental to U.S. fisheries with the information available (stock boundaries outside the EEZ are unknown, abundance of false killer whales outside the EEZ is unknown, and mortality and serious injury incidental to foreign fisheries is unknown). The approach is consistent with the best available information, with NMFS' guidelines for preparing SARs, and with the MMPA.

Comment 48: Human-caused mortality estimates for blue whales should be updated to include a number of ship strike events documented in 2007.

Response: Human-caused mortality information included in the stock assessments represents data for the most recent five-year period for which data are available. At the time the 2007 draft stock assessments were written, the recent ship strike events had not occurred. Ship strike data for the previous calendar year 2006 were also not available to the authors at that time.

Comment 49: The SAR for short-finned pilot whales, CA/OR/WA stock, should be updated to report that a pilot observer program was implemented in this fishery in 2004 and that no pilot whale interactions have been observed in 95 fishing trips through early 2007. NMFS should also strike language from the stock assessment that assigns responsibility for 14 fishery-related pilot whale strandings between 1974 and 1990 to the squid purse seine fishery, while not providing evidence for the fishery-specific source of the mortalities.

Response: The report was updated to reflect the recent lack of pilot whale interactions in the squid purse seine fishery. There is well-documented historical evidence (cited in the stock assessment) of pilot whale interactions and mortalities resulting from interactions with this fishery, and while no recent interactions have occurred, the text on historical interactions is

included to give the reader perspective on past and current risks to the stock.

Comment 50: The long-beaked common dolphin stock assessment should be modified so that inter-annual variability in abundance estimates is adequately addressed. The stock has gone from "non-strategic" to "strategic" status, largely because of steep decline in the estimate of abundance for this stock, while the annual human-caused mortality has not changed significantly (from 11 animals to 17 animals in the draft stock assessment).

Response: The SAR notes the high inter-annual variability in abundance estimates for this stock.

Comment 51: Mortalities in the form of fishery-related strandings should be included in the table that summarizes fishery mortality for Pacific white-sided dolphins, CA/OR/WA stock.

Response: Table 1 of the stock assessment includes fishery-related strandings in the summation of mortalities although the specific fishery responsible for the mortalities is listed as unknown.

Comment 52: We trust that methodology to allow for species-specific management of mesoplodont beaked whales is being developed, rather than the current strategy of lumping six species under one management unit.

Response: NMFS agrees that finer scale resolution of stock management for these species is desirable. Unfortunately, field identification of most of these species is difficult, which prevents species-specific abundance estimates. Progress has been made with the identification of Blainville's beaked whales, and a stock-specific abundance estimate which appeared in the draft 2007 stock assessment.

Comment 53: NMFS should use a more precautionary approach in designating a strategic status for the CA/OR/WA stocks of pygmy and dwarf sperm whales, given the lack of abundance estimates and evidence of historic mortality.

Response: Pygmy and dwarf sperm whales occur only rarely in waters under the jurisdiction of the U.S. The fishery with which these stocks have interacted in the past is the CA/OR drift gillnet fishery, which has been subject to observer coverage since the early 1990s. No mortality of these stocks of marine mammals have been noted in recent years. In addition, a Take Reduction Plan has been prepared and implemented for the fishery to protect offshore cetaceans; presumably, these pygmy and dwarf sperm whales are deriving benefit from the plan even though the stocks are not driving the

need for the plan. Therefore, labeling these stocks as "strategic" would add no additional protection.

Comment 54: Provide clarification on whether or not estimates of sperm whale, CA/OR/WA stock, abundance are corrected for diving whales that were not sighted during surveys.

Response: Estimates are corrected for diving animals not seen during surveys. The stock assessment was revised to clarify this point.

Dated: April 15, 2008.

David Cottingham,

Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. E8-8406 Filed 4-17-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Public Comment Period for the Revised Management Plan for the Chesapeake Bay Maryland National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty-day public comment period on the Chesapeake Bay Maryland National Estuarine Research Reserve Management Plan Revision.

The Chesapeake Bay Maryland National Estuarine Research Reserve has three sites; Monie Bay, Jug Bay, and Otter Point Creek. Monie Bay was designated as part of the National Estuarine Research Reserve in 1985 and Jug Bay and Otter Point Creek were designated in 1990 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve has been operating under a management plan approved in 1990. Pursuant to 15 CFR Section 921.33(c), a state must revise their management plan every five years. The submission of this plan brings the reserve into compliance and sets a course for successful implementation of

the goals and objectives of the reserve. A boundary expansion, new facilities, and updated programmatic objectives are notable revisions to the 1990 approved management plan.

The revised management plan outlines the administrative structure; the education, stewardship, and research goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations. Since 1990, the reserve has added a coastal training program that delivers science-based information to key decisionmakers in the Chesapeake Bay. The reserve has realized many aspects of the 1990 plan, including the completion of the Anita C. Leight Center in Harford County. This facility provides classrooms, lab space, exhibit space and office space and has allowed the implementation of research, education and volunteer activity at the Otter Point Creek component of the reserve.

This management plan calls for a boundary expansion at two reserve sites: One thousand three hundred and forty-five acres are incorporated into the Jug Bay component site and approximately thirty-two acres will be incorporated into the Otter Point Creek site. The Otter Point Creek component will expand its land area from 443 to 475 acres. The land increase consists of two forested parcels adjacent to the current boundary that will serve as a buffer for core estuarine habitat and will also provide an important access point for monitoring and education programming. The expansion at Jug Bay includes land on both sides of the Patuxent River, increasing the acreage of this site from 491 to 1,836. The original boundary for this component site included a portion of the county owned parks. This expansion incorporates a larger portion of those parks to become designated as part of the National Estuarine Research Reserves. West of the Patuxent River, the reserve will add 455 acres of wetlands and buffer lands that will enhance the protection of core reserve lands and will enhance the research and monitoring. East of the Patuxent River, the reserve will be expanded by 890 acres to increase the level of protection surrounding the river and expand the area available for reserve programming.

FOR FURTHER INFORMATION CONTACT:

Michael Migliori at (301) 563-1126 or Laurie McGilvray at (301) 563-1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Chesapeake Bay Management Plan

revision, visit <http://www.dnr.state.md.us/bay/cbnerr/>.

Dated: April 10, 2008.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E8-8345 Filed 4-17-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD-2008-OS-0037]

Proposed Collection; Comment Request

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Defense Information Systems Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other form of information technology.

DATES: Consideration will be given to all comments received by June 17, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Mr. Robert Berk, P. O. Box 4502, Arlington VA 22204-4502 or call (703) 681-2232.

Title and OMB Number: DISA Computing Services Survey; OMB Number 0704-TBD.

Needs and Uses: The survey data is needed from those organizations that use the DISA Computing Services provided by DISA Center for Computing Services. The survey responses will help determine the customers' satisfaction level with the provided Data Processing and Help Desk/ Operations Support team (OST) services. It will offer an opportunity for suggested changes as well. This information will be used to develop and execute an action plan that addresses all major issue areas perceived by the customer end-users.

Affected Public: DISA Contractors, potential DISA contractors, or all contractors who work for DoD related Services/Agencies and who use DISA Computing Services offerings.

Annual Burden Hours: 92 hours.

Number Of Respondents: 275.

Responses Per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The survey data is needed from those organizations that use the DISA Computing Services provided by DISA Center for Computing Services. The survey responses will help determine the customers' satisfaction level with the provided Data Processing and Help Desk/ Operations Support team (OST) services. It will offer an opportunity for suggested changes as well. This information will be used to develop and execute an action plan that addresses all major issue areas perceived by the customer end-users.

Dated: March 24, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8-8375 Filed 4-17-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket No. DoD-2008-OS-0034]****Proposed Collection; Comment Request****AGENCY:** National Security Agency, DoD.**ACTION:** Notice

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the National Security Agency announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 17, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the National Security Agency, Information Assurance Directorate, ATTN: Mr. Matthew Needleman or IAWS Coordinator, 9800 Savage Road, Suite 6716, Fort Meade, MD 20755-6716, or call the Information Assurance Directorate, Community

Outreach Office, at (410) 854-3354/7811.

Title and OMB Number: Information Assurance Workshop Survey, OMB Number 0704-TBD.

Needs and Uses: The purpose of collecting this information is to obtain feedback from the annual Information Assurance Workshop attendees on location, accommodations, workshop speakers and content, etc. This feedback will be used to only to improve future workshops.

Affected Public: DoD contractors.

Annual Burden Hours: 33.

Number Of Respondents: 400.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:**Summary of Information Collection**

Respondents have attended the annual Information Assurance Workshop sponsored by the government. Information gathered (on a voluntary basis) will be used only to enhance future workshops. No data collected or information related to the attendee will be released or made available to the public. Additionally, no correlation between the information gathered and the attendee will be made nor is it desired.

Dated: April 1, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8-8377 Filed 4-17-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Reserve Forces Policy Board (RFPB)**

AGENCY: Department of Defense; Office of the Secretary of Defense Reserve Forces Policy Board

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR § 102-3.150, the Department of Defense announces the following Federal advisory committee meeting of the Reserve Forces Policy Board (RFPB).

Previously, the Committee Management Officer for the Department of Defense waived the 15-calendar day requirement for publishing the **Federal Register** notice for this meeting. That

waiver, issued pursuant to 41 CFR 102-3.150(b), remains in effect.

DATES: April 15, 2008 (8 a.m.-4:30 p.m.) and April 16, 2008 (8 a.m.-4 p.m.).

ADDRESSES: Meeting address is HQ U.S. Northern Command, Building 2, Peterson AFB, CO 80914. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301-7300.

FOR FURTHER INFORMATION CONTACT: Col Marjorie Davis, Designated Federal Officer, (703) 697-4486 (Voice), (703) 614-0504 (Facsimile), marjorie.davis@osd.mil. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301-7300.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: A quarterly meeting of the Reserve Forces Policy Board.

Agenda: Discussion of homeland security and other issues relevant to the Reserve Components.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b(c)1, as amended, portions of the meeting will be closed. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165, and the availability of space, portions of this meeting are open to the public. To request a seat to open portions of the meeting, contact the DFO at 703-697-4486, or by e-mail, marjorie.davis@osd.mil and/or donald.ahern@osd.mil.

Written Statements: Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: April 14, 2008.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. E8-8382 Filed 4-17-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Nationwide TRICARE Demonstration Project

AGENCY: Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity, Department of Defense.

ACTION: Notice Extending Deadline for Demonstration Project.

SUMMARY: On November 5, 2001, the Department of Defense (DoD) published a notice of a Nationwide TRICARE Demonstration Project (66 FR 55928-55930). On October 1, 2004, DoD published a notice (69 FR 58895) to extend the demonstration through October 31, 2005. On October 12, 2005, DoD published a notice (70 FR 59320) to extend the demonstration through October 31, 2007. On June 19, 2007, the Department published a notice (72 FR 33742) to extend the demonstration through October 31, 2008. On August 22, 2006, the Department published a proposed rule to implement sections 704 and 705 of the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005, and is in the process of promulgating the final rule.

The demonstration is also referred to as the Operation Noble Eagle/Enduring Freedom Reservist and National Guard Benefits Demonstration. This notice is to advise interested parties of the continuation of the demonstration in which the DoD Military Health System addresses unreasonable impediments to the continuity of health care encountered by certain family members of Reservists and National Guardsmen called to Active Duty in support of a Federal/contingency operation. The demonstration scheduled to end on October 31, 2008, is now extended through October 31, 2009.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, TRICARE Policy and Operations Directorate, at (703) 681-0039.

SUPPLEMENTARY INFORMATION: The continued activation of Reserve Component members in support of Noble Eagle/Operation Enduring Freedom and Operation Iraqi Freedom

warrants the continuation of the demonstration to support the health care needs and morale of family members of activated reservists and guardsmen. The National Defense Authorization Act of 2005 amended existing statutes to authorize the Secretary of Defense to provide these benefits permanently by regulation. The demonstration needs to be extended to allow sufficient time to complete the rule-making process. The impact, if the demonstration is not extended before the regulation is completed, includes higher out-of-pocket costs and potential inability of beneficiaries to continue to use the same provider for ongoing care. There are three separate components to the demonstration. First, those who participate in TRICARE Standard will not be responsible for paying the TRICARE Standard deductible. By law, the TRICARE Standard deductible for Active Duty dependents is \$150 per individual and \$300 per family (\$50/\$150 for E-4's and below).

The second component extends TRICARE payments up to 115 percent of the TRICARE maximum allowable charge, less the applicable patient co-payment, for care received from a provider that does not participate (accept assignment) under TRICARE to the extent necessary to ensure timely access to care and clinically appropriate continuity of care.

Third, the demonstration authorizes a waiver of the non-availability statement requirement of nonemergency inpatient care. This demonstration project is being conducted under the authority of 10 U.S.C. 1092. This demonstration is extended through October 31, 2009.

Dated: April 14, 2008.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. E8-8385 Filed 4-17-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Meeting

AGENCY: Department of the Air Force, U.S. Air Force Academy Board of Visitors.

ACTION: Notice of meeting.

SUMMARY: Pursuant to 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will meet in the Rayburn House Building, Washington, DC, on 8 May 2008. The purpose of this meeting is to review morale and

discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy. Meeting sessions will begin at 9 a.m. on 8 May 2008, in room 2105 of the Rayburn House Building, Washington, DC.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.155, the Department of Defense has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined that one portion of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102-3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Any oral presentations

before the BoV shall be in accordance with 41 CFR 102–3.140(c), section 10(a)(3) of the FACA, and this paragraph. The DFO and BoV Chairperson may, if desired, allot a specific amount of time for members of the public to present their issues for BoV review and discussion. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION CONTACT: Or to attend this BoV meeting, contact Mr. Scotty Ashley, USAFA Programs Manager, Directorate of Airman Development and Sustainment, Deputy Chief of Staff, Manpower and Personnel, AF/A1DOA, 1040 Air Force Pentagon, Washington, DC 20330–1040, (703) 695–3594.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–8372 Filed 4–17–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Record of Decision (ROD) for the Permanent Stationing of the 2/25th Stryker Brigade Combat Team (SBCT)

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Deputy Chief of Staff of the Army, G–3/5/7 has reviewed the Final Environmental Impact Statement (FEIS) for the Permanent Stationing of the 2/25th SBCT and has made the decision to proceed with all facets of Alternative A. Alternative A permanently stations the 2/25th SBCT at Schofield Barracks Military Reservation (SBMR) while conducting the required training at military training sites in Hawaii. This alternative is summarized in the Army's ROD and described fully in Chapter 2 of the FEIS.

ADDRESSES: The ROD can be accessed at <http://www.aec.army.mil>.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office, U.S. Army Environmental Command, Building E4460, 5179 Hoadley Road, Attention: IMAE–PA, Aberdeen Proving Ground, MD 21010–5401; telephone: 410–436–2556; facsimile: (410) 436–1693. The Public Affairs Office is open during normal business hours Monday through Friday 9 a.m. to 5 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: The FEIS assessed the potential environmental consequences of the alternatives on the

biological, physical, and cultural environments. This decision incorporates analyses contained in the FEIS, comments provided during formal public comment and review periods, and an evaluation of the ability of each alternative to meet the Purpose and Need for the Proposed Action. Hawaii was selected primarily because it is best able to meet the Army's strategic defense and national security needs in the Pacific Theater. A fuller rationale for the decision can be found in the Record of Decision.

Dated: April 11, 2008.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

[FR Doc. E8–8296 Filed 4–17–08; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Feasibility Report and Supplemental Environmental Impact Statement and Draft State Environmental Impact Report for the Boston Harbor Deep Draft Navigation Improvement Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, New England District in partnership with the Massachusetts Port Authority (Massport) has prepared a joint Draft Supplemental Environmental Impact Statement and State Draft Environmental Impact Report (DSEIS/DEIR) examining improvements to deep-draft navigation channels in Boston Harbor, Boston, MA. Four separate improvements were developed. The first examined deepening the outer and lower harbor's existing 40-foot channel system to provide deeper access to Massport's Conley Terminal in South Boston for containership traffic. All depths are referenced to minus mean lower low water (MLLW). Navigation channel depths of between 45 to 50 feet were examined, with a depth of 48 feet recommended, with an additional two feet in the entrance channel. Under this plan the following project features would be improved: the 40-foot lane of the Broad Sound North Entrance Channel would be deepened to 50 feet and widened through the bend at Finn's Ledge. The 40-foot lane of the Main Ship Channel from the Broad Sound North Entrance Channel upstream

through President Roads to the Reserved Channel would be deepened to 48 feet and its 600-foot-wide reaches widened to between 800 and 900 feet, with additional width in the bends. The 40-foot lower reach of Reserved Channel and its turning area would be deepened to 48 feet, with the turning area also widened to 1600 feet. The 40-foot President Roads Anchorage would be deepened to 48 feet. The second improvement would deepen the existing 40-foot lane of the Main Ship Channel from the Reserved Channel Turning Area upstream to just below the Third Harbor Tunnel to a depth of 45 feet, to improve access to the Massport Marine Terminal in South Boston. The third improvement would deepen a portion of the 35-foot Mystic River Channel lane to 40 feet to improve access to Massport's Medford Street Terminal. The fourth and final improvement would deepen the 38-foot Chelsea River Channel to 40 feet, with minor widening in the bridge approaches and the bend between the bridges. In conjunction with work in the Federal channels, the Massachusetts Port Authority would deepen vessel berths at the Conley Terminal and Marine Terminal. Terminals on the Chelsea River would also deepen their berths to match the new channel depth. A total of about 12.1 million cubic yards (cy) of parent material, and 1.2 million cy of rock, would be removed by dredging and placed at the Massachusetts Bay Disposal Site (MBDS). Beneficial use opportunities for the dredged material have been identified and would be considered further during final design of the project. Those beneficial use opportunities include: creation of rock reefs in Massachusetts Bay and Broad Sound, and using the non-rock material as cover at the former Industrial Waste Site, which overlaps the MBDS. This joint Federal and State document builds on the lessons learned from the final EIR/S prepared in June of 1995 for the previous navigation improvement project in Boston Harbor.

DATES: Submit comments on or before June 2, 2008.

ADDRESSES: Comments should be submitted to Colonel Curtis L. Thalken, District Engineer, U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rogers, (978) 318–8231.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers is authorized to conduct this Feasibility Study by a Senate Subcommittee on Public Works Resolution dated September 11, 1969.

The DSEIS/DEIR is available on-line on the New England District's Web page at http://www.nae.usace.army.mil/projects/ma/BHNIP/BostonHarbor_draft_FeasibilitySEIS.zip and at the following local libraries: Boston Libraries—25 Parameter Street, 20 City Hall Avenue, 18 Barnes Avenue, 666 Boylston Street, Boston City Hall, 179 Main Street, 646 West Broadway, 276 Meridan Street; Chelsea Library—569 Broadway; Revere Library—179 Beach Street; and the Winthrop Library—2 Metcalf Square. If you wish to receive a copy of the Executive Summary or an electronic copy of the DSEIS/DEIR, please contact Ms. Catherine Rogers, Ecologist, U.S. Army Corps of Engineers, New England District, Evaluation Branch, 696 Virginia Road, Concord, MA 01742.

A public meeting to solicit comments has been scheduled for 1 p.m. on Tuesday, May 20, 2008, on the second floor of the Black Falcon Cruise Terminal, One Black Falcon Avenue, Boston, MA.

Dated: April 8, 2008.

Curtis L. Thalken,

Colonel, Corps of Engineers, New England District.

[FR Doc. E8-8202 Filed 4-17-08; 8:45 am]

BILLING CODE 3710-24-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Final Environmental Impact Report/Environmental Impact Statement for the Carryover Storage and San Vicente Dam Raise Project (CSP), San Diego County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers, Los Angeles District (Corps) Regulatory Branch, in coordination with the San Diego County Water Authority (Water Authority), has completed a Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Carryover Storage and San Vicente Dam Raise Project (CSP). Four alternatives were co-equally analyzed in the EIR/EIS, including Alternative 1 (100,000 acre-feet of carryover storage at San Vicente), Alternative 2 (100,000 acre-feet of carryover storage at Moosa Canyon), Alternative 3 (50,000 acre-feet

of carryover storage at San Vicente and 50,000 acre-feet of carryover storage at Moosa Canyon) and the No Action Alternative, as required by NEPA. As the project proponent and applicant, the Water Authority selected Alternative 1 as its preferred alternative. The proposed CSP requires authorization pursuant to section 404 of the Clean Water Act for approximately 0.34 acre of fill placement in jurisdictional waters of the United States, including wetlands, to construct an expansion of the existing San Vicente Dam to store approximately 100,000 acre-feet of carryover storage water.

FOR FURTHER INFORMATION CONTACT:

Questions or comments concerning the Final EIR/EIS should be directed to Mr. Robert R. Smith, Jr., Regulatory Project Manager/Team Leader San Diego Field Office, U.S. Army Corps of Engineers, Los Angeles District, 16885 W. Bernardo Drive, Suite 300A, San Diego, CA 92127, (858) 674-6784. Alternatively, comments can be submitted electronically to:

robert.r.smith@usace.army.mil.

SUPPLEMENTARY INFORMATION: Paper copies of the Final EIR/EIS will be made available to the public for review at the following: the San Diego County Water Authority offices at 4677 Overland Avenue, San Diego, CA 92123; the Lakeside Public Library, 9839 Vine Street, Lakeside, CA 92040; and the Valley Center Public Library, 29200 Cole Grade Road, Valley Center, CA 92082. A CD copy of the document may be obtained by contacting Ms. Kelley Gage at the San Diego County Water Authority at the address above, or by e-mailing Ms. Gage at kgage@sdwca.org. A copy of the Final EIR/EIS is also available online at the Water Authority's Web site: <http://www.sdcwa.org/>. Interested parties are invited to provide their comments on the Final EIR/EIS, which will become a part of the official record and will be considered in the final decision. Written comments must be received on or before May 19, 2008 and should be submitted to the contact listed above. A Record of Decision (ROD) will be issued by the Corps no earlier than 30 days after the Notice of Receipt for the Final EIR/EIS is published in the **Federal Register**.

Dated: April 8, 2008.

Mark Durham,

Acting Chief, Regulatory Branch.

[FR Doc. E8-8282 Filed 4-17-08; 8:45 am]

BILLING CODE 3710-KF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Finding

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR parts 1500-1508), implementing procedural provisions of NEPA, and Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, the Department of the Navy (DON) gives notice that a combined Finding of No Significant Impact (FONSI)/Finding of No Significant Harm (FONSH) has been issued and is available for Carrier Strike Group Composite Training Unit Exercise (CSG COMPTUEX) April/May 2008.

DATES: The effective date of the finding is April 14, 2008.

ADDRESSES: Electronic copies of the combined FONSI/FONSH are available for public viewing or downloading at <http://www.navydocuments.com>.

FOR FURTHER INFORMATION CONTACT:

Commander, Second Fleet Public Affairs, Commander Phillips, telephone: 757-443-9822 or visit <http://www.navydocuments.com>.

SUPPLEMENTARY INFORMATION: CSG COMPTUEX (April-May 2008) is a major Navy Atlantic Fleet training exercise proposed to occur in April and May 2008 in the offshore Jacksonville Operating Area (OPAREA) and adjacent military installations. The purpose of this exercise is to certify naval forces as combat-ready. Activities conducted during the exercise include air-to-ground (ATG) bombing at land ranges, Combat Search and Rescue (CSAR), Maritime Interdiction Operations (MIO), Naval Gunfire, Fast Attack Craft/Fast Inshore Attack Craft (FAC/FIAC), and Anti-Submarine Warfare (ASW), including use of mid-frequency active (MFA) sonar.

The FONSI is based on analysis contained in a Comprehensive Environmental Assessment (EA) addressing environmental impacts associated with land-based training for Major Atlantic Fleet Training Exercises on the East and Gulf Coasts of the U.S.

The FONSH is based on analysis contained in a Comprehensive Overseas Environmental Assessment (OEA) and Supplement to the Comprehensive OEA (SOEA) for environmental impacts associated with Navy's conduct of major

exercise training in offshore operating areas along the East and Gulf Coasts of the U.S.

Environmental concerns addressed in the EA included land use, community facilities, coastal zone management, socioeconomic, cultural resources, airspace, air quality, noise, geology, soils, water resources, biological resources, munitions and hazardous materials management, and safety. The EA and OEA addressed potential impacts to the ocean physical environment, fish and Essential Fish Habitat; sea turtles and marine mammals; seabirds and migratory birds; endangered and threatened species; socioeconomic; and cultural resources. The SOEA included an updated analysis of MFA sonar use associated with the CSG COMPTUEX.

This action includes mitigation measures to reduce impacts to a level that is less than significant. In accordance with the Major Atlantic Fleet Training Exercise EA and OEA and the SOEA and the evaluation of the nature, scope and intensity of the proposed action, the Navy finds that the conduct of the CSG COMPTUEX in April and May 2008 will not significantly impact or harm the environment and, therefore, an Environmental Impact Statement or Overseas Environmental Impact Statement is not required.

Dated: April 9, 2008.

T. M. Cruz,

*Lieutenant, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.*
[FR Doc. E8-8383 Filed 4-17-08; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. 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, May 15, 2008, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box

1410, MS-103, Paducah, Kentucky 42001, (270) 441-6825.

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

- 6 p.m. Call to Order, Introductions, Review of Agenda, Approval of March Meeting Minutes.
- 6:15 p.m. Deputy Designated Federal Officer's Comments.
- 6:30 p.m. Federal Coordinator's Comments.
- 6:35 p.m. Liaisons' Comments.
- 6:45 p.m. Presentation.
- 7:15 p.m. Public Comments.
- 7:30 p.m. Administrative Issues.
 - Motions.
 - Review Next Agenda.
- 7:45 p.m. Final Comments.
- 8 p.m. Adjourn.

Breaks taken as appropriate.

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 agenda items should contact Reinhard Knerr 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 Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the Web site <http://www.pgdpca.org/minutes.htm>.

Issued at Washington, DC on April 15, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-8389 Filed 4-17-08; 8:45 am]

BILLING CODE 6450-01-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, May 14, 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 main meeting topic will be on the "Report on Submittal of the Integrated Facility Disposition Project Critical Decision-1 Document."

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 April 14, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-8404 Filed 4-17-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**High Energy Physics Advisory Panel**

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 29, 2008; 9 a.m. to 6 p.m. and Friday, May 30, 2008; 8:30 a.m. to 4 p.m.

ADDRESSES: DoubleTree Hotel, 1515 Rhode Island Ave, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC-25/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585-1290; Telephone: 301-903-1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, May 29, 2008, and Friday, May 30, 2008

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301-903-1298 or John.Kogut@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and

copying within 90 days on the High Energy Physics Advisory Panel Web site. Minutes will also be available by writing or calling John Kogut at the address and phone number listed above.

Issued at Washington, DC, on April 15, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-8428 Filed 4-17-08; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6698-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 2008 (73 FR 19833).

Draft EISs

EIS No. 20070534, ERP No. D-AFS-L65546-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.

Summary: EPA expressed environmental concerns about impacts to drinking water, ground water, and the potential impacts from expansions of phosphate mining. The final EIS should clarify the disposition of temporary roads, especially duration and closure, consistent with NFMA. *Rating* EC2.

EIS No. 20080014, ERP No. D-NPS-L65547-WA, San Juan Island National Historical Park, General Management Plan, Implementation, WA.

Summary: EPA expressed environmental concerns about impacts to air and water quality, and requested additional data on current water and air quality within the park and mitigation for air and water quality impacts. *Rating* EC2.

EIS No. 20080068, ERP No. D-NPS-J61113-SD, Minuteman Missile National Historic Site, General Management Plan, Implementation, Jackson and Pennington Counties, SD.

Summary: EPA has no objections to NPS's Preferred (Alternative 4). *Rating* LO.

Final EISs

EIS No. 20080051, ERP No. F-AFS-J65446-MT, Beaverhead-Deerlodge National Forest Draft Revised Land and Resource Management Plan, Implementation, Beaverhead, Butte-Silver Bow, Deerlodge, Granite, Jefferson, Madison Counties, MT.

Summary: EPA continues to have environmental concerns about impacts to fisheries, wildlife and other unique aquatic resources.

EIS No. 20080124, ERP No. F-USN-D11043-MD, National Naval Medical Center, Activities to Implement 2005 Base Realignment and Closure Actions, Construction and Operation of New Facilities for Walter Reed National Military Medical Center, Bethesda, MD.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20080093, ERP No. FS-AFS-L65382-ID, Meadow Face Stewardship Pilot Project, Improvement to Aquatic and Terrestrial Vegetative Conditions, Supplement Information on the Cumulative Effects Analysis, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID.

Summary: No comment letter was sent to the preparing agency.

Dated: April 15, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. E8-8396 Filed 4-17-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6697-9]

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 04/07/2008 through 04/11/2008 pursuant to 40 CFR 1506.9.

EIS No. 20080133, Draft EIS, NPS, TX, Guadalupe Mountains National Park, General Management Plan, Implementation, Culberson and Hudspeth Counties, TX, Comment Period Ends: 06/09/2008, Contact: Roxanne Runkel 303-969-2377.

EIS No. 20080134, Draft EIS, NPS, MI, Sleeping Bear Dunes National Lakeshore, General Management Plan and Wilderness Study, Implementation, Benzie and Leelanau Counties, MI, Comment Period Ends: 06/02/2008, Contact: Nick Chevance 402-661-1844.

EIS No. 20080135, Draft EIS, COE, TN, PROGRAMMATIC—Hydropower Rehabilitations, Dissolved Oxygen and Minimum Flow Regimes at Wolf Creek Dam, Kentucky and Center Hill and Dale Hollow Dams, Tennessee, Implementation, Comment Period Ends: 06/03/2008, Contact: Chip Hall 615-736-7666.

EIS No. 20080136, Draft EIS, BIA, CA, Ione Band of Miwok Indians Project, Proposed 228.04 Acre Fee-to-Trust Land Transfer and Casino Project, Amador County, CA, Comment Period Ends: 07/02/2008, Contact: John Rydzik 916-978-6042.

EIS No. 20080137, Draft EIS, AFS, OR, East Maury Fuels and Vegetation Management Project, Proposed Fuels and Vegetation Treatments Reduce the Risk of Stand Loss, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR, Comment Period Ends: 06/02/2008, Contact: Barb Fontaine 541-416-6500.

EIS No. 20080138, Final EIS, NOAA, 00, Reef Fish Amendment 30A: Greater Amberjack—Revise Rebuilding Plan, Accountability Measures: Gray Triggerfish—Establish Rebuilding Plan, End Overfishing, Accountability Measures, Regional Management, Management Thresholds and Benchmarks, Gulf of Mexico, Wait Period Ends: 05/19/2008, Contact: Roy E. Crabtree 727-824-5305.

EIS No. 20080139, Draft EIS, FHW, MN, Trunk Highway 23 and U.S. Highway 71 Project, Construction of One or More Grade-Separated Bridge Crossings, Dovre Township, Northeast of Wilmar County, Kandiyohi, MN, Comment Period Ends: 06/02/2008, Contact: Lowell Flaten 320-214-6367.

EIS No. 20080140, Final EIS, DOI, UT, Lower Duchesne River Wetlands Mitigation Project (LDWP), Restoration Measures in the Lower Duchesne River Area, Strawberry Aqueduct and Collection System (SACS) on portion of the Strawberry Reservoir, Implementation, Ute Indian Tribe, NPDES and U.S. Army COE Section 404 Permits, Duchesne, Utah, Uintah Counties, UT, Wait Period Ends: 05/19/2008, Contact: Ralph G. Swanson 801-379-1254.

EIS No. 20080141, Final EIS, TVA, TN, Rutherford-Williamson-Davidson Power Supply Improvement Project,

Proposes to Construct and Operate a New 500-kilovolt (kV) Rutherford Substation, a New 27-mile 500-kV Transmission Line and Two New 9- and 15-mile 161-kV Transmission Lines, Rutherford, Williamson and Maury Counties, TN, Wait Period Ends: 05/19/2008, Contact: Anita E. Masters 423-751-8697.

EIS No. 20080142, Final EIS, COE, CA, Carryover Storage and San Vicente Dam Raise Project, Providing Additional Storage Capacity for 100,000 area feet of Water by the Year 2011, Issuance of Permits, Section 10 and 404 Permits, San Diego County, CA, Wait Period Ends: 05/19/2008, Contact: Robert R. Smith 858-674-6784.

EIS No. 20080143, Second Draft Supplement, COE, MA, Boston Harbor Federal Deep Draft Navigation Improvement Project, To Evaluate the Feasibility of Channel Deepening and Related Berth Improvements at the Port of Boston, Chelsea and Revere, Boston, MA, Comment Period Ends: 06/02/2008, Contact: Catherine Rogers 978-318-8231.

EIS No. 20080144, Draft EIS, CGD, FL, Port Dolphin LLC Liquefied Natural Gas Deepwater Port License Application, Proposes to Own, Construct and Operate a Deepwater Port, Outer Continental Shelf, Manatee County, FL, Comment Period Ends: 06/02/2008, Contact: Raymond Martin 202-372-1449.

EIS No. 20080145, Final EIS, FRC, 00, Rockies Express Pipeline Project (REX-East), Construction and Operation of Natural Gas Pipeline Facilities, WY, NE, MO, IL, IN and OH, Wait Period Ends: 05/19/2008, Contact: Andy Black 1-866-208-3372.

EIS No. 20080146, Final EIS, NOAA, 00, Amendment 2 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan, To Implement Management Measures that Prevent Overfishing and Rebuild Overfished Stocks, Implementation, Exclusive Economic Zone (EEZ) of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea, Wait Period Ends: 05/19/2008, Contact: Margo Schulze-Haugen 301-713-2347.

Amended Notices

EIS No. 20080004, Draft EIS, NSA, 00, PROGRAMMATIC—EIS—Complex Transformation, To Make the U.S. Nuclear Weapon Complex Smaller, and more Responsive, Efficient and Secure in Order to Meet National Security Requirements, CA, NV, NM, SC, TN and TX, Comment Period Ends: 4/30/2008, Contact: Theodore

A. Wyka 1-800-832-0885 Ext 63519. Revision of FR Notice Published 01/11/2008: Extending Comment Period from 04/09/2008 to 04/30/2008.

EIS No. 20080021, Draft EIS, SFW, AK, Yukon Flats National Wildlife Refuge Project, Proposed Federal and Public Land Exchange, Right-of-Way Grant, Anchorage, AK, Comment Period Ends: 05/19/2008, Contact: Cyndie Wolfe 907-786-3463. Revision of FR Notice Published 01/25/2008: Reopening Comment Period from 03/25/2008 to 05/19/2008.

EIS No. 20080088, Final EIS, FHW, MT, Miller Creek Road Project, To Provide Safe and Improved Access between U.S. 93 and the Miller Creek Area, Missoula County, MT, Wait Period Ends: 05/01/2008, Contact: Craig Genzlinger 406-449-5302 Ext 240. Revision to FR Notice Published 03/14/2008: Extending Comment Period from 04/14/2008 to 05/1/2008.

Dated: April 15, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-8397 Filed 4-17-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0274; FRL-8360-8]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review The Agency's Evaluation of the Toxicity Profile of Chlorpyrifos.

DATES: The meeting will be held on July 15-18, 2008, from 9 a.m. to 5:30 p.m., Eastern Time.

Comments. The Agency encourages that written comments be submitted by July 7, 2008 and requests for oral comments be submitted by July 10, 2008. However, written comments and requests to make oral comments may be submitted until the date of the meeting. Anyone submitting written comments after July 7, 2008 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before May 2, 2008.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Environmental Protection Agency Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0274, 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-2008-0274. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the docket are listed in a docket index available in www.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 www.regulations.gov website to view the docket index or access available documents. Although, listed in a docket 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 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.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as an ad hoc member of the FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-0130; fax number:

(202) 564-8382; e-mail addresses: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. 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.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA-HQ-OPP-2008-0274 in the subject line on the first page of your request.

1. **Written comments.** The Agency encourages that written comments be submitted, using the instructions in

ADDRESSES, no later than July 7, 2008, to provide FIFRA SAP the time necessary to consider and review the written comments. However, written comments are accepted until the date of the meeting. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies. Anyone submitting written comments after July 7, 2008 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the extent of written comments for consideration by FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than July 10, 2008, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of the FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas:

- i. Organophosphate pesticides.
- ii. Acetylcholinesterase inhibition.
- iii. Chlorpyrifos metabolism including paraoxonase 1 (PON 1) expression and activity.

- iv. Cholinergic and non-cholinergic modes/mechanisms of toxicity.
- v. Developmental neurotoxicity.
- vi. Physiologically-based pharmacokinetic modeling.
- vii. Interpretation of metabolite data from human samples.
- viii. Mode of action framework.
- ix. Human relevance framework.
- x. Human health risk assessment.
- xi. Epidemiology.
- xii. IPSC WHO Guidance on Chemical Specific Adjustment Factors.

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 2, 2008. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although, financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel.

In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 to 15 ad hoc

scientists. FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at <http://epa.gov/scipoly/sap> or may be obtained from the OPP Regulatory Public Docket at <http://www.regulations.gov>.

II. Background

A. Purpose of the FIFRA SAP

The FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Scientific Advisory Panel. As a

peer review mechanism, the FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

In the last decade, there has been a substantial amount of research on the human health effects of chlorpyrifos. The Agency is currently updating the hazard identification and hazard characterization for chlorpyrifos, in part, by evaluating aspects of this research. The Agency is particularly focusing on studies that evaluate the effects of chlorpyrifos on infants and children from *in utero* and/or post-natal exposures and on studies that evaluate population variability with respect to response to chlorpyrifos. This review will encompass selected human epidemiological data, *in vivo* data in laboratory animals and *in vitro* studies. The Agency will be seeking comments from the SAP on the following areas:

1. Interpretation of recent epidemiological studies associating *in utero* and/or post-natal chlorpyrifos exposure with health outcomes;
2. Aspects of chlorpyrifos metabolism, such as differences in paraoxonase 1 (PON 1) expression and activity, which affects population variability with respect to the effects of chlorpyrifos and its oxon metabolite; and
3. Cholinergic and non-cholinergic modes/mechanisms of toxicity which are relevant to evaluating hazard and risk to infants and children.

As part of this review, the Agency is evaluating the relevance of animal studies conducted by different routes of administration (e.g., gavage or subcutaneous injection) for conducting human health risk assessment to different age groups and by different exposure pathways.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to the FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by late June 2008. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at <http://www.regulations.gov> and the FIFRA SAP homepage at <http://www.epa.gov/scipoly/sap>.

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at <http://www.regulations.gov>.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 10, 2008.

Elizabeth A. Resek,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. E8-8399 Filed 4-17-08; 8:45 a.m.]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8555-7]

Science Advisory Board Staff Office; Notification of a Meeting of the Science Advisory Board's Advisory Council on Clean Air Compliance Analysis (Council)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the Advisory Council on Clean Air Compliance Analysis (Council).

DATES: The meeting dates are Thursday, May 8, 2008, from 8:30 a.m. to 5 p.m. and Friday, May 9, 2008, from 8:30 a.m. to 3 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the SAB Conference Center at 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

Members of the public who wish to obtain further information about this meeting may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail: (202) 343-9867 or at stallworth.holly@epa.gov. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web Site at <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION:

Background: The Advisory Council on Clean Air Compliance Analysis (Council) is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Council is charged with providing advice, information and recommendations to the Agency on the economic issues associated with programs implemented under the Clean Air Act and its Amendments. Pursuant to a requirement under Section 812 of the 1990 Clean Air Act Amendments, EPA conducts periodic studies to assess the benefits and the costs of the Clean Air Act. The Council has been the chief reviewing body for these studies and has issued advice on a retrospective study issued in 1997, a prospective study issued in 1999 and since 2001, analytic blueprints for a second prospective study on the costs and benefits of clean air programs covering the years 1990-2020.

On May 9, 2008, the Council will review a case study entitled "Section 812 Prospective Study of the Benefits and Costs of the Clean Air Act: Air Toxics Case Study—Health Benefits of Benzene Reductions in Houston, 1990-2020." This case study presents a methodology for assessing the benefits of reducing benzene levels in the Houston, Texas, area over 30 years. EPA's Office of Air and Radiation (OAR) conducted this case study (posted at <http://www.epa.gov/air/sect812/prospective2.html#mar08/>) as part of the second prospective study on the costs and benefits of the Clean Air Act programs being developed by EPA's Office of Air and Radiation (OAR).

EPA's OAR has also requested the Council's advice on using results of a recently conducted expert elicitation in the regulatory context of a benefits assessment conducted as part of a regulatory impact analysis for a regulation promulgated in 2006. To better characterize uncertainty in the health benefits of particulate matter reductions, EPA's Office of Air and Radiation undertook an expert elicitation study in 2005-2006 to characterize the uncertainty in the concentration-response function for premature mortality related to particulate matter, specifically PM_{2.5}. EPA applied the results of this study to develop probabilistic estimates of reductions in premature mortality as part of its regulatory impact analysis for the 2006 National Ambient Air Quality Standards for Particle Pollution. The Council's review will focus on Chapter 5 and the Executive Summary of the regulatory impact analysis found at <http://www.epa.gov/ttn/ecas/regdata/RIAs/Chapter%205—Benefits.pdf>. The

Council, augmented with additional experts, will conduct this review on May 8, 2008. The SAB Staff Office described a process for identifying experts for this advisory activity in the **Federal Register** on June 28, 2007 (72 FR 35463–35465).

The meeting agenda for May 8–9, 2008 and any background materials will be posted on the Council area (<http://www.epa.gov/advisorycouncilcaa>) of the SAB Web Site prior to the meeting.

Technical Contacts: The OAR technical contact for the benzene case study is Ms. Jeneva Craig at (202) 564–1674 or craig.jeneva@epa.gov. The technical contact for the review of the application of the PM-Mortality expert elicitation is Ms. Lisa Conner at (919) 541–5060 or conner.lisa@epa.gov.

Availability of Meeting Materials: Materials in support of this meeting will be placed on the Council area (<http://www.epa.gov/advisorycouncilcaa>) of the SAB Web site in advance of this meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the Council to consider on the topics included in this advisory activity or the group providing advice on the benzene case study. **Oral Statements:** In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Dr. Stallworth at the contact information provided above by May 1, 2008, to be placed on the public speaker list for the May 8–9, 2008 meeting. **Written Statements:** Written statements should be received in the SAB Staff Office by May 1, 2008, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements should be supplied to the DFO via e-mail to stallworth.holly@epa.gov (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at (202) 343–9867, or via e-mail at stallworth.holly@epa.gov. To request accommodation of a disability, please contact Dr. Stallworth, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 11, 2008.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–8393 Filed 4–17–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8555–8]

Science Advisory Board Staff Office; Request for Nominations to Augment Expertise on the Radiation Advisory Committee (RAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice request for nominations.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting nominations of experts in the area of radiogenic cancer risk to augment expertise to the SAB's Radiation Advisory Committee (RAC). Nominees with appropriate expertise will be considered for service on the augmented RAC to review the EPA draft document under development entitled *EPA Radiation Risk Estimates Based on BEIR VII*, dated 2008.

DATES: Nominations should be submitted by May 9, 2008 per the instructions below.

FOR FURTHER INFORMATION CONTACT:

Members of the public wishing further information regarding this Request for Nominations may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9984; via e-mail at kooyoomjian.jack@epa.gov, or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB as well as any update concerning this request for nominations may be found on the SAB Web site at: <http://www.epa.gov/sab>.

Technical Contact: For information concerning the draft technical document currently under development and any background information contact Dr. Mary E. Clark at (202) 343–9348 or clark.marye@epa.gov.

SUPPLEMENTARY INFORMATION: In 1994, the EPA published a report, entitled “Estimating Radiogenic Cancer Risks,” (often referred to as the “Blue Book”) which lays out the EPA's methodology for quantitatively estimating radiogenic cancer risks <http://epa.gov/radiation/docs/assessment/402-r-93-076.pdf>. That document revised methodology for EPA's estimation of cancer risks due to low-Linear-Energy-Transfer (LET)

radiation exposures developed in light of new information on the Japanese atomic bomb survivors. In 1999, a follow-on report made minor adjustments to the previous estimates and presented a partial analysis of the uncertainties in the numerical estimates <http://epa.gov/radiation/docs/assessment/402-r-99-003.pdf>. Also in 1999 the Agency published Federal Guidance Report 13 <http://epa.gov/radiation/docs/federal/402-r-99-001.pdf> which utilized the previously published cancer risk models, in conjunction with International Commission on Radiological Protection (ICRP) dosimetric models and the U.S.A. usage patterns, to obtain cancer risk estimates for over 800 radionuclides, and for several exposure pathways. These were later updated at http://www.epa.gov/radiation/federal/techdocs.html#cd_supplement.

In 2006, the U.S. National Academy of Sciences/National Research Council (NAS/NRC) released *Health Risks from Exposure to Low Levels of Ionizing Radiation BEIR VII Phase 2* which primarily addresses cancer and genetic risks from low doses of low-LET radiation (available at <http://newton.nap.edu/catalog/11340.html#toc>). Also available at: http://www.nap.edu/catalog.php?record_id=11340#toc). In August, 2006 EPA prepared the draft *White Paper: Modifying EPA Radiation Risk Models Based on BEIR VII*, (available at <http://epa.gov/radiation/docs/assessment/white-paper8106.pdf>), where the Agency proposed changes to the EPA's methodology for estimating radiogenic cancers, based on the contents of BEIR VII. The Agency expects to adopt the models and methodology recommended in BEIR VII, but believes that certain modifications and expansions are desirable or necessary for the EPA's purposes. EPA's Office of Radiation and Indoor Air (ORIA) requested the SAB to review the Agency's draft White Paper and provide advice regarding the proposed approach to dose-response assessment of radionuclides. The EPA SAB/RAC prepared an advisory entitled “*Advisory on Agency Draft White Paper entitled Modifying EPA Radiation Risk Models Based on BEIR VII*” (EPA–SAB–08–006) dated January 31, 2008 (see [http://yosemite.epa.gov/sab/sabproduct.nsf/FD9963E56C66E4FF852573E200493359/\\$File/EPA-SAB-08-006-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/FD9963E56C66E4FF852573E200493359/$File/EPA-SAB-08-006-unsigned.pdf)).

The EPA has asked the SAB to review the draft document currently under development entitled *EPA Radiation Risk Estimates Based on BEIR VII*, dated 2008. This document under preparation utilizes the advice contained in the

NAS/NRC BEIR VII, Phase 2 report, as well as the SAB's recently completed advisory (EPA-SAB-08-006) described above.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies in conducting advisory activities. The SAB RAC provides scientific and technical advice to the EPA Administrator through the chartered SAB on scientific matters pertaining to EPA's mission in protecting public health and the environment.

Request for Nominations: The SAB RAC augmented with experts in radiogenic cancer risk will review the Agency's draft document currently under preparation and to be entitled *EPA Radiation Risk Estimates Based on BEIR VII*. Accordingly, the SAB is seeking nominations of nationally and internationally recognized experts with specialized expertise and experience in radiogenic cancer risk in one or more of the following areas: radiobiology, radiation biophysics, cancer epidemiology related to radiation, radiation exposure and uptake, and high-to-low dose extrapolation for LET radiation. The augmented RAC will provide advice through the chartered SAB, and will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate individuals qualified in the areas of radiogenic cancer risk described above. Self-nominations are also requested. Nominations may be submitted in electronic format through a link on the blue navigational bar on the SAB Web Site at: <http://www.epa.gov/sab>. Please follow the instructions for submitting nominations carefully, and include all of the information requested. The SAB Staff Office requests contact information of the person making the nomination; contact information for the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Anyone unable to submit nominations using the electronic form, or who may have questions concerning the nomination process or any other aspect of this notice may contact Dr. K. Jack Kooyoomjian, DFO, at the contact information above. Nominations should be submitted in time to arrive no later than May 9, 2008. The SAB Staff Office will acknowledge receipt of nominations.

The selection process used by the SAB Staff office in selecting nominees for service on SAB Committees and Panels is described in *Overview of the Panel Formation Process at the Environmental Protection Agency, Science Advisory Board* (EPA-SAB-EC-COM-02-010), on the SAB Web Site. Nominees identified by respondents to this **Federal Register** notice and other sources, will be included in an initial list termed the "Widecast". The credentials submitted by nominees will be evaluated by the SAB Staff Office, and all technically qualified candidates will be included in a smaller subset of nominees termed the "Short List" for additional consideration. The Short List will be posted on the SAB Web Site at: <http://www.epa.gov/sab> and will include the nominee's name and biographical sketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the panel. For the SAB, a balanced panel is characterized by inclusion of nominees who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List will be considered in the selection of the panel members, along with information provided by nominees and information independently gathered by SAB Staff (e.g., financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating Short List nominees include:

- (a) Scientific and/or technical expertise, knowledge, and experience (primary factors);
- (b) absence of financial conflicts of interest;
- (c) scientific credibility and impartiality;
- (d) availability and willingness to serve; and

(e) ability to work constructively and effectively on committees.

Dated: April 11, 2008.

Anthony F. Maciorowski,
Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8-8400 Filed 4-17-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8555-6]

EPA Science Advisory Board Staff Office Request for Nominations of Candidates for EPA Advisory Council on Clean Air Compliance Analysis; EPA Clean Air Scientific Advisory Committee and EPA Science Advisory Board

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) Staff Office is soliciting nominations for consideration of membership on EPA's Advisory Council on Clean Air Compliance Analysis (Council), EPA's Clean Air Scientific Advisory Committee (CASAC), and EPA's Science Advisory Board (SAB) and its Standing Subcommittees.

DATES: Nominations should be submitted in time to arrive no later than May 19, 2008.

FOR FURTHER INFORMATION CONTACT: Nominators unable to submit nominations electronically as described below, may submit a paper copy by contacting Ms. Wanda Bright, U.S. EPA SAB Staff Office (Mail Code 1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx/Courier address: U.S. EPA SAB, Suite 3600, 1025 F Street, NW., Washington, DC 20004), (202) 343-9986 (telephone), (202) 233-0643 (fax), or via e-mail at bright.wanda@epa.gov. General inquiries regarding the work of the Council, CASAC and SAB may be directed to Dr. Anthony F. Maciorowski, Deputy Director, U.S. EPA SAB Staff Office, (202) 343-9983 (telephone), or via e-mail at: maciorowski.anthony@epa.gov.

Background: Established by statute, the Council (42 U.S.C 7612), the CASAC (42 U.S.C. 7409) and SAB (42 U.S.C. 4365) are EPA's chartered Federal Advisory Committees that provide independent scientific and technical peer review, consultation, advice and recommendations directly to the EPA

Administrator on a wide variety of EPA science activities. As Federal Advisory Committees, the Council, CASAC, and SAB conduct business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. C) and related regulations. Generally, Council, CASAC and SAB meetings are announced in the **Federal Register**, conducted in public view, and provide opportunities for public input during deliberations. Additional information about these Federal Advisory Committees may be found at: <http://www.epa.gov/advisorycouncilcaa>, <http://www.epa.gov/casac>, and <http://www.epa.gov/sab>.

Members of the Council, CASAC, the SAB, and their Subcommittees constitute a distinguished body of non-EPA scientists, engineers, economists, and social scientists that are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a period of three years, with the possibility of re-appointment to a second three-year term. This notice specifically requests nominations for the chartered Council, the chartered CASAC, the chartered SAB and its Subcommittees.

Expertise Sought: The Council was established in 1990 pursuant to the Clean Air Act (CAA) Amendments of 1990 to provide advice and recommendations to the EPA Administrator on technical and economic aspects of the impacts of the Clean Air Act (CAA) on the public health, economy, and environment of the United States. The SAB Staff Office is seeking nominations of experts for the Council in the following disciplines: *Air quality modeling; environmental economics; and epidemiology.*

Established in 1977 under the Clean Air Act (CAA) Amendments, the chartered CASAC reviews and offers scientific advice to the EPA Administrator on technical aspects of national ambient air quality standards for criteria pollutants. As required under the CAA section 109(d), CASAC will be composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies. The SAB Staff Office is seeking nominations of experts for CASAC in the following disciplines: *Environmental health sciences; inhalation toxicology; risk assessment; statistics; mathematics; and biostatistics.*

The chartered SAB (or Board) was established in 1978 by the Environmental Research, Development and Demonstration Act to provide

independent advice to the Administrator on general scientific and technical matters underlying the Agency's policies and actions. All the work of the SAB is under the direction of the Board. The chartered Board provides strategic advice to the EPA Administrator on a variety of EPA science and research issues and programs and reviews and approves all SAB Subcommittee and Panel reports. The chartered SAB consists of about thirty members. The SAB Staff Office is seeking nominations of experts for the chartered Board in the following disciplines: *Behavioral and decision sciences; ecological sciences; environmental economics; environmental engineering; environmental modeling; epidemiology; risk assessment, statistics, mathematics, and biostatistics.*

The SAB Drinking Water Committee (DWC) provides advice on the technical aspects of EPA's national drinking water standards program. The SAB Staff office is seeking nominations of experts for the DWC in the following disciplines: *Chemistry; epidemiology; environmental health sciences; and environmental engineering.*

The SAB Exposure and Human Health Committee (EHHHC) provides advice on the development and use of guidelines for human health effects, exposure assessment, and risk assessment. The SAB Staff office is seeking nominations of experts for the EHHHC in the following disciplines: *Carcinogenesis; reproductive toxicology; developmental toxicology; epidemiology; and risk assessment.*

The Radiation Advisory Committee (RAC) provides advice on radiation protection, radiation science, and radiation risk assessment. The SAB Staff office is seeking nominations of experts for the RAC in the following disciplines: *Radiation biology, radiation biophysics, radiation dosimetry, and cancer epidemiology.*

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to these chartered advisory committees and SAB Standing Committees. Individuals may self-nominate. Qualified nominees will demonstrate appropriate scientific education, training, and experience to evaluate basic and applied science issues addressed by these advisory committees. Successful nominees will have distinguished themselves professionally and be available to invest the time and effort in providing advice and recommendations on the development and application of science at EPA. Nominations should be

submitted in electronic format (preferred) following the instructions for "Nominating Experts to a Chartered Advisory Committee or Standing Committee" provided on the SAB Web site. The form can be accessed through the "Public Involvement in Advisory Committee" link on the blue navigational bar on the SAB Web site at: <http://www.epa.gov/sab>. To be considered, all nominations should include the information requested.

Nominators are asked to identify the specific committee(s) for which nominees would like to be considered. The nominating form requests contact information about: The person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; and a biographical sketch of the nominee indicating current position, educational background; research activities; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Ms. Wanda Bright as indicated above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic form. The SAB Staff Office will acknowledge receipt of nominations.

Candidates invited to serve will be asked to submit the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110-48). This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the "Ethics Requirements for Advisors" link on the blue navigational bar on the SAB Web site at: <http://www.epa.gov/sab>. This form should not be submitted as part of a nomination.

The SAB Staff Office seeks candidates who possess the necessary domains of knowledge, and relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation) to adequately address scientific issues facing the Agency. The primary criteria to be used in evaluating potential nominees will be scientific and/or technical expertise, knowledge, and experience. Additional

criteria that will be used to evaluate technically qualified nominees will include: The absence of financial conflicts of interest; scientific credibility and impartiality; availability and willingness to serve; and the ability to work constructively and effectively on committees. The selection of new members will also include consideration of the collective breadth and depth of scientific perspectives; a balance of scientific perspectives; continuity of knowledge and understanding of EPA missions and environmental programs, and diversity factors (e.g., geographical areas and professional affiliations) for each of the chartered committees and subcommittees.

Dated: April 11, 2008.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8-8401 Filed 4-17-08; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—no change: Local Union Report (EEO-3).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension of the existing collection as described below.

DATES: Written comments on this notice must be submitted on or before June 17, 2008.

ADDRESSES: Comments should also be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone number of the FAX receiver is (202) 663-4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive

Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTD). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m. or can be reviewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507; (202) 663-4958 (voice) or (202) 663-7063 (TDD). This notice is also available in the following formats: large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1-800-669-3392. **SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the commission's estimate 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; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: Local Union Report (EEO-3).

OMB Number: OMB Number 3046-0006.

Frequency of Report: Biennial.

Type of Respondent: Referral local unions with 100 or more members.

Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 3,000.

Reporting Hours: 3,000 (4,500 including record keeping).

Federal Cost: \$50,000.

Number of Forms: 1

Abstract: Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations, Title 29, Chapter XIV, Subpart F, 1602.22-26, which set forth the reporting requirements for various kinds of labor organizations. Referral local unions with 100 or more members have been required to submit EEO-3 reports since 1967 (biennially since 1985). The individual reports are confidential.

Burden Statement: The estimated number of respondents included in the biennial EEO-3 survey is 3,000 referral unions. The biennial reporting is estimated to take 3,000 hours, and total biennial reporting and record keeping is 4,500 hours.

Dated: April 14, 2008.

For the Commission.

Naomi Earp,

Chair.

[FR Doc. E8-8481 Filed 4-17-08; 8:45 am]

BILLING CODE 6570-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Information Collection—No Change; Elementary-Secondary Staff Information Report EEO-5

AGENCY: Equal Employment Opportunity Commission.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension of the existing collection as listed below.

DATE: Written comments on this notice must be submitted on or before June 17, 2008.

ADDRESSES: Comments should be submitted to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by

facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone number of the FAX receiver is (202) 663-4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTD). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m. or can be reviewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Ronald Edwards, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507, (202) 663-4958 (voice) or (202) 663-7063 (TDD). This notice is also available in the following formats: large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1-800-669-3392.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the Commission's estimate 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; and
- (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: Elementary-Secondary Staff Information Report EEO-5.

OMB-Number: 0346-0003.

Frequency of Report: Biennial.

Type of Respondent: Public elementary and secondary school districts with 100 or more employees.

Description of Affected Public: State and Local Government.

Number of Responses: 5,000.

Reporting Hours: 12,000.

Federal Cost: \$80,000.

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirement for various kinds of employers. Elementary and secondary public school systems and districts have been required to submit EEO-5 reports to EEOC since 1974 (biennially in even-numbered years since 1982). Since 1996 each school district or system has submitted all of the district data on a single form, EEOC Form 168A. The individual school form, EEOC Form 168B, was eliminated in 1996, greatly reducing the respondent burden and cost.

EEO-5 data are used by the EEOC to investigate charges of employment discrimination against elementary and secondary public school districts. The data are used to support EEOC decisions and conciliations, and for research. The data are shared with the Department of Education (Office for Civil Rights and the National Center for Education Statistics) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO-5 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO-5 survey is 5000 public elementary and secondary school districts. The number of responses per respondent is one report. The annual number of responses is approximately 5,000 and the total hours per response ranges from one (1) to five (5) hours. The estimated total number of response hours is 12,000 each time the survey is conducted (i.e., biennially.) Respondents are encouraged to report

data on electronic media such as magnetic tapes and diskettes.

Dated: April 14, 2008.

For the Commission.

Naomi C. Earp,

Chair.

[FR Doc. E8-8495 Filed 4-17-08; 8:45 am]

BILLING CODE 6570-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—no change: State and Local Government Information (EEO-4).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension of the existing collection as described below.

DATES: Written comments on this notice must be submitted on or before June 17, 2008.

ADDRESSES: Comments should be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663-4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTD). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m. or can be reviewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program

Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507; (202) 663-4958 (voice) or (202) 663-7063 (TDD). This notice is also available in the following formats: large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1-800-669-3392.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate 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; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: State and Local Government Information (EEO-4).
OMB—Number: 3046-0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more full-time employees.

Description of Affected Public: State and local governments excluding elementary and secondary public school districts.

Number of Responses: 10,000.

Reporting Hours: 40,000.

Cost to Respondents: \$600,000.

Number of Forms: 1.

Form Number: EEOC Form 164.

Federal Cost: \$47,000 (annualized).

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirements for various kinds

of employers. State and local governments with 100 or more full-time employees have been required to submit EEO-4 reports since 1973 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO-4 data are used by the EEOC to investigate charges of discrimination against state and local governments and to provide information on the employment status of minorities and women. The data are shared with several other Federal government agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO-4 data are also shared with eighty-six State and Local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO-4 survey is 5,000 state and local governments. The estimated number of responses per respondent is approximately two (2) EEO-4 reports and the reporting burden averages between 1 and 5 hours per response, including the time needed to review instructions, search existing data sources, gather and maintain the data, and complete and review the collection of information. The total number of responses is thus 10,000 reports while the total burden is estimated to be 40,000 hours, including record keeping burden. In order to help reduce burden, respondents are encouraged to report data on electronic media such as diskettes.

Dated: April 14, 2008

For the Commission.

Naomi C. Earp,
Chair.

[FR Doc. E8-8496 Filed 4-17-08; 8:45 am]

BILLING CODE 6570-01-P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 18, 2008

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 18, 2008, 2008.¹

¹ Copies of the Minutes of the Federal Open Market Committee meeting on March 18, 2008, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate at an average of around 2¼ percent.

By order of the Federal Open Market Committee, April 11, 2008.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. E8-8333 Filed 4-17-08; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Delegation of Authority To Disclose Certain Nonpublic Complaint Information to Domestic Law Enforcement Agencies

AGENCY: Federal Trade Commission.

ACTION: Delegation of Authority.

SUMMARY: The Commission has delegated authority to the Associate Director of the Division of Planning and Information, Bureau of Consumer Protection, to allow U.S. Consumer Sentinel law enforcement members to access, via the secure Consumer Sentinel Web site, all consumer complaints received by the FTC.

DATES: *Effective Date:* June 1, 2008.

FOR FURTHER INFORMATION CONTACT: Nicholas Mastrocinque, 202-326-3188, Division of Planning & Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, the Commission has delegated to the Associate Director of the Division of Planning and Information, Bureau of Consumer Protection, the authority to permit U.S. Consumer Sentinel law enforcement members to access, via the secure Consumer Sentinel Web site, all consumer complaint information it receives. Domestic Consumer Sentinel members will have expanded access to complaints previously unavailable to them in Consumer Sentinel, including complaints against third-party debt collectors, credit bureaus, and mortgage lenders.

When exercising its authority under this delegation, staff will require from the Consumer Sentinel law enforcement agency members assurances of confidentiality and data security. This

delegation does not apply to competition-related investigations.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8-8482 Filed 4-17-08; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11 $\frac{3}{8}$ % for the quarter ended March 31, 2008. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 14, 2008.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. E8-8374 Filed 4-17-08; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-243]

Availability of Two Interaction Profiles [Draft Documents]

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice of availability for public comments.

SUMMARY: This notice announces the availability of two interaction profiles prepared by ATSDR for public comments [draft documents].

DATES: The interaction profiles will be available to the public on or about April 15, 2008.

ADDRESSES: The documents will be available on ATSDR's Web site at <http://www.atsdr.cdc.gov>.

FOR FURTHER INFORMATION CONTACT:

Please submit comments regarding the information contained in the profiles to Dr. Hana Pohl, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F-32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (888) 422-8737.

SUPPLEMENTARY INFORMATION: ATSDR develops interaction profiles for hazardous substances found at the National Priority List (NPL) sites under Section 104(i)(3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This public law mandates that ATSDR assess whether or not adequate information on health effects is available for priority hazardous substances. Where such information is not available or under development, ATSDR shall, in cooperation with the National Toxicology Program, initiate a research program to determine these health effects. The act further directs that, where feasible, ATSDR shall develop methods to determine the health effects of these priority hazardous substances in combination with other substances commonly found with them.

To carry out these legislative mandates, ATSDR has developed a chemical mixtures program. As part of the mixtures program, ATSDR developed a guidance manual that outlines the latest methods for mixtures health assessment. In addition, a series of documents called "interaction profiles" is being developed for certain priority mixtures that are of special concern to ATSDR. To recommend approaches for the exposure-based assessment of the potential hazard to public health, an interaction profile evaluates data on the toxicology of the whole priority mixture, if available, and on the joint toxic action of the chemicals in the mixture.

The entire interaction profile development process is as follows:

- ATSDR selects substances/chemicals for development of interaction profiles through inter/intra agency communications collaboration and literature reviews.

- After the selection, a letter is sent to individuals and agencies on ATSDR's mailing list providing notice of ATSDR's intent to create an interaction profile.

- A notice is posted in the **Federal Register** to inform the public of ATSDR's intent to develop a particular interaction profile.

- The draft interaction profile undergoes both internal and external peer review.

- A **Federal Register** notice announces the release of the official draft for public comment.

- ATSDR posts a link to the draft interaction profile on its Web site, giving the public an opportunity to provide comments.

- ATSDR reviews all public comments and revises the draft, as appropriate, before issuing the final version.

The following documents will be available to the public on or about April 15, 2008.

Document 1

Interaction Profile for Carbon Monoxide, Formaldehyde, Methylene Chloride, Nitrogen Dioxide, and Tetrachloroethylene.

Document 2

Interaction Profile for Chloroform, 1,1-Dichloroethylene, Trichloroethylene, and Vinyl Chloride.

Document 1 evaluates a mixture of chemicals often found in indoor air based on the information regarding residential (i.e., background) exposures provided by the U.S. Environmental Protection Agency. Data on background exposures can be used for evaluations of total exposures in populations living around hazardous waste sites.

Document 2 evaluates a mixture of volatile organic chemicals. This particular mixture was chosen as a subject for the interaction profile because these chemicals are among the top 10 chemicals found in water around hazardous waste sites. Consequently, they are also encountered in combinations.

The two interaction profiles underwent external peer review. These documents were also reviewed by the ATSDR's Interagency Workgroup on Mixtures.

The documents will be available for public comments for 90 days.

Dated: April 11, 2008.

Tim Hack,

Deputy Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E8-8167 Filed 4-17-08; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Epidemiology of Carbapenemase-Producing Enterobacteriaceae in a Healthcare Setting, Potential Extramural Projects (PEP) 2008-R-24

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.-2 p.m., May 15, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of "Epidemiology of Carbapenemase-Producing Enterobacteriaceae in a Healthcare Setting, PEP 2008-R-24."

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498-1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8-8355 Filed 4-17-08; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Monitoring Hospitalizations and Outpatient Visits for Pneumonia and Other Non-Invasive Pneumococcal Diseases by Using National Databases, Potential Extramural Project (PEP) 2008-R-17

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.-2:30 p.m., May 19, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of "Monitoring Hospitalizations and Outpatient Visits for Pneumonia and other Non-Invasive Pneumococcal Diseases by Using National Databases, PEP 2008-R-17."

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498-1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8-8356 Filed 4-17-08; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Survey of Community Support Interventions for Mammography Screenings, Potential Extramural Project (PEP) 2008-R-13

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.-2:30 p.m., May 20, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of "Survey of Community Support Interventions for Mammography Screenings, PEP 2008-R-13."

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498-1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8-8357 Filed 4-17-08; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): The Effect of Prenatal Bleeding on Pregnancy Outcomes in Women With a Previously Undiagnosed Bleeding Disorder, Potential Extramural Project (PEP) 2008-R-27

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.–2 p.m., May 14, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of “The Effect of Prenatal Bleeding on Pregnancy Outcomes in Women with a Previously Undiagnosed Bleeding Disorder, PEP 2008–R–27.”

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8363 Filed 4–17–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Impact of Cultural and Socioeconomic Factors on Post-Treatment Surveillance among African Americans with Colorectal Cancer, Potential Extramural Project (PEP) 2008–R–03

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.–3 p.m., May 29, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and

evaluation of “Impact of Cultural and Socioeconomic Factors on Post-Treatment Surveillance among African Americans with Colorectal Cancer, PEP 2008–R–03.”

Contact Person for More Information:

Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8368 Filed 4–17–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A Retrospective Evaluation of Patterns of Care for American Indian and Alaska Native Men With Elevated Prostate Specific Antigen, Potential Extramural Project (PEP) 2008–R–15

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–2:30 p.m., May 19, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of “A Retrospective Evaluation of Patterns of Care for American Indian and Alaska Native Men with Elevated Prostate Specific Antigen, PEP 2008–R–15.”

Contact Person for More Information:

Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and

other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8369 Filed 4–17–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of the Immune Response to a Modified Dosing Schedule for the Quadrivalent Human Papillomavirus (HPV) Vaccine, Potential Extramural Projects (PEP) 2008–R–22

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time And Date: 1 p.m.–2 p.m., May 15, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of “Evaluation of the Immune Response to a Modified Dosing Schedule for the Quadrivalent HPV Vaccine, PEP 2008–R–22.”

Contact Person for More Information:

Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8370 Filed 4–17–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Postpartum Hemorrhage Among Women with an Undiagnosed Bleeding Disorder, Potential Extramural Projects (PEP) 2008–R–28

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.–2 p.m., May 16, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of “Postpartum Hemorrhage Among Women with an Undiagnosed Bleeding Disorder, PEP 2008–R–28.”

Contact Person for More Information:

Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8407 Filed 4–17–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of Breastfeeding Promotion and Support Programs for African-American Women, Potential Extramural Project (PEP) 2008–R–25

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.–2:30 p.m., May 22, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of “Evaluation of Breastfeeding Promotion and Support Programs for African-American Women, PEP 2008–R–25.”

Contact Person for More Information:

Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8438 Filed 4–17–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10260]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to

be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Advantage (MA) Disclosure Requirements; *Use:* The information collection requirements are mandated by 42 CFR 422.111 and 422.80. MA organizations will be required to notify plan members of the coming year's changes using a combined standardized document. MA organizations and potential MA organizations (applicants) will use the information to comply with the eligibility requirements and the MA contract requirements. CMS will use this information to ensure that correct information is disclosed to Medicare beneficiaries, both potential enrollees and enrollees. *Form Number:* CMS–10260 (OMB# 0938–New); *Frequency:* Yearly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 670; *Total Annual Responses:* 670; *Total Annual Hours:* 8040.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *June 17, 2008*:

1. *Electronically.* You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 9, 2008.

Michelle Shortt,

Director, Regulations Development Group,
Office of Strategic Operations and Regulatory
Affairs.

[FR Doc. E8-8229 Filed 4-17-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2007-N-0321] (formerly
Docket No. 2007N-0485)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Application for Food and Drug Administration Approval to Market a New Drug

AGENCY: Food and Drug Administration,
HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 19, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to baguilar@omb.eop.gov. All comments should be identified with the OMB control number 0910-0111 and Application for Food and Drug Administration Approval to Market a New Drug. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Food and Drug Administration Approval to Market a New Drug—(OMB Control Number 0910-0001—Extension)

Under section 505(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(a)), a new drug may not be commercially marketed in the United States, imported, or exported from the United States, unless an approval of an application filed with FDA under section 505(b) or 505(j) of the act is effective with respect to such drug. Under the act, it is the sponsor's responsibility to provide the information needed by FDA to make a scientific and technical determination whether the product is safe and effective for use.

This information collection approval request is for all information requirements imposed on sponsors by the regulations under part 314 (21 CFR part 314), who apply for approval of a new drug application (NDA) or abbreviated new drug application (ANDa) in order to market or to continue to market a drug.

Section 314.50(a) requires that an application form (Form FDA 356h) be submitted that includes introductory information about the drug as well as a checklist of enclosures.

Section 314.50(b) requires that an index be submitted with the archival copy of the application and that it reference certain sections of the application.

Section 314.50(c) requires that a summary of the application be submitted that presents a good general synopsis of all the technical sections and other information in the application.

Section 314.50(d) requires that the NDA contain the following technical sections about the new drug: Chemistry, manufacturing, and controls; nonclinical pharmacology and toxicology; human pharmacokinetics and bioavailability; microbiology; clinical data; and statistical section.

Section 314.50(e) requires the applicant to submit samples of the drug if requested by FDA. In addition, the archival copy of the application must include copies of the label and all labeling for the drug.

Section 314.50(f) requires that case report forms and tabulations be submitted with the archival copy.

Section 314.50(h) requires that patent information, as described under § 314.53, be submitted with the application. (The burden hours for § 314.50(h) are already approved by OMB under OMB control number 0910-0513 and are not included in the burden estimates in table 1 of this document.)

Section 314.50(i) requires that patent certification information be submitted in section 505(b)(2) applications for patents claiming the drug, drug product, or method of use.

Section 314.50(j) requires that applicants that request a period of marketing exclusivity submit certain information with the application.

Section 314.50(k) requires that an archival, review, and field copy of the application be submitted.

Section 314.52 requires that any notice of certification of invalidity or noninfringement of a patent to each patent owner and the NDA holder be sent by a section 505(b)(2) applicant that relies on a listed drug. A 505(b)(2) applicant is required to amend its application at the time notice is provided to include a statement certifying that the required notice has been provided. A 505(b)(2) applicant also is required to amend its application to document receipt of the required notice.

Section 314.54 sets forth the content requirements for applications filed under section 505(b)(2) of the act. (The information collection burden estimate for 505(b)(2) applications is included in table 1 of this document under the estimates for § 314.50 (a), (b), (c), (d), (e), (f), and (k)).

Section 314.60 sets forth reporting requirements for sponsors who amend an unapproved application.

Section 314.65 states that the sponsor must notify FDA when withdrawing an unapproved application.

Sections 314.70 and 314.71 require that supplements be submitted to FDA for certain changes to an approved application.

Section 314.72 requires sponsors to report to FDA any transfer of ownership of an application.

Section 314.80(c)(1) and (c)(2) sets forth requirements for expedited adverse drug experience postmarketing reports and followup reports, as well as for periodic adverse drug experience postmarketing reports (Form FDA 3500A). (The burden hours for §§ 314.80(c)(1) and (c)(2) are already approved by OMB under OMB control numbers 0910-0230 and 0910-0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.80(i) establishes recordkeeping requirements for reports of postmarketing adverse drug experiences. (The burden hours for § 314.80(i) are already approved by OMB under OMB control numbers 0910-0230 and 0910-0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.81(b)(1) requires that field alert reports be submitted to FDA (Form FDA 3331).

Section 314.81(b)(2) requires that annual reports be submitted to FDA (Form FDA 2252).

Section 314.81(b)(3)(i) requires that drug advertisements and promotional labeling be submitted to FDA (Form FDA 2253). Form FDA 2253 has been revised by FDA as follows: On line 8, "Please check one or both" has been revised to read "Please check only one." In the instruction for line 8, the sentence "Consumer and professional pieces should be submitted separately" has been added.

Section 314.81(b)(3)(iii) sets forth reporting requirements for sponsors who withdraw an approved drug product from sale. (The burden hours for § 314.81(b)(3)(iii) are already approved by OMB under OMB control number 0910-0045 and are not included in the burden estimates in table 1 of this document.)

Section 314.90 sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.50 through 314.81. (The information collection burden estimate for NDA waiver requests is included in table 1 of this document under estimates for §§ 314.50, 314.60, 314.70 and 314.71.)

Section 314.93 sets forth requirements for submitting a suitability petition in accordance with 21 CFR 10.20 and 10.30. (The burden hours for § 314.93 are already approved by OMB under control number 0910-0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.94(a) and (d) requires that an ANDA contain the following information: Application form; table of contents; basis for ANDA submission; conditions of use; active ingredients; route of administration, dosage form, and strength; bioequivalence; labeling; chemistry, manufacturing, and controls; samples; patent certification.

Section 314.95 requires that any notice of certification of invalidity or noninfringement of a patent to each patent owner and the NDA holder be sent by ANDA applicants.

Section 314.96 sets forth requirements for amendments to an unapproved ANDA.

Section 314.97 sets forth requirements for submitting supplements to an approved ANDA for changes that require FDA approval.

Section 314.98(a) sets forth postmarketing adverse drug experience reporting and recordkeeping requirements for ANDAs. (The burden hours for § 314.98(a) are already approved by OMB under OMB control

numbers 0910-0230 and 0910-0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.98(c) requires other postmarketing reports for ANDAs: Field alert reports (Form FDA 3331), annual reports (Form FDA 2252), and advertisements and promotional labeling (Form FDA 2253). (The information collection burden estimate for field alert reports is included in table 1 of this document under § 314.81(b)(1); the estimate for annual reports is included under § 314.81(b)(2); the estimate for advertisements and promotional labeling is included under § 314.81(b)(3)(i).)

Section 314.99(a) requires that sponsors comply with certain reporting requirements for withdrawing an unapproved ANDA and for a change in ownership of an ANDA.

Section 314.99(b) sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.92 through 314.99. (The information collection burden estimate for ANDA waiver requests is included in table 1 of this document under estimates for § 314.94(a) and (d) and §§ 314.96 and 314.97.)

Section 314.101(a) states that if FDA refuses to file an application, the applicant may request an informal conference with FDA and request that the application be filed over protest.

Section 314.107(c) requires notice to FDA by the first applicant to submit a substantially complete ANDA containing a certification that a relevant patent is invalid, unenforceable, or will not be infringed of the date of first commercial marketing.

Section 314.107(e) requires that an applicant submit a copy of the entry of the order or judgment to FDA within 10 working days of a final judgment.

Section 314.107(f) requires that ANDA or section 505(b)(2) applicants notify FDA immediately of the filing of any legal action filed within 45 days of receipt of the notice of certification. A patent owner may also notify FDA of the filing of any legal action for patent infringement. If the patent owner or approved application holder who is an exclusive patent licensee waives its opportunity to file a legal action for patent infringement within the 45-day period, the patent owner or approved application holder must submit to FDA a waiver in the specified format.

Section 314.110(a)(3) and (a)(4) states that, after receipt of an FDA approvable letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.110(a)(3)

and (a)(4) are included under parts 10 through 16 (21 CFR part 16) hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.110(a)(5) states that, after receipt of an approvable letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.110(b) states that, after receipt of an approvable letter, an ANDA applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.110(b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.120(a)(3) states that, after receipt of a not approvable letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.120(a)(3) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document.)

Section 314.120(a)(5) states that, after receipt of a not approvable letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.122(a) requires that an ANDA or a suitability petition that relies on a listed drug that has been voluntarily withdrawn from sale must be accompanied by a petition seeking a determination whether the drug was withdrawn for safety or effectiveness reasons. (The burden hours for § 314.122(a) are already approved by OMB under OMB control number 0910-0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.122(d) sets forth requirements for relisting petitions for unlisted discontinued products. (The burden hours for § 314.122(d) are already approved by OMB under OMB control number 0910-0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.126(c) sets forth requirements for a petition to waive criteria for adequate and well-controlled studies. (The burden hours for § 314.126(c) are already approved by OMB under 0910-0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.151(a) and (b) set forth requirements for the withdrawal of approval of an ANDA and the applicant's opportunity for a hearing and submission of comments. (The burden hours for § 314.151(a) and (b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.151(c) sets forth the requirements for withdrawal of approval of an ANDA and the applicant's opportunity to submit written objections and participate in a limited oral hearing. (The burden hours for § 314.151(c) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.152(b) sets forth the requirements for suspension of an ANDA when the listed drug is voluntarily withdrawn for safety and effectiveness reasons, and the applicant's opportunity to present comments and participate in a limited oral hearing. (The burden hours for § 314.152(b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the burden estimates in table 1 of this document.)

Section 314.161(b) and (e) sets forth the requirements for submitting a petition to determine whether a listed drug was voluntarily withdrawn from sale for safety or effectiveness reasons. (The burden hours for § 314.161(b) and (e) are already approved by OMB under OMB control number 0910-0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.200(c), (d), and (e) requires that applicants or others subject to a notice of opportunity for a hearing who wish to participate in a hearing file a written notice of participation and request for a hearing as well as the studies, data, and so forth, relied on. Other interested persons may also submit comments on the notice. This section also sets forth the content and format requirements for the applicants' submission in response to notice of opportunity for hearing. (The burden hours for § 314.200(c), (d), and (e) are included under parts 10 through 16

hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.200(f) states that participants in a hearing may make a motion to the presiding officer for the inclusion of certain issues in the hearing. (The burden hours for § 314.200(f) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.200(g) states that a person who responds to a proposed order from FDA denying a request for a hearing provide sufficient data, information, and analysis to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing. (The burden hours for § 314.200(g) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the burden estimates in table 1 of this document.)

Section 314.420 states that an applicant may submit to FDA a drug master file in support of an application, in accordance with certain content and format requirements.

Section 314.430 states that data and information in an application are disclosable under certain conditions, unless the applicant shows that extraordinary circumstances exist. (The burden hours for § 314.430 is included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the burden estimates in table 1 of this document.)

Section 314.530(c) and (e) states that, if FDA withdraws approval of a drug approved under the accelerated approval procedures, the applicant has the opportunity to request a hearing and submit data and information. (The burden hours for § 314.530(c) and (e) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.530(f) requires that an applicant first submit a petition for stay of action before requesting an order from a court for a stay of action pending review. (The burden hours for

§ 314.530(f) are already approved by OMB under 0910-0194 and are not included in the burden estimates in table 1 of this document.)

Section 314.610(b)(1) requires that applicants include a plan or approach to postmarketing study commitments in applications for approval of new drugs when human efficacy studies are not ethical or feasible, and provide status reports of postmarketing study commitments. (The information collection burden estimate for § 314.610(b)(1) is included in table 1 of this document under the estimates for §§ 314.50 (a), (b), (c), (d), (e), (f), and (k) and 314.81(b)(2)).

Section 314.610(b)(3) requires that applicants propose labeling to be provided to patient recipients in applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The information collection burden estimate for § 314.610(b)(3) is included in table 1 of this document under the estimates for § 314.50(e)).

Section 314.630 requires that applicants provide postmarketing safety reporting for applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The burden hours for § 314.630 are already approved by OMB under OMB control numbers 0910-0230 and 0910-0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.640 requires that applicants provide promotional materials for applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The information collection burden estimate for § 314.640 is included in table 1 of this document under the estimates for § 314.81(b)(3)(i)).

Respondents to this collection of information are all persons who submit an application or abbreviated application or an amendment or supplement to FDA under part 314 to obtain approval of a new drug, and any person who owns an approved application or abbreviated application.

In the **Federal Register** of January 4, 2008 (73 FR 865), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section [Form Number]	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
314.50 (a), (b), (c), (d), (e), (f), and (k)	85	1.41	120	1,917	230,040

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹—Continued

21 CFR Section [Form Number]	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
314.50(i) and 314.94(a)(12)	96	9.61	923	2	1,846
314.50(j)	71	4.02	286	2	572
314.52 and 314.95	71	3.66	260	16	4,160
314.60	305	15.05	4,590	80	367,200
314.65	13	1.08	14	2	28
314.70 and 314.71	281	9.30	2,613	150	391,950
314.72	69	3.40	235	2	470
314.81(b)(1) [3331]	114	2.68	306	8	2,448
314.81(b)(2) [2252]	724	11.15	8,073	40	322,920
314.81(b)(3)(i) [2253]	390	61.39	23,942	2	47,884
314.94(a)(1)-(11) and (d)	110	7.21	793	480	380,640
314.96	300	28	8,400	80	672,000
314.97	215	20.66	4,442	80	355,360
314.99(a)	40	2.02	81	2	162
314.101(a)	1	1	1	.50	.50
314.107(c) -	56	4.1	230	.50	115
314.107(e) -	25	3.92	98	.50	49
314.107(f) -	56	4.1	230	.50	115
314.110(a)(5)	45	1.15	52	.50	26
314.120(a)(5)	10	1.20	12	.50	6
314.420	487	1.98	964	61	58,804
Total					2,836,795.5

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 10, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-8459 Filed 4-17-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-D-0224]

Draft Guidance for Sponsors, Industry, Researchers, Investigators, and Food and Drug Administration Staff: Certifications to Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance With Section 402(j) of the Public Health Service Act, Added by Title VIII of the Food and Drug Administration Amendments Act of 2007

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or agency) is announcing the availability of a draft

guidance for industry entitled “Guidance for Sponsors, Industry, Researchers, Investigators, and FDA Staff: Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance with Section 402(j) of The Public Health Service Act (PHS Act), Added By Title VIII of The Food and Drug Administration Amendments Act of 2007.” The draft guidance provides sponsors, industry, researchers, investigators, and FDA staff with the agency’s views on some types of information and documents submitted to FDA that typically need not be accompanied by the certification described in section 402(j)(5)(B) of the PHS Act.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the

final version of the guidance, submit written or electronic comments on the draft guidance by June 17, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Policy (HF-11), Office of Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm.1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy (HF-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3360.

SUPPLEMENTARY INFORMATION:

I. Background

Title VIII of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110-85) amended the PHS Act by adding new section 402(j) (42 U.S.C. 282(j)). The new provisions require that additional information be submitted to the clinical trials data bank (www.ClinicalTrials.gov) previously established by the National Institutes of Health (NIH)/National Library of Medicine, including expanded information on clinical trials and information regarding the results of clinical trials.

One new provision, section 402(j)(5)(B) of the PHS Act, requires that a certification accompany certain human drug, biological product, and device applications and submissions to FDA. The purpose of title VIII of FDAAA is to provide a means for ensuring that the public has access to information about certain clinical trials. Specifically, title VIII is intended to provide a mechanism for the public to learn about clinical trials that are being conducted, as well as the results of those trials. The certification, which accompanies certain applications and submissions to FDA, plays a role in helping to achieve the purposes of title VIII of FDAAA. One purpose of the certification is to require the submitter to confirm that it has complied with all applicable requirements of title VIII, including the requirement to register applicable clinical trials. Failure to submit a certification, knowingly submitting a false certification, failure to

submit required clinical trial information, and submission of clinical trial information that is false or misleading are all newly added prohibited acts under section 301(jj) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 331(jj)). Requiring a certification to accompany certain information and documents submitted to FDA is, therefore, one way of encouraging compliance with the provisions of the law.

The certification also serves the purpose of enabling FDA to exercise its responsibilities under the new law. The certification is critical to the agency's ability to determine whether the law has been complied with and whether a party has committed any of the new prohibited acts under section 301(jj) of the FD&C Act such that an enforcement action is appropriate. Section 402(j)(3)(F) of the PHS Act also requires FDA to notify the Director of NIH of certain actions taken on applications and reports that were accompanied by a certification. That notification alerts NIH to the fact that the responsible party must submit the results of the trials within a certain period of time, thereby enabling NIH to exercise its responsibilities under title VIII of FDAAA. The information in the certification form also will help FDA assist NIH in "linking" information posted on FDA's Web site regarding certain FDA regulatory actions to specific applicable clinical trials included in ClinicalTrials.gov. This linking, using the information in the certification form, eventually will allow FDA to help the public more easily correlate various reports, medical reviews, advisories, health alerts, advisory committee actions, and other materials with specific applicable clinical trials registered with ClinicalTrials.gov.

The certification requirement went into effect on December 26, 2007. To assist sponsors, industry, researchers, and investigators in complying with the requirement, FDA created a certification form, FDA Form 3674, that they may use to satisfy the certification requirement. Since the provision went into effect, FDA has received numerous inquiries asking whether various kinds of information and documents that sponsors, industry, researchers, and investigators submit to the agency should be accompanied by the certification.

The purpose of this draft guidance document is to provide FDA's current thinking regarding specific types of information and documents submitted to FDA under section 505, 515, 520(m), or 510(k) of the FD&C Act (21 U.S.C.

355, 360e, 360j(m), or 360(k)), or under section 351 of the PHS Act (42 U.S.C. 262) that typically need not be accompanied by the certification described in section 402(j)(5)(B) of the PHS Act. In determining whether specific information or documents submitted under the previously noted statutory sections typically should be accompanied by a certification, FDA has focused on the role the certification plays in achieving the purposes of title VIII of FDAAA. We believe that it would not further the purposes of the legislation if a certification were to accompany every type of information or document submitted to the agency regarding a medical product regulated by FDA.

While we intend the draft guidance to assist submitters in determining whether to submit a certification based on the type of document being submitted to FDA, this guidance does not address, nor does it make a recommendation on, all possible information and documents that may be submitted to FDA under those sections of the FD&C Act or the PHS Act. The guidance is currently limited to those specific types of submissions of information or documents described in the draft guidance. We will continue to review the types of information and documents that a certification typically does not need to accompany. We are interested in receiving comments from sponsors, industry, researchers, and investigators about additional types of information and documents submitted to FDA that typically need not be accompanied by a certification. (See section II of this document for instructions on how to submit comments on the draft guidance.) We intend to update this draft guidance document as appropriate to address additional information and documents that may be submitted under those sections and whether a certification should accompany those types of submissions of information or documents.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on those types of submissions of information or documents a certification typically does not need to accompany. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

II. Comments

We are interested in receiving comments from sponsors, industry, researchers, investigators, and other interested stakeholders on other types of information and documents that typically need not be accompanied by a certification. A description of the specific type of information or document and an explanation of the rationale for why a certification should not be necessary will assist us in evaluating the need for an accompanying certification.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information have been approved under OMB control no. 0910–0616.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at either <http://www.fda.gov/oc/initiatives/advance/fdaaa.html> or <http://www.regulations.gov>.

Dated: April 14, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–8349 Filed 4–17–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic 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: Dermatologic and Ophthalmic 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 May 29, 2008, from 8 a.m. to 1 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, Rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, Rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail:

Yvette.Waples@fda.hhs.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512534. 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 new drug application (NDA) 22–212, difluprednate ophthalmic emulsion, Sirion Therapeutics, Inc., proposed for the treatment of inflammation and pain following ocular surgery.

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 May 14, 2008. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. 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 May 6, 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 May 7, 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 Yvette Waples 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: April 10, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–8351 Filed 4–17–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Ethics Subcommittee of the Pediatric 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: Pediatric Ethics Subcommittee of the Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Pediatric Advisory Committee on FDA and certain Department of Health and Human Services (DHHS) regulatory issues.

Date and Time: The meeting will be held on June 9, 2008, from 8:30 a.m. to 5:30 p.m. and June 10, 2008, from 8 a.m. to 1 p.m.

Location: Holiday Inn /Gaithersburg, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Carlos Peña, Office of the Commissioner (HF-33), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, rm. 14B-08) Rockville, MD 20857, 301-827-3340, e-mail: Carlos.Peña@fda.hhs.gov or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hotline/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 9, 2008, the Pediatric Ethics Subcommittee of the Pediatric Advisory Committee will meet to discuss the application of 21 CFR 50.52 (Clinical investigations involving greater than minimal risk but presenting the prospect of direct benefit to individual subjects) to FDA-regulated research. The discussion will be illustrated with hypothetical case examples of research involving HIV vaccines in adolescents and controlled

trials of inhaled corticosteroids in children with asthma. On June 10, 2008, the Subcommittee will meet to discuss the application of 21 CFR 50.52 to FDA-regulated research illustrated with a hypothetical case example of research using stem cells for treating periventricular white matter injury in children.

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 May 20, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on June 9, 2008, and between approximately 8 a.m. and 8:30 a.m. on June 10, 2008. 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 May 13, 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. Persons making oral presentations should arrive early to be sure that they are present to make their presentation in case the schedule advances. The contact person will notify interested persons regarding their request to speak by May 12, 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 Carlos Peña

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: April 10, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8-8352 Filed 4-17-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 20-21, 2008.

Closed: May 20, 2008, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: May 21, 2008, 8 a.m. to 1:30 p.m.

Agenda: Call to order and reports from the Task Force Minority Aging Research Report; Working Group on Program Report; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robin Barr, PhD, Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496-9322, barr@nia.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nih.gov/nia/naca/>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 10, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8222 Filed 4-17-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: June 26-27, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Bethesda, Wisconsin Avenue, Bethesda, MD.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892-9304, 301-443-2369, lgunzerath@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8338 Filed 4-17-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 26-27, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Beata Buzas, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301-443-0800, bbuzas@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research

Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891 Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8340 Filed 4-17-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Review Subcommittee

Date: June 3-4, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza, 877 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Katrina L. Foster, PhD, Scientific Review Administrator, National Inst on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3042, Rockville, MD 20852, 301-443-4032, katrina@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory
Committee Policy.

[FR Doc. E8-8341 Filed 4-17-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Review Subcommittee.

Date: June 2-3, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Philippe Marmillot, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm 3045, Bethesda, MD 20892, 301-443-2861, marmillotp@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory
Committee Policy.

[FR Doc. E8-8344 Filed 4-17-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Office for Civil Rights and Civil Liberties; DHS Individual Complaint of Employment Discrimination

AGENCY: Office for Civil Rights and Civil Liberties, DHS.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection 1610-0001, DHS Form 3090-1.

SUMMARY: The Department of Homeland Security, Office for Civil Rights and Civil Liberties, submits this extension for the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). The Office for Civil Rights and Civil Liberties is soliciting comments concerning an extension to an existing information collection, DHS Individual Complaint of Employment Discrimination Form, DHS 3090-1. DHS previously published this information collection request (ICR) in the **Federal Register** on January 22, 2008 at 73 FR 3738, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow an additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until May 19, 2008. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties, and sent via electronic mail to oira_submission@omb.eop.gov or faxed to (202) 395-6974.

The Office of Management and Budget is particularly interested in comments which:

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, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the 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.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: the Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties, Mail Stop 0800, 245 Murray Lane, SW., Bldg 110, Washington, DC 20528, (202) 401-1474, (202) 401-0470 (TTY).

SUPPLEMENTARY INFORMATION: This form will allow a complainant to submit required information used by the Department to process an employment discrimination complaint with the Department of Homeland Security. The information contained in this form will allow the Department to accept, investigate and further process, or to dismiss issues.

Analysis

Agency: Department of Homeland Security, Office for Civil Rights and Civil Liberties.

Title: DHS Individual Complaint of Employment Discrimination Form.

OMB Number: 1610-0001.

Frequency: On occasion.

Affected Public: Federal Government and Individuals or Households. Information collection is necessary for DHS CRCL to identify problem areas, propose changes, and assist individuals experiencing problems during the filing of a formal EEO complaint with DHS.

Number of Respondents: 1200 respondents.

Estimated Time per Respondent: 30 minutes per response.

Total Burden Hours: 600 annual burden hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Dated: April 9, 2008.

Charles Armstrong,

Acting, Chief Information Officer.

[FR Doc. E8-8476 Filed 4-17-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY**Office of the Secretary****Office of Policy, Private Sector Office, DHS; Welcome to the United States Survey**

AGENCY: Office of Policy, Private Sector Office, DHS.

ACTION: 30-Day Notice and request for comments; Reinstatement without change of a previously approved information collection OMB Control Number 1601-0003.

SUMMARY: The Department of Homeland Security, Office of the Secretary, Office of Policy, Private Sector Office will submit this reinstatement without change for the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). The Private Sector Office is soliciting comments concerning the reinstatement without change to a previously approved information collection, Welcome to the United States Survey. DHS previously published this information collection request (ICR) in the **Federal Register** on January 31, 2008 at 73 FR 5861, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until May 19, 2008. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

The Office of Management and Budget is particularly interested in comments which:

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,

including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the 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.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: the Department of Homeland Security (DHS), Private Sector Office, Jenny Randall (202) 282-9801, this is not a toll free number.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), Office of the Secretary, Office of Policy, Private Sector Office, in conjunction with Customs and Border Protection (CBP) and Research Triangle Institute, International, will interview foreign visitors entering the United States at four southern border ports of entry, three northern border ports of entry and four airport ports of entry. This survey will measure how CBP is serving the American public with vigilance and integrity, while providing courteous and helpful treatment to visitors, immigrants and travelers. Additionally, this survey will further the Rice-Chertoff Initiative as has been announced by evaluating the two model airports (Dulles International Airport, Chantilly, VA, and Houston International Airport, Houston, TX) for baseline information as well as how welcomed foreign visitors feel upon entering the United States and interacting with a DHS Customs and Border Protection officer.

Analysis

Agency: Department of Homeland Security, Office of the Secretary, Office of Policy, Private Sector Office.

Title: Welcome to the United States Survey.

OMB Number: 1601-0003.

Frequency: One-time collection.

Affected Public: Foreign visitors into the United States.

Number of Respondents: 939 respondents.

Estimated Time per Respondent: 5 minutes per response.

Total Burden Hours: 78.22 annual burden hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Dated: April 10, 2008.

Charles Armstrong,

Acting, Chief Information Officer.

[FR Doc. E8-8505 Filed 4-17-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[FEMA-1751-DR]

Arkansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA-1751-DR), dated March 26, 2008, and related determinations.

EFFECTIVE DATE: April 9, 2008.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 26, 2008.

Monroe and Prairie Counties for Individual Assistance.

Pope and Sharp Counties for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

Scott County for Individual Assistance (already designated for Public Assistance, including direct Federal assistance.)

Clay, Conway, Crawford, Franklin, Howard, Newton, Pope, Sharp, and Van Buren Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

Independence, Jackson, Lawrence, Logan, Marion, Randolph, Stone, and Woodruff Counties for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

Monroe and Perry Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-8454 Filed 4-17-08; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1749-DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA-1749-DR), dated March 19, 2008, and related determinations.

EFFECTIVE DATE: April 9, 2008.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 19, 2008.

Barry, Barton, Camden, Cedar, Crawford, Dallas, Dent, Howell, Lawrence, Miller, Mississippi, Montgomery, New Madrid, Pemiscot, Perry, St. Clair, and Wright Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

Bollinger, Butler, Cape Girardeau, Carter, Christian, Franklin, Gasconade, Howard, Iron, Jefferson, Laclede, Madison, Maries, McDonald, Newton, Oregon, Osage, Phelps, Pulaski, Reynolds, Ripley, Scott, Shannon, Stoddard, Stone, Taney, Texas, Washington,

Wayne, and Webster Counties for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-8456 Filed 4-17-08; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA-2006-24191; Coast Guard-2006-24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Juneau, AK; Freeport, TX; Galveston, TX; Anchorage, AK; and Sandusky, OH

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Juneau, AK; Freeport, TX; Galveston, TX; Anchorage, AK; and Sandusky, OH.

DATES: TWIC enrollment begins in Juneau and Galveston on April 30, 2008; Freeport on May 1, 2008; Sandusky on May 7, 2008; and Anchorage on May 8, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at <http://www.regulations.gov>;

(2) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>; or

(3) Visiting TSA's Security Regulations Web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

FOR FURTHER INFORMATION CONTACT:

James Orgill, TSA-19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227-4545; e-mail: credentialing@dhs.gov.

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107-295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109-347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports of Juneau, AK and Galveston, TX on April 30, 2008; Freeport, TX on May 1, 2008; Sandusky, OH on May 7, 2008; and Anchorage, AK on May 8, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Southeast Alaska, including those in the Port of Juneau; Captain of the Port Zone Houston/Galveston, including those in the Ports of Freeport and Galveston; Captain of the Port Zone Western Alaska, including those in the Port of Anchorage; and Captain of the Port Zone Detroit, including those in the Port of Sandusky must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at <http://www.tsa.gov/twic>.

Issued in Arlington, Virginia, on April 15, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E8-8423 Filed 4-17-08; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Ione Band of Miwok Indians' Proposed 228.04-Acre Fee-To-Trust Land Transfer and Casino Project, Amador County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Ione Band of Miwok Indians (Tribe), National Indian Gaming Commission, City of Plymouth, California, and U.S. Environmental Protection Agency (EPA), intends to file a Draft Environmental Impact Statement (DEIS) with the EPA for the proposed 228.04 acre trust acquisition and construction of casino project to be located within the City of Plymouth in Amador County, California and that the DEIS is now available for public review. This notice provides a 75-day public comment period and thereby grants a 30-day extension to the normal 45-day public comment period. This notice also announces a public hearing to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by July 2, 2008. The public hearing will be held May 21, 2008, from 6 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Dale Risling, Deputy Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address, and the caption, "DEIS Comments, Ione Band of Miwok Indians' Casino Project," on the first page of your written comments.

The public hearing will be at the Amador County Fairgrounds, 18621 Sherwood and School Streets, Plymouth, California.

The DEIS is available for review at the Amador County Library, Jackson Main Library, 530 Sutter Street, Jackson, California 95642 and at the City Clerk, Plymouth City Hall, 9426 Main Street, Plymouth, California 95669. General information for the Amador County Library, Jackson Main Library, may be obtained by calling (209) 223-6400. General information for the City Clerk, Plymouth City Hall, may be obtained by calling (209) 245-6941.

If you would like to obtain a copy of the DEIS, please write or call John Rydzik, Chief of the Division of Environmental, Cultural Resource Management and Safety, at the BIA address above or the telephone number provided below. An electronic version of the DEIS may be viewed at <http://www.ioneeis.com>.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978-6042.

SUPPLEMENTARY INFORMATION: The Tribe has requested that the BIA take into Federal trust 228.04 acres of land currently held in fee by the Tribe, on which the Tribe proposes to construct a casino, a hotel, parking areas and other facilities. The proposed project is located in the City of Plymouth in Amador County, California. The project site is located immediately east of State Highway 49 and is within 2½ miles of State Highway 16. The project site consists of 12 parcels of land totaling 228.04 acres. Eight of the 12 parcels (10.28 acres) are located within the City of Plymouth, while the remaining four parcels, approximately 218 acres, are located on unincorporated land within Amador County.

Phase I of the proposed action includes the development of a 120,000 square foot casino complex, which would consist of a porte cochere, main gaming hall, food and beverage services, retail space and administration space. Approximately 65,000 square feet of this building space would be devoted to the main gaming hall, while the balance of the facility would include administration space, small retail shops, food/beverage facilities and a small gift and art shop. This entire complex would be built on land currently within the City of Plymouth. Primary access to the casino complex would be via State Highway 49.

Phase II of the proposed action consists of the construction of a hotel (250 rooms maximum), which would include small conference style facilities, together with food and beverage services. The proposed hotel would also be fitted with a dual plumbing system for the use of potable and recycled water. In addition, site parking would

be increased to supply adequate parking for hotel and conference patrons. The hotel is anticipated to be operational no sooner than the middle of year 3-4 of the project. Primary vehicle access to the hotel would be provided by the main casino and surface-parking driveway.

A range of project alternatives is considered in the DEIS, including: (1) Preferred casino and hotel; (2) reduced casino and hotel; (3) reduced casino, no hotel; (4) regional shopping development; and (5) no action. Environmental issues addressed in the DEIS include land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resource use patterns, public services, other values including noise, hazards and hazardous materials and visual resources and environmental justice, cumulative effects, indirect effects, growth inducing effects and mitigation measures. Input from the public, including that from public scoping meetings the BIA held November 19, 2003, and February 4, 2004, at the Amador County Fairgrounds in Plymouth, California, was included in the development of these alternatives and issues.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours: 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. 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.

Authority

This notice is published in accordance with section 1503.1 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: January 22, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–8334 Filed 4–17–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1220–NLCS]

Emergency Closure to Unpermitted Collection of Petrified Wood and Plant Fossils in the Robledo Mountains on Federal Land, Dona Ana County, NM.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain public land located in the southern Robledo Mountains, Dona Ana County, New Mexico, is subject to an emergency closure to unpermitted collection (free use) of fossilized wood and plant fossils. This closure is necessary in order to prevent further adverse impacts to paleontological resources in the area while the formal conservation status of the region is under determination. Closure will remain in effect for 2 years and may be renewed upon the completion of the Tri-County Resource Management Plan. Closure signs will be posted at main entry points to this area. Maps of the closure area, as well as documents associated with environmental review of this closure may be obtained at the Las Cruces District Office.

DATES: This closure is effective upon publication in the **Federal Register**, and will remain in effect for two years from April 18, 2008. This closure may be renewed upon the completion of the Tri-County Resource Management Plan.

FOR FURTHER INFORMATION CONTACT: Tim Sanders, Assistant District Manager, Multi-Resources, 1800 Marquess Street, Las Cruces, New Mexico 88005, Telephone (575) 525–4393.

SUPPLEMENTARY INFORMATION: The area has been proposed as an Area of Critical Environmental Concern and also is under Congressional consideration for National Monument status. A management plan to address the long-term management of paleontological resources would be initiated upon designation. Resource damage has already taken place and the potential for additional adverse effects occurring as a result of unrestricted collection within this area is substantial and significant. The authorities for this closure may be found at 43 CFR Subpart 3622, and 43

CFR Subpart 8364. This order applies to all forms of collection of fossilized plant and petrified wood materials; all unpermitted collection or free use of fossilized plant and petrified wood materials in the location identified in this closure order is prohibited.

On all public land, under section 303(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1733(a), 43 CFR 8360.0–7, and 43 CFR 9262.1, any person who violates any closures or restriction on public land as announced in this order may be tried before a United States Magistrate and fined no more than \$1,000.00 or imprisoned for no more than 12 months, or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571 (not to exceed \$100,000.00 and/or imprisonment not to exceed 12 months).

The public land affected by the closure order is located northwest of Las Cruces, New Mexico, and west of Interstate–25, in Dona Ana County, New Mexico and is described as follows:

New Mexico Principal Meridian

T., 22 S., R. 1 W.,

Section 24

Section 25 and

Portions of Sections 13, 14, 15, 22, 23, 26, 35, 36.

T. 22 S., R. 1 E.,

Portions of Sections 19, 30, 31.

The area described contains approximately 5,240 acres, more or less, of the Robledo Mountain Range. Maps of the land affected by this closure, as well as documents associated with environmental review of the closure are available in the Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico. The area affected by this order will be posted with appropriate signs announcing this closure.

Authority: 43 CFR 3622.3(a), and 43 CFR 8364.1.

Bill Childress,

District Manager, Las Cruces.

[FR Doc. E8–8384 Filed 4–17–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–FQ; SDM 034316]

Public Land Order No. 7702; Partial Revocation of Public Land Order No. 1446; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Public Land Order insofar as it affects 20 acres of public land within the Black Hills

National Forest withdrawn from surface entry and mining and reserved for use of the Forest Service as the Pactola Administrative Site. The land is no longer needed for administrative purposes. This order opens the land for sale.

EFFECTIVE DATE: May 19, 2008.

FOR FURTHER INFORMATION CONTACT:

Sandra Ward, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5052.

SUPPLEMENTARY INFORMATION: The revocation is needed to facilitate a Forest Service land sale conducted in accordance with Public Laws 106–329 and 109–54.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 1446 (22 FR 5873 (1957)), which withdrew public land from surface entry and mining and reserved it for use of the Forest Service as the Pactola Administrative Site, is hereby revoked insofar as it affects the following described land:

Black Hills Meridian

Black Hills National Forest

T. 2 N., R. 5 E.,

Sec. 26, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 20 acres in Pennington County.

2. The above-described land is hereby made available for sale in accordance with Public Law 106–329 and Public Law 109–54.

Authority: 43 CFR 2370.

Dated: April 3, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–8409 Filed 4–17–08; 8:45 am]

BILLING CODE 3419–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 94312]

Public Land Order No. 7705; Withdrawal of National Forest System Land To Preserve Cave Resources Adjacent to Jewel Cave National Monument; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,595.78 acres of National Forest System

land from mining for a period of 20 years to preserve unique cave resources adjacent to Jewel Cave National Monument. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: April 18, 2008.

FOR FURTHER INFORMATION CONTACT:

Valerie Hunt, U.S. Forest Service, Rocky Mountain Region, 303-275-5122 or Sandra Ward, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101-4669, 406-896-5052.

SUPPLEMENTARY INFORMATION: Geological formations nearby indicate that continued exploration may result in discovery of additional passageways and caverns beyond the known extent of Jewel Cave. This order protects the passageway and caverns extending beyond the exterior boundaries of the Jewel Cave National Monument.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from settlement, sale, location or entry under the United States mining laws (30 U.S.C. Ch. 2 (2000)), to preserve unique cave resources adjacent to the Jewel Cave National Monument:

Black Hills National Forest

Black Hills Meridian

T. 4 S., R. 2 E.,

Sec. 12, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 13, E $\frac{1}{2}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 4 S., R. 3 E.,

Sec. 5, lot 6 and lots 10 to 16, inclusive;

Sec. 6, lots 1 to 5, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$,

SE $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 7, lots 3 and 4, E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 8, lots 1 to 16, inclusive;

Sec. 9, lots 4 to 8, inclusive, and lots 11 to 14, inclusive;

Sec. 16, lots 4, 5, 8, and 9, NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 17, lots 1 to 14, inclusive;

Sec. 18, lots 1 to 4, inclusive, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 19, lots 1 and 2, NE $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 20, lots 1 to 9, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 21, lots 1 to 9 inclusive, and NW $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 4,595.78 acres in Custer County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of

National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Authority: 43 CFR 2310.3-3.

Dated: April 7, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8-8410 Filed 4-17-08; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-923-1430-ET; COC-69155]

Public Land Order No. 7700; Transfer of Public Land for the Maybell West Uranium Repository; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order permanently transfers 160 acres of public land to the Department of Energy for its Maybell West Uranium Repository, in accordance with the terms of the Uranium Mill Tailings Radiation Control Act of 1978 (Public Law 95-604), as amended.

EFFECTIVE DATE: April 18, 2008.

FOR FURTHER INFORMATION CONTACT:

Andy Senti, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7093, 303-239-3713.

SUPPLEMENTARY INFORMATION: The Umetco Maybell Uranium Mill Site has been stabilized and the Department of Energy plans to convert the site to a uranium mill tailings repository. Under Public Law 95-604, the Department of Energy is legally obligated to become the long-term custodian of the stabilized Umetco Maybell Uranium Mill Site. The long-term custodial responsibility is perpetual and is administered by the DOE under a Nuclear Regulatory Commission license. The land must be transferred in order for the Department of Energy to execute its responsibilities under Public Law 95-604.

Order

By virtue of the authority vested in the Secretary of the Interior by the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916 (2000)), as amended, it is ordered as follows:

1. Subject to valid existing right, the following described public land is hereby permanently transferred to the Department of Energy, and as a result of this transfer, the land is no longer subject to the operation of the general land laws, including the mining and mineral leasing laws, for the Maybell West Uranium Repository:

Sixth Principal Meridian

T. 7 N., R. 95 W.,

Sec. 24, S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$.

The area described contains 160 acres in Moffat County.

2. The transfer of the above-described land to the Department of Energy vests in that Department, full management, jurisdiction, responsibility, and liability for such land and all activities conducted thereon, except as provided in Paragraph 3.

3. The Secretary of the Interior shall retain the authority to administer any existing claims, rights, and interests in this land that were established before the effective date of the transfer.

Dated: March 27, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8-8418 Filed 4-17-08; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS-2008-OMM-0020]

Notice of Nominations Received and Proposed Limited Alternative Energy Leases on the Outer Continental Shelf (OCS) and Initiation of Coordination and Consultation

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Announcement of nominations and processing priorities, inquiry on competing nominations for proposed limited alternative energy leases, and request for comments from interested and affected parties.

SUMMARY: On November 6, 2007, the Minerals Management Service (MMS) published in the **Federal Register** (72 FR 214, pp. 62673-62675) a request for information and nominations of areas for leases authorizing alternative energy

resource assessment and technology testing activities pursuant to subsection 8(p) of the OCS Lands Act, as amended.

We received over 40 nominations of areas for limited leases authorizing such activities relating to wind, wave, and ocean current energy resources on the OCS. The MMS has considered the nominations in light of relevant criteria for proceeding with the issuance of leases. As required by subsection 8(p), MMS must issue such leases on a competitive basis unless we determine after public notice that there is no competitive interest. Subsection 8(p) also requires MMS to coordinate and consult with relevant Federal agencies and affected State and local governments concerning the issuance of OCS alternative energy leases. This Notice provides the required public notice of proposed leases by announcing the nominations that MMS has decided to process as a priority and inquiring as to the existence of any competitive interest in these nominated areas. Also, with this announcement we intend to inform all interested and affected parties of these nominations and invite comments and information—including information on environmental issues and concerns—that will be useful in our consideration of the nominated areas for the issuance of limited alternative energy leases.

DATES: The MMS requests any competing nominations and relevant comments and information by May 19, 2008. As it pertains to nominations, this is a strict deadline, and nominations received after the deadline will be not be considered by MMS for the purpose of determining competitive interest in the areas originally nominated. Other comments may be submitted within 60 days.

ADDRESSES: You may submit your comments by one of two methods:

(1) Federal eRulemaking Portal: <http://www.regulations.gov>. Under the tab “More Search Options,” click “Advanced Docket Search,” then select “Minerals Management Service” from the agency drop-down menu, then click “submit.” In the Docket ID column, select MMS–2008–OMM–0020 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.

(2) Mailing your comments to the following address: Minerals

Management Service, Offshore Minerals Management, Alternative Energy and Alternate Use Team, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Bornholdt, Minerals Management Service, Offshore Minerals Management, 381 Elden Street, Mail Stop 4080, Herndon, Virginia 20170–4817, (703) 787–1300.

SUPPLEMENTARY INFORMATION:

Public Comment Policy. Before including your address, phone number, e-mail address, or other personal identifying information in your submission, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. While you may 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.

Background. Under the interim policy described in the November 6, 2007, **Federal Register** Notice referenced above, MMS stated its intention to issue limited OCS alternative energy leases for a term of 5 years that would authorize resource assessment and technology testing activities, subject to specific terms and conditions. That Notice invited respondents who wish to acquire limited OCS alternative energy leases to nominate areas of interest by January 7, 2008. On December 14, 2007, MMS published in the **Federal Register** (72 FR 240, pp. 71152–71157) a Notice of new information collection that presented a proposed “Lease of Submerged Lands for Alternative Energy Activities on the OCS” and requested comments by February 12, 2008.

In addition to the nominations submitted by prospective lessees, MMS received numerous comments from proponents of OCS alternative energy development, including industry associations. Several of those comments stated that the interim policy should be revised to provide a right to commercial development for those who acquire leases for resource assessment and technology testing. As MMS stated in the November 6, 2007, **Federal Register** Notice, the interim policy is intended to permit the collection of resource assessment and technology testing data in support of future development activity without any priority right for future commercial development. It is designed to begin the process in the acquisition of needed information about a variety of OCS conditions under a relatively simple authorizing process. Conveyance of full commercial development rights would entail a much

lengthier and complicated process than MMS is willing to undertake at this time under the interim policy.

Therefore, MMS reiterates and reaffirms its interim policy as originally formulated and proposed. Further, in the absence of promulgated rules, MMS does not plan to revise the interim policy or adopt a new policy to authorize commercial development of OCS alternative energy. We will continue to defer consideration of commercial OCS alternative energy projects until regulations governing alternative energy activities on the OCS are in place, except with respect to the two proposed projects that are the subject of the savings provision of section 388 of the Energy Policy Act of 2005.

Prospective lessees, both the original nominators and those responding to this Notice, must show that they are qualified to hold an OCS lease before MMS will consider their proposals. The qualifications for holders of OCS oil and gas leases set forth at 30 CFR 256.35 provide useful guidance in this regard to prospective limited alternative energy lessees. Limited alternative energy lease holders must also comply with all terms and conditions of their lease (see the December 14, 2007, **Federal Register** Notice of the proposed lease form). As stated in the November 6, 2007, **Federal Register** Notice proposing the interim policy, a limited lease will grant the lessee the exclusive right to conduct the activities identified in the lease on the designated lease area. Acquisition of a limited lease will not grant the lessee any rights with respect to the future acquisition of commercial development rights for the leased site.

Nominations. We received nominations on the Atlantic and Pacific Coasts. Most of the Atlantic Coast nominations are for meteorological and oceanographic data collection facilities that would support wind energy projects off of the coasts of Massachusetts, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, and Georgia. There also are nominations for areas off of the coast of Florida focused on ocean current information collection and technology testing. On the Pacific coast, the main interest is in wave energy, and nominations were received for areas off California, Oregon and Washington.

The MMS has decided to give priority consideration to issuing limited leases for: (1) Data collection activities relating to wind resources off of the coasts of New Jersey, Delaware, and Georgia; (2) data collection and technology testing activities relating to current resources off of the coast of Florida; and (3) data

collection and technology testing activities relating to wave resources off

of the coast of Northern California. These locations of proposed OCS

alternative energy limited leasing are described as follows:

Adjacent state	Official protraction diagram	Block(s)	Resource
1. New Jersey	Hudson Canyon NJ 18-03 ..	6451	Wind.
2. New Jersey	Wilmington NJ 18-02	6936 and 7131	Wind.
3. New Jersey	Wilmington NJ 18-02	6931	Wind.
4. New Jersey	Wilmington NJ 18-02	6738	Wind.
5. New Jersey	Wilmington NJ 18-02	7033	Wind.
6. Delaware	Salisbury NJ 18-05	6325	Wind.
7. Georgia	Brunswick NH 17-02	6074	Wind.
8. Georgia	Brunswick NH 17-02	6174	Wind.
9. Georgia	Brunswick NH 17-02	6126	Wind.
10. Florida	Bahamas NG 17-06	7103	Current.
11. Florida	Bahamas NG 17-05	7040 and 7090	Current.
	Bahamas NG 17-06	7001, 7002, 7003, 7004, 7005, 7006, 7007, 7051, 7052, 7053, 7054, 7055, 7056, 7057, 7104, 7105, 7106, and 7107.	
12. Florida	Bahamas NG 17-06	6702, 6703, 6704, 6705, 6706, 6707, and 6708	Current.
13. Florida	Miami NG 17-08	6040	Current.
14. Florida	Bimini NG 17-09	6001	Current.
15. California	Ukiah NJ 10-02	6405, 6455, 6456, 6504, 6505, 6506, 6554, 6555, 6604, 6605, 6654, 6655, 6704, and 6705.	Wave.
16. California	Eureka NK 10-10	6031, 6032, 6033, 6080, 6081, 6082, 6083, 6130, 6131, 6132, 6133, 6179, 6180, 6181, 6182, 6229, 6230, 6231, 6232, 6279, 6280, 6281, 6330, and 6331.	Wave.

The above locations refer to areas identified on the Official Protraction Diagrams that are available from each MMS regional office and online at <http://www.mms.gov/ld/Maps.htm>, and the areas are identified as OCS blocks that are generally nine square miles in size. The nominated areas may be located on those maps or on a map viewer maintained by MMS at <http://www.mms.gov/offshore/RenewableEnergy/WebMappingViewer.htm>.

The MMS reviewed in detail all nominations we received and established our priority areas for initial leasing in light of considerations such as technological complexity, timing needs, competing use issues, and relationships to relevant state-supported renewable energy activities, as well as considerations relating to limited available MMS staff and budget resources for processing and managing limited leases. We also took into consideration the desirability of authorizing the advancement of activities relating to each of the alternative energy resource types cited in the nominations—wind, current, and wave.

We chose proposed leasing locations off of the New Jersey and Delaware coasts primarily because the installation of data collection facilities relating to wind would support the concurrent efforts by those States to foster commercial development of wind power on the adjoining OCS. We also selected the area off of the coast of Georgia as a site for limited leasing related to wind

because of the ongoing efforts of Southern Company and the Georgia Institute of Technology Strategic Energy Institute to acquire wind data to determine the technical and economic feasibility of locating an OCS wind energy project off of the coast of Georgia. Their efforts include the use of existing U.S. Navy meteorological and oceanographic data collection platforms and other lower elevation facilities for several years. They now propose to gather critical data at a substantially higher height.

We chose proposed leasing locations off of the coast of Florida, because the data collection and technology testing activities relate to ocean currents. The State of Florida has supported ocean current research through the Florida Atlantic University Center of Excellence in Ocean Energy Technology, which includes several academic, Federal Government, and private industry participants.

We chose two proposed leasing locations off of the coast of Northern California, specifically offshore Humboldt and Mendocino Counties, because the data collection and technology testing activities relate to ocean wave activities. The areas were nominated to conduct alternative energy resource assessment and technology testing with respect to the WaveConnect Projects proposed by Pacific Gas and Electric Company in each area. The Pacific Gas and Electric Company has sought or obtained permits from other Federal agencies and has applied to the California Public Utilities Commission

for funds to conduct studies related to these projects.

It is important to note that MMS has not made any final decision to award leases in the areas identified in this Notice. We have identified these areas as our priorities for potentially authorizing limited leases under this interim policy, and through this Notice we are soliciting comments to determine if competitive interest exists in these areas. Nominations that were not selected for processing as a priority, as well as additional nominations received in the future, may be processed by MMS at a later date. We have chosen to process a lease or group of leases relating to each type of alternative energy resource in accordance with our staff and budget resources and associated timing considerations. Many of the nominations that were not selected for priority processing appear to entail complex technology (e.g., new deeper-water designs) or environmental or conflicting use concerns that would make processing them more difficult and time consuming.

Request for Competing Nominations. As stated above, the areas that have been nominated for proposed alternative energy limited leases are identified as blocks on the OCS Official Protraction Diagrams. While we received some nominations for areas smaller than OCS blocks, we have decided that the minimum size for limited leases issued under the interim policy will be a block or aggregation of blocks but will not be smaller than a block. Upon acquisition of such a lease, a lessee may contract the

original lease area by relinquishing aliquot parts of the lease, a part as small as $\frac{1}{16}$ of a block.

We request respondents who wish to compete for limited leases for the areas identified in this Notice to submit a nomination identifying the block(s) in which you are interested, the resource(s) you want to assess (e.g., wind, current, wave) and the technology you want to test. Also, provide a general description of the type and number of installations or technologies you would use and a project schedule for the activities you propose. Your nomination of an area must be consistent with the type of alternative energy resource identified for that area (e.g., a nomination off of the coast of New Jersey must pertain to data collection activities relating to wind resources). A nomination that is not consistent with the resource identified for a specific area will not be considered. The block(s) you wish to nominate should be identified using the information on Official Protraction Diagrams available as described above. Also, if you submit such a nomination, please provide the name, telephone number, and e-mail address of an individual for the MMS to contact.

With this request MMS is inviting nominations from parties who have not previously submitted nominations for the areas identified in this Notice and are interested in acquiring leases only for one or more of the blocks listed above. Those who have already submitted nominations for these areas should not resubmit the same nomination. A nomination received in response to the November 6, 2007, **Federal Register** Notice will be considered active unless the original nominator notifies MMS in writing that the nominator is no longer interested in obtaining a lease for the area originally nominated. If an original nominator is interested in competing for a lease area identified in this Notice and it was not the original nominator of that site, it must submit a new nomination for that lease area as provided in this Notice. If you have not already submitted a nomination and wish to submit one for an area listed above, you must submit by the deadline stated above. Late submissions will not be considered.

MMS Analysis of Nominations. The MMS will consider the nominations received in response to this Notice along with the original nominations. We will determine that there is competitive interest for any proposed lease area that receives more than one nomination and that there is no competitive interest for any area that receives only one nomination. In instances where our analysis determines that there is

competitive interest, we will contact the competing nominators to explore options for collaboration or refinements of proposals before considering options for proceeding with a competitive auction. If we receive a competing nomination that only partially overlaps a multiple-block original nomination, we may determine that there is no competition, because in such a case the proposed lease area subject to competition would comprise the entire multiple-block original nomination. However, based on the information we receive in response to this notice, MMS may decide to issue a subsequent public notice requesting expressions of interest in the partial area where the competing nominations overlap separate from the remainder of the multiple-block area proposed for lease.

In instances where our analysis concludes that there is no competitive interest in a previously nominated area, we will contact the nominators and proceed with noncompetitive lease issuances as time and resources allow. However, we may first choose to explore options for collaboration in the interest of optimizing efficiency. The MMS will publicly announce the results of its analyses to determine competitive interest and its intentions to proceed with the issuance of leases.

Coordination and Consultation

The MMS invites all interested and affected parties to submit comments and information pertaining to the nominated areas listed above. We believe such input would be useful as we consider these areas for limited leasing, and we especially welcome information concerning geographic characteristics and environmental resources, as this will assist us in our environmental review processes. We seek information on the nominated areas relating to other ocean and seabed uses, relationships to onshore energy markets of the nominated areas, and applicable State and local laws and policies. We also request comments and suggestions on how we may best coordinate and consult comprehensively and efficiently to comply with applicable Federal, State, and local laws and policies. Officials of MMS intend to contact Federal, State, and local government counterparts during the comment period to discuss the nominations and the process for issuing limited OCS alternative energy leases under the interim policy. Such discussions may explore methods to foster intergovernmental coordination, including whether to establish intergovernmental task forces with

Federal, State, and local entities for this purpose.

Dated: April 2, 2008.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E8-8387 Filed 4-17-08; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

South Valley Facilities Expansion Project—Clark County, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of scoping meetings.

SUMMARY: The Bureau of Reclamation (Reclamation), together with the Bureau of Land Management (BLM) and the National Park Service (NPS) as cooperating agencies, is preparing an EIS pursuant to the National Environmental Policy Act to evaluate the effects of the South Valley Facilities Expansion (SVFE) Project (Project), as proposed by the Southern Nevada Water Authority (SNWA). The SNWA has applied for temporary and permanent rights-of-way to construct water treatment and conveyance facilities on public land administered by Reclamation, BLM, and NPS in Clark County, Nevada.

DATES: Public scoping meetings will be held from 4:30 to 8 p.m., with a half-hour presentation at 5:30 p.m., on Monday, Tuesday, and Wednesday, May 5, 6, and 7, 2008, to receive oral and written input on the scope of issues to be addressed in the EIS such as alternatives, resources, and other concerns. Written comments on the scope of the EIS should be submitted by May 23, 2008.

ADDRESSES: Send written comments to Ms. Laureen Perry (LC-2631), Bureau of Reclamation, Lower Colorado Region, PO Box 61470, Boulder City, NV 89006-1470, or to svfe-eis@lc.usbr.gov, or fax to 702-293-8418. The public scoping meetings will be held at the following locations:

- *Monday, May 5, 2008:* Valley View Recreation Center, 500 Harris Street, Henderson, NV 89015.

- *Tuesday, May 6, 2008:* Sun City MacDonald Ranch Community Center, 2020 West Horizon Ridge Parkway, Henderson, NV 89012.

- *Wednesday, May 7, 2008:* Wingate Hotel, 3041 St. Rose Parkway, Henderson, NV 89052.

FOR FURTHER INFORMATION CONTACT: Ms. Lauren Perry at 702-293-8020, or at the above address.

SUPPLEMENTARY INFORMATION: Evolving water use patterns in the southern area of the Las Vegas Valley and the need to increase the reliability and flexibility of the SNWA water supply system have resulted in the proposal to redistribute, treat, and convey existing water supplies to meet the water demand projections and use patterns in this area. The proposed SVFE Project would increase treatment and conveyance capacity to allow SNWA to redistribute existing water supplies to locations identified by the City of Henderson and the Las Vegas Valley Water District to meet projected water demands and to increase the flexibility and reliability of the SNWA system to meet seasonal and regional water needs. The Project consists of two major elements: (1) An expansion of raw water transmission and treatment facilities (the treatment element), and (2) construction of a new transmission system to convey treated water to the southern area of the Las Vegas Valley (the conveyance element).

The raw water transmission and treatment element of the Project includes upgrades and additional facilities to redistribute raw water from existing sources at Lake Mead to the River Mountains Water Treatment Facility (RMWTF); expansion of treatment capacity within the existing footprint of the RMWTF; and enhancement of existing pumping station capacity and water filtration rates.

The conveyance element would include construction of approximately 26 miles of underground pipeline (72- to 114-inch diameter) from the RMWTF to a location west of Interstate 15 in the vicinity of Cactus Avenue and Decatur Boulevard. Appurtenant facilities would include a 40-million gallon storage reservoir, rate-of-flow control stations, and a pumping station. Currently, the South Valley Lateral transmits water supplies to the southern Las Vegas Valley. The conveyance element of the SVFE Project would increase SNWA's management flexibility and system reliability by supplying water to locations identified by the City of Henderson and Las Vegas Valley Water District, and through a planned interconnection with the South Valley Lateral, would allow areas to be served from either lateral if needed as a result of maintenance, repair, or power outage.

Potential project alternatives include different pipeline alignments, different pipeline construction methods (trench excavation and tunneling), and different

locations for pumping stations, storage reservoir, and appurtenant facilities. Alignments being considered for the treatment element of the Project include following the existing raw water pipeline from the vicinity of Lake Mead to the RMWTF, or a new route under the River Mountains. One alignment being considered for the conveyance element includes a southern route from the RMWTF that heads south and then west and generally parallels the southern corporate limits of the City of Henderson, the northern boundary of Sloan Canyon National Conservation Area, and north of the Henderson Executive Airport to Gillespie Street. The northern conveyance alignment heads west from the RMWTF to U.S. Highway 95 where the alignment may go either north or south around Black Mountain. The route continues west and generally parallels Interstate 215 to St. Rose Parkway and to Maryland Parkway where the route turns south and then west to Gillespie Street. At Gillespie Street both the northern and southern alignments head south to St. Rose Parkway and north to Silverado Ranch Boulevard to new distribution facilities, and west across Interstate 15 to the terminus in the vicinity of Cactus Avenue and Decatur Boulevard. Maps of the potential alternative alignments will be available for review at the public scoping meetings, may be requested from Ms. Lauren Perry (at the above address), or may be viewed at <http://www.usbr.gov/lc/region/g2000/envdocs.html>.

Special Assistance for Public Scoping Meeting

If special assistance or other accommodation is needed, please notify Ms. Lauren Perry at 702-293-8020, or at svfe-eis@lc.usbr.gov, or by mail at the above address as far in advance as possible to secure the needed services. If a request cannot be honored, the requestor will be notified.

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 personal identifying information, may be made publicly available at any time. While you may request in your comment to withhold your personal identifying information from public review, Reclamation cannot guarantee it will be able to do so.

Dated: March 20, 2008.

Jayne Harkins,

Deputy Regional Director, Lower Colorado Region.

[FR Doc. E8-8380 Filed 4-17-08; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Yakima River Basin Conservation Advisory Group, Yakima River; Basin Water Enhancement Project, Yakima, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary of the Interior and Washington State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Tuesday, April 29, 2008, 1 p.m.–4 p.m.

ADDRESSES: Bureau of Reclamation, Yakima Field Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Larrick, Assistant Program Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington 98901; 509-575-5848, extension 209.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review the option of using the acquired habitat lands to mitigate the impacts that occur from the planned conservation measures and develop recommendations. This meeting is open to the public.

Dated: March 25, 2008.

Walter Larrick,

Assistant Program Manager Pacific Northwest Region.

[FR Doc. E8-8236 Filed 4-17-08; 8:45 am]

BILLING CODE 4310-MN-M

INTERNATIONAL TRADE COMMISSION**[Investigation No. 337-TA-587]****In the Matter of Certain Connecting Devices ("Quick Clamps") for Use With Modular Compressed Air Conditioning Units, Including Filters, Regulators, and Lubricators ("FRL's") That Are Part of Larger Pneumatic Systems and the FRL Units They Connect; Notice of Commission Decision Not To Review an Initial Determination of the Administrative Law Judge Finding No Violation of Section 337; Termination of the Investigation****AGENCY:** U.S. International Trade Commission.**ACTION:** Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") determining that there is no violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 13, 2006, based on a complaint filed by Norgren, Inc. ("Norgren") of Littleton, Colorado. 71 FR 66193 (Nov. 13, 2006). An amended complaint was filed on October 25, 2006. A supplement to the complaint was filed on November 1, 2006. The amended complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, or the sale within the

United States after importation of certain devices for modular compressed air conditioning units and the FRL units they connect by reason of infringement of claims 1-9 of U.S. Patent No. 5,372,392 ("the '392 patent"). The amended complaint also alleged that a domestic industry exists with regard to the '392 patent under subsection (a)(2) of section 337. The amended complaint named SMC Corporation of Japan; SMC Corporation of America of Indianapolis, Indiana (collectively, "SMC"); AIRTAC of China; and MFD Pneumatics ("MFD") of Chicago, Illinois as the respondents and requested a limited exclusion order and a cease and desist order. On July 13, 2007, the Commission determined not to review an ID terminating the investigation with respect to MFD and AIRTAC on the basis of a consent order stipulation and consent order.

On February 13, 2008, the ALJ issued his final ID finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, the ALJ found that there had been an importation of SMC's accused products and that none of the accused products infringe the asserted claims of the '392 patent. He also found that the asserted claims are not invalid due to obviousness. He further found that Norgren satisfies the domestic industry requirement with respect to the '392 patent. On February 25, 2008, the ALJ issued a recommended determination on remedy and bonding in the event the Commission reversed his finding of no violation of section 337.

On February 25, 2008, Norgren and SMC each filed a separate petition for review of the ID. The Commission Investigative Attorney ("IA") did not file a petition for review. On March 3, 2008, Norgren and SMC filed responses in opposition to each other's petitions for review, and the IA filed her response in opposition to both petitions.

On March 5, 2008, the Commission determined to extend the deadline for determining whether to review the ID by 14 days, *i.e.*, until April 14, 2008.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined not to review the ALJ's determination and has terminated this investigation with a finding of no violation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42-45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-45).

By order of the Commission.

Issued: April 14, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-8353 Filed 4-17-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR**Employment and Training Administration****[TA-W-59,649]****Rowe Furniture, Inc., Including On-Site Leased Workers From Penske Logistics, Elliston, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on July 25, 2006, applicable to workers of Rowe Furniture, Inc., Elliston, Virginia. The notice was published in the **Federal Register** on August 14, 2006 (71 FR 46518).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of upholstered living room furniture.

New information shows that leased workers of Penske Logistics were employed on-site at the Elliston, Virginia location of Rowe Furniture. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Penske Logistics working on-site at the Elliston, Virginia location of the subject firm.

The intent of the Department's certification is to include all workers employed at Rowe Furniture, Inc., Elliston, Virginia who were adversely affected by increased imports.

The amended notice applicable to TA-W-59,649 is hereby issued as follows:

All workers of Rowe Furniture, Inc., including on-site leased workers from Penske Logistics, Elliston, Virginia, who became

totally or partially separated from employment on or after June 28, 2005, through July 25, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974. I further determine that all workers of Rowe Furniture, Inc., Elliston, Virginia are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8354 Filed 4-17-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-63,020]

Owens Brockway, Fulton, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 18, 2008 in response to a petition filed by a company official on behalf of workers at Owens Brockway, Fulton, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 4th day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-7741 Filed 4-17-08; 8:45 am]

BILLING CODE 4510-FN-P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and the Board's Committees; Revised Notice; Technical Revisions

Notice

The Legal Services Corporation (LSC) is announcing technical revisions to the notices of meetings of the Board of Directors and two of its Committees. The revisions appear in *italic*. There are no other changes.

TIMES AND DATES: The Legal Services Corporation Board of Directors and *five* of the Board's Committees will meet on April 25-26, 2008 in the order set forth in the following schedule, with each meeting commencing within 10 minutes after adjournment of the immediately preceding meeting.

PUBLIC OBSERVATION BY TELEPHONE: Members of the public who wish to

listen to the open portions of the meetings live may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. Comments from the public may from time to time be solicited by the presiding Chairman.

Call-In Directions for Open Sessions

Friday, April 25, 2008

- Call toll-free number 1-888-831-6080.
- When prompted, enter the following numeric pass code: 23698.
- When connected to the call, please "MUTE" your telephone immediately.

Saturday, April 26, 2008

- Call toll-free number 1-888-913-9965.
- When prompted, enter the following numeric pass code: 58990.
- When connected to the call, please "MUTE" your telephone immediately.

MEETING SCHEDULE

Date	Time ¹
Friday, April 25, 2008:	
1. Provision for the Delivery of Legal Services Committee (Provisions Committee).	1:30 p.m.
2. Operations & Regulations Committee.	
Saturday, April 26, 2008:	
3. Finance Committee	9 a.m.
4. Audit Committee.	
5. Annual Performance Reviews Committee.	
6. Board of Directors.	

¹ Please note that all times in this notice are *Central Daylight Time*.

LOCATION: The Marriott Hotel, 3233 Northwest Expressway, Oklahoma City, Oklahoma.

STATUS OF MEETINGS: Open, except as noted below.

• *April 26, 2008 Finance Committee Meeting*—A portion of the Committee's meeting may be *closed* to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to receive a report/briefing on staff's assessment of proposals submitted by companies competing for selection to serve as Administrator of the 403(b) Thrift Plan (Plan) for LSC employees, as well as to permit the Committee to conduct confidential interviews of representatives of two of the competing companies. The staff report/briefing is not subject to the Government in the Sunshine Act or the Legal Services Corporation regulations implementing

the Sunshine Act.² The closing is authorized by the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(4) and (c)(9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(c) and (g). A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provision(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), and the corresponding provision of LSC's implementing regulation, 45 CFR 1622.5(e), will not be available for public inspection. The transcript of any portions not falling within the cited provisions will be available for public inspection. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

• *April 26, 2008 Board of Directors Meeting*—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on the General Counsel's report on potential and pending litigation involving LSC. A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(10), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(h), will not be available for public inspection. The transcript of any portions not falling within the cited provisions will be available for public inspection. A copy of the General Counsel's Certifications that the closings are authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Friday, April 25, 2008

Provision for the Delivery of Legal Services Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of January 25, 2008.
3. Staff Update on activities implementing the *LSC Private Attorney Involvement Action Plan—Help Close*

¹ Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

the Justice Gap: Unleash the Power of Pro Bono.

4. Staff Update on LSC Technology Capacities for Legal Aid Offices.

5. Presentation on Native American Delivery and Funding.

- Representatives of Native American Indian Legal Services (NAILS).

6. Consider and act on Provision for the Delivery of Legal Services Committee charter to propose to the Board of Directors for adoption.

7. Chairman's Update on Provisions Committee 2008 Agenda.

8. Public comment.

9. Consider and act on other business.

10. Consider and act on adjournment of meeting.

Operations & Regulations Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's January 25, 2008 meeting.
3. Approval of the minutes of the Committee's January 26, 2008 meeting.
4. Consider and act on initiation of rulemaking to adopt "lesser sanctions".
 - a. Staff report.
 - b. OIG comment.
 - c. Public comment.
5. Consider and act on Operations & Regulations Committee charter to propose to the Board of Directors for adoption.
6. Staff report on development of LSC's in-house Compliance Program.
7. Staff report on LSC's Continuation of Operations Plan ("COOP").
8. Staff report on LSC's risk management plan.
9. Public comment.
10. Consider and act on other business.
11. Consider and act on adjournment of meeting.

Saturday, April 26, 2008

Finance Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of January 26, 2008.
3. Consider and act on adjustments to the Consolidated Operating Budget for FY 2008 and recommend Resolution # 2008-004 to the full Board.
 - Presentation by David Richardson, Treasurer/Comptroller.
 - Comments by Charles Jeffress.
4. Presentation on LSC's Financial Reports for the first six months of FY 2008.

- Presentation by David Richardson, Treasurer/Comptroller.

- Comments by Charles Jeffress, Chief Administrative Officer.

5. Report on FY 2009 appropriations process.

- Presentation by John Constance, Director, Office of Government Relations and Public Affairs.

6. Consider and act on Finance Committee charter to propose to the Board of Directors for adoption.

Closed Session

7. Consider and act on a recommendation to the Board for a new plan administrator for the 403(b) Thrift Plan for Employees of LSC, Resolution 2008-005.

- Introduction by Charles Jeffress.
- Presentation by the Nationwide Team, Ivette Dominguez, Regional Vice President, Private Sector Retirement Plans, Nationwide Financial; Ralph Prisco, President, Long Island Employee Benefits Group; and Thomas Gletner, SunTrust Investment Services.

- Presentation by the American United Life/One America Team, David Frost, Regional Sales Director, AUL/One America; and David Ponder, Ponder Financial Group, Financial Adviser.

Open Session

8. Public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

Audit Committee

Agenda

Open Session

1. Approval of agenda.
2. Report of the Committee Chairman on the Board's actions regarding establishment of the Audit Committee.
3. Report on Board Chairman's appointments to the Audit Committee.
4. Committee Chairman's summary of the Audit Committee's Charter.
5. Consider and act on the process used by the Inspector General to select and/or retain the Corporation's external auditor.
6. Consider and act on how the work of the Office of Inspector General will assist and complement the work of the Audit Committee.
7. Comments by LSC's Independent Public Accountant ("IPA") regarding the IPA's perspective on the Audit Committee mission.
8. Consider and act on development of a plan of action for the Committee.
9. Public comment.
10. Consider and act on other business.
11. Consider and act on adjournment of meeting.

Performance Reviews Committee

Agenda

Open Session

1. Approval of agenda.
2. Consider and act on establishment of procedures and a protocol for the annual performance review of the LSC Inspector General.
3. Consider and act on other business.
4. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's Open Session meeting of January 26, 2008.
3. Approval of minutes of the Board's Open Session telephonic meeting of February 20, 2008.
4. Approval of minutes of the Board's Open Session telephonic meeting of March 24, 2008.
5. Consider and act on delegation to Chairman of authority to assign Directors to the various committees of the Board and to appoint each committee's chairperson.
6. Chairman's Report.
7. Members' Reports.
8. President's Report.
9. Inspector General's Report.
10. Consider and act on the report of the Provision for the Delivery of Legal Services Committee.
11. Consider and act on the report of the Finance Committee.
12. Consider and act on the report of the Operations & Regulations Committee.
13. Consider and act on the report of the Audit Committee.
14. Consider and act on the report of the Performance Reviews Committee.
15. Consider and act on the report of the Board's 2008 Ad Hoc Committee Liaison.
16. Consider and act on recommendations made to the Board in the Government Accountability Office report on LSC governance.
 - a. Develop a plan for providing a regular training program for board members that includes providing updates or changes in LSC's operating environment and relevant governance and accountability practices.
 - b. Implement a periodic self-assessment of the Board's, the committees', and each individual member's performance for purposes of evaluating whether improvements can be made to the board's structure and processes.

c. Develop and implement procedures to periodically evaluate key management processes, including at a minimum, processes for risk assessment and mitigation, internal control, and financial reporting.

d. Establish and implement a comprehensive orientation program for new board members to include key topics such as fiduciary duties, IRS requirements, and interpretation of the financial statements.

e. Adopt Board committee charters.

17. Consider and act on proposed Protocol for Board member access to Corporation records.

18. Public comment.

19. Consider and act on other business.

20. Consider and act on whether to authorize an executive session of the Board to address items listed below under *Closed Session*.

Closed Session

21. Approval of minutes of the Board's Executive Session of January 26, 2008.

22. Consider and act on General Counsel's report on potential and pending litigation involving LSC.

23. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295-1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295-1500.

Dated: April 16, 2008.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 08-1156 Filed 4-16-08; 2:16 pm]

BILLING CODE 7050-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 08-027]

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 Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection helps to ensure that engineering changes to contracts are made quickly and in a cost effective manner. Proposals supporting such change orders contain detailed information to obtain best goods and services for the best prices.

II. Method of Collection

NASA does not prescribe a format for submission, though most contractors have cost collection systems which are used for proposal preparation. NASA encourages the use of computer technology for preparing proposals and submission.

III. Data

Title: Modifications Related to Engineering Change Proposals.

OMB Number: 2700-0054.

Type of review: Revision of currently approved collection.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Time Per Response: 30 hours.

Estimated Total Annual Burden Hours: 4500 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,

Associate Chief Information Officer (Acting).

[FR Doc. E8-8415 Filed 4-17-08; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 08-028]

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 Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Record-keeping and reporting are required to ensure proper accounting of Federal funds and property provided under grants and cooperative agreements with state and local governments.

II. Method of Collection

Electronic funds transfer is used for payment under Treasury guidance.

Submission of almost all information required under grants or cooperative agreements with state and local governments, including property, financial, performance, and financial reports, is submitted electronically.

III. Data

Title: Grants and Cooperative Agreements with State and Local Governments.

OMB Number: 2700-0093.

Type of review: Revision of currently approved collection.

Affected Public: State, Local or Tribal Governments.

Estimated Number of Respondents: 70.

Estimated Time Per Response: 10 hours for record-keeping and 1 hour for each of different report types.

Estimated Total Annual Burden Hours: 1370 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,

Associate Chief Information Officer (Acting).

[FR Doc. E8-8416 Filed 4-17-08; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 08-029]

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 Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Record-keeping and reporting are required to ensure proper accounting of Federal funds and property provided under grants and cooperative agreements with state and local governments.

II. Method of Collection

Electronic funds transfer is used for payment under Treasury guidance. Submission of almost all information required under grants or cooperative agreements with state and local governments, including property, financial, performance, and financial reports, is submitted electronically.

III. Data

Title: Grants and Cooperative Agreements with State and Local Governments.

OMB Number: 2700-0017.

Type of review: Revision of currently approved collection.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1092.

Estimated Time Per Response: Variable.

Estimated Total Annual Burden Hours: 9805 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,

Associate Chief Information Officer (Acting).

[FR Doc. E8-8465 Filed 4-17-08; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[08-030]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Sharon Mar, Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

I. Abstract

This information collection is an application form to be considered for career exploration opportunities through job shadowing and access to NASA education resources. Students are

required to submit an application package consisting of an application form, a teacher recommendation, and parent/guardian permission for parents to sign approving the child's participation.

II. Method of Collection

NASA will utilize a Web-base application form with instructions and other application materials also on-line.

III. Data

Title: Kennedy Education Experiences Program (KEEP) Application.

OMB Number: 2700-XXXX.

Type of Review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 20.

Estimated Total Annual Cost: \$0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

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

Gary Cox,

Associate Chief Information Officer (Acting).

[FR Doc. E8-8466 Filed 4-17-08; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of Humanities Panels will be

held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 1, 2008.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars for Teachers, submitted to the Division of Education Programs, at the March 3, 2008 deadline.

2. *Date:* May 5, 2008.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs, at the March 17, 2008 deadline.

3. *Date:* May 6, 2008.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs, at the March 17, 2008 deadline.

4. *Date:* May 7, 2008.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American

History and Culture, submitted to the Division of Education Programs, at the March 17, 2008 deadline.

5. *Date:* May 30, 2008.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Advancing Knowledge in Preservation and Access Advancing Knowledge, submitted to the Division of Preservation and Access, at the March 18, 2008 deadline.

Heather C. Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E8-8504 Filed 4-17-08; 8:45 am]

BILLING CODE 7536-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52-017]

Dominion Virginia Power; Supplement to Notice of Hearing and Opportunity to Petition for Leave To Intervene on a Combined License for North Anna Unit 3; Order Imposing Procedures for Access To Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation

The U.S. Nuclear Regulatory Commission (NRC) has determined to issue a supplement to the "Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for North Anna Unit 3" (Notice of Hearing) published in the **Federal Register** on March 10, 2008 (73 FR 12760). The Notice of Hearing offered an opportunity to petition for leave to intervene in the proceeding on the application dated November 26, 2007, filed by Dominion Virginia Power (Dominion) pursuant to Subpart C of 10 CFR Part 52 for a combined license (COL) for North Anna Unit 3, which would be located at the North Anna Power Station in Louisa County, Virginia. The application references the Early Site Permit for the North Anna ESP Site (North Anna ESP), which was issued on November 27, 2007, and the application for certification of the economic simplified boiling water reactor (ESBWR) design, which was initially submitted on August 24, 2005. The Commission believes the documents on the dockets of the North Anna ESP and ESBWR proceedings may be useful to persons who seek to intervene in the proceeding on the COL application. Accordingly, this notice provides additional information on the availability of the North Anna ESP, the ESBWR application, and the documents

submitted on their respective dockets, which are Docket Nos. 52-008 (North Anna ESP) and Docket No. 52-010 (ESBWR).

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (First Floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. The ADAMS accession number for the North Anna ESP is ML073180440. To search for documents on the North Anna ESP docket, enter "05200008" in the "Docket Number" field in the Web-based search (advanced search) engine or the ADAMS find tool. The ESP application and staff review documents related to the North Anna ESP are also available at <http://www.nrc.gov/reactors/new-licensing/esp/north-anna.html>. To search for documents on the ESBWR docket, enter "05200010" in the "Docket Number" field in the Web-based search (advanced search) engine or the ADAMS find tool. The ESBWR design control document is also available at <http://www.nrc.gov/reactors/new-licensing/design-cert/esbwr.html>. In addition, as stated in the Notice of Hearing, the ADAMS accession number for the Dominion COL application (cover letter) is ML073320913, and the entire application is available at: <http://www.nrc.gov/reactors/new-licensing/col.html>. To search for documents on the North Anna COL application docket, enter "05200017" in the "Docket Number" field in the Web-based search (advanced search) engine or the ADAMS find tool. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to pdr.resources@nrc.gov.

Neither this supplement to the Notice of Hearing nor the following Order changes the time set in the Notice of Hearing for the filing of petitions for leave to intervene in the proceeding on the Dominion COL application. The last day for filing such a petition remains May 9, 2008.

Order Imposing Procedures for Access To Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and SGI).

2. Within ten (10) days after publication of this Supplement to Notice Of Hearing And Opportunity To Petition For Leave To Intervene On A Combined License For North Anna Unit 3, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the Notice of Hearing may request access to SUNSI or SGI. A "potential party" is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are HearingDocket@nrc.gov and OGCmail@nrc.gov, respectively.¹ The request must include the following information:

a. A description of the licensing action with a citation to the Notice of Hearing published in the **Federal Register** on March 10, 2008 (73 FR 12760);

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting

access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and,

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and,

e. If the request is for SGI, Form SF-85, "Questionnaire for Non-Sensitive Positions," Form FD-248 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF-85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301-415-0320.² The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of \$191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: Office of Administration, Security Processing Unit, Mail Stop T-6E46, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. Note: copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter

¹ See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

² The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding³ and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and

that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and,

d. The presiding officer has issued a protective order concerning the information or documents requested.⁴ Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the Notice of Hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,⁵ and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to

SUNSI or with respect to standing or need to know for SGI by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.⁶

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2.

Dated at Rockville, Maryland, this 14th day of April 2008.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

³ Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

⁴ If a presiding officer has not yet been designated, the Chief Administrative Judge will

issue such orders, or will appoint a presiding officer to do so.

⁵ Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

⁶ As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

ATTACHMENT 1.—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of Supplement to FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
60	May 9, 2008, deadline for submitting petition for intervention containing: (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
25	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E8-8414 Filed 4-17-08; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION**Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Monday, April 21, 2008 at 10 a.m. in the Auditorium, Room L-002.

Chairman Cox, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the Open Meeting scheduled for April 21, 2008 will be:

The Commission will consider whether to propose amendments to provide for corporate financial statement information to be filed with the Commission in interactive data format, and a near- and long-term schedule therefor.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: April 15, 2008.

Nancy M. Morris,
Secretary.

[FR Doc. E8-8517 Filed 4-17-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57659; File No. SR-MSRB-2008-03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G-11, on New Issue Syndicate Practices, and Rule G-12, on Uniform Practice

April 14, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 18, 2008, the Municipal Securities Rulemaking Board ("MSRB" or "Board") 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 MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G-11 and Rule G-12 that (a) delete Rule G-12(i); (b) consolidate the remaining syndicate practice provisions of Rule G-12 into Rule G-11; (c) delete the syndicate-related sections of Rule G-12; and (d) make minor technical corrections to Rule G-11. The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule G-11, on new issue syndicate practices, sets forth basic requirements for dealers serving as senior managers or members of underwriting syndicates. Rule G-12, on uniform practice, includes additional settlement-related provisions in connection with syndicate operations. The Board has determined to consolidate the syndicate practice provisions into Rule G-11 by deleting the syndicate-related sections of Rule G-12 and inserting them into Rule G-11, as well as to make minor technical corrections to Rule G-11. This consolidation will put the Board's syndicate practice requirements into a single rule and thereby reduce the possibility of rule violations due to inadvertent failures to note the additional syndicate practice provisions that are currently embedded in Rule G-12 among other un-related provisions.

In addition, the Board has also determined to delete Rule G-12(i), on good faith deposits, in order to clarify and modernize its rules to bring them into line with the realities of current market practice without compromising investor protection. A good faith deposit was in the past generally delivered to a municipal bond issuer by a firm competing for the underwriting business of the issuer. If the syndicate was not successful in purchasing the issue, Rule G-12(i) required the syndicate manager to return the deposit to the members of the syndicate within two business days following the return of the deposit from the issuer. Under current market practice, generally such deposits are not advanced either because they are not required by issuers or are treated as an expense of the syndicate for which syndicate managers give an accounting to syndicate members pursuant to MSRB rules.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,³ which provides that the MSRB's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to

and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change will facilitate transactions in municipal securities and protect investors and the public interest by creating a consolidated rule that seeks to avoid inadvertent rule violations and clarifies and modernizes its rules to bring them into line with the realities of current market practice without compromising investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2008-03 on the subject line.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78o-4(b)(2)(C).

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-MSRB-2008-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2008-03 and should be submitted on or before May 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴

Nancy M. Morris,
Secretary.

[FR Doc. E8-8348 Filed 4-17-08; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11206 and # 11207]

Arkansas Disaster Number AR-00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-1751-DR), dated 03/28/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/18/2008 and continuing.

DATES: Effective Date: 04/09/2008.

Physical Loan Application Deadline Date: 05/27/2008.

EIDL Loan Application Deadline Date: 12/29/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Arkansas, dated 03/28/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Monroe, Pope, Prairie, Scott, Sharp.

Contiguous Counties:

Arkansas: Arkansas, Conway, Lee, Lonoke, Montgomery, Phillips, Polk. Oklahoma; Le Flore.

All other information in the original declaration remains unchanged. (Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-8364 Filed 4-17-08; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 6176]

International Security Advisory Board (ISAB) Meeting Notice

Announcement Type: Closed meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on May 9, 2008, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public in the interest of national defense and foreign policy because the Board will be reviewing and discussing matters classified in accordance with Executive Order 12958.

The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, political-military affairs, and international security and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding international security, nuclear proliferation, and diplomacy.

For more information, contact Brandon Buttrick, Deputy Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 647-9336.

Dated: April 8, 2008.

George W. Look,

Executive Director, International Security Advisory Board, Department of State.

[FR Doc. E8-8413 Filed 4-17-08; 8:45 am]

BILLING CODE 4710-27-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Intent To Not Re-Evaluate Aircraft Kits Previously Determined To Be Eligible for Certification as Amateur-Built Aircraft**

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: This notice announces the FAA's intent to not re-evaluate aircraft kits previously determined to be eligible for certification as amateur-built aircraft. Although the FAA recently announced its intent to temporarily suspend amateur-built aircraft kit evaluations, this notice announces our intent to not re-evaluate or remove any kits from the agency's current eligibility list as a result of developing new evaluation procedures. Those evaluations were conducted to determine if a prefabricated amateur-built aircraft kit is eligible for certification as an amateur-built aircraft and will continue to remain valid.

FOR FURTHER INFORMATION CONTACT:

Frank P. Paskiewicz, Manager, Production and Airworthiness Division, Aircraft Certification Service, AIR-200, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2008, the FAA published a notice in the **Federal**

⁴ 17 CFR 200.30-3(a)(12).

Register (73 FR 8926) which temporarily suspended amateur-built aircraft kit evaluations. The FAA has performed these evaluations as a courtesy to assist manufacturers in determining whether their prefabricated aircraft kits can meet the regulatory requirements for certification as an amateur-built aircraft under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.191(g). That section defines an amateur-built aircraft as, "an aircraft the major portion of which has been fabricated and assembled by persons who undertook the construction project solely for their own education or recreation." Upon determination that the percentage of a kit presented for evaluation by a manufacturer permits the major portion (51%) of the aircraft's fabrication and assembly to be completed by an amateur builder, the aircraft kit is added to a list of eligible kits maintained by the FAA.

Kit evaluations have been a courtesy that the FAA has provided for the convenience of kit manufacturers, their customers, and FAA inspectors. Successful evaluations assure manufacturers that their kits can be marketed as being eligible for certification as an amateur-built aircraft. They also assist inspectors by providing a baseline from which an inspector can begin an assessment of a completed aircraft kit once it has been presented for certification under § 21.191(g). Additionally, the evaluations inform prospective applicants that an aircraft is eligible for certification as an amateur-built aircraft, when completed in accordance with FAA-evaluated assembly and instruction manuals. Completion of a kit evaluation, however, is not, nor ever has been, a regulatory requirement.

The FAA recently concluded that a temporary suspension of kit evaluations is necessary because existing policy and guidance used to evaluate these kits has resulted in inconsistent determinations regarding regulatory compliance. This decision also reflects the conclusions of the Amateur-Built Aviation Rulemaking Committee (ARC). That committee was established on July 26, 2006, to make recommendations regarding the use of builder or commercial assistance when fabricating and assembling amateur-built aircraft intended for certification under § 21.191(g). The committee concluded that the process used for the evaluation of aircraft kits is not standardized. The FAA believes a temporary suspension of kit evaluations is therefore needed to update the policy and guidance material used to conduct these evaluations. The agency is currently evaluating proposed changes

to the policy and guidance used to evaluate amateur-built aircraft kits.

Since publication of the notice of the agency's temporary suspension of kit evaluations in the **Federal Register**, amateur-built aircraft kit manufacturers have expressed concerns that the FAA would re-evaluate or remove kits on the current eligibility list as a result of re-evaluating previously evaluated kits using the new evaluation procedures. The FAA does not intend to re-evaluate or remove any of the kits from the current eligibility list as a result of developing new evaluation procedures. As is current practice, a re-evaluation of any kit on the current eligibility list would only occur if a potentially unsafe condition is identified. The temporary suspension of kit evaluations does not affect the status of kits previously determined to be eligible for certification as an amateur-built aircraft. Previous FAA-conducted amateur-built aircraft kit evaluations remain valid.

The FAA has also received inquiries concerning whether amateur-built kit manufacturers may continue to develop, manufacture, market, and sell their previously evaluated aircraft kits during the temporary suspension. The FAA does not certify aircraft kits or approve kit manufacturers. Kit evaluations are not required by the regulations and do not prevent a manufacturer from introducing a new kit for the amateur-built marketplace. Companies may continue to design, develop, manufacture, market, and sell aircraft kits. The temporary suspension in no way prevents these actions.

Several amateur aircraft builders were also concerned that aircraft currently being built from kits which were on the eligibility list at their time of purchase would be reevaluated in accordance with new procedures when the aircraft are presented for airworthiness certification: The FAA will not re-evaluate these kit aircraft to the new criteria when they are inspected for airworthiness certification provided the kit from which they have been built remains on the current list. The airworthiness certification process for these aircraft remains unchanged. The determination that an applicant has fabricated and assembled the major portion of an aircraft in accordance with § 21.191(g), will continue to be accomplished when the aircraft is inspected for airworthiness certification. This procedure is consistent with longstanding practices in place prior to the temporary suspension of kit evaluations.

The FAA will resume amateur-built kit evaluations after issuing the final policy changes. Prior to publishing the

final policy, FAA will solicit comments on draft procedures (FAA Orders and Advisory Circulars) through a notice in the **Federal Register**.

Issued in Washington, DC on April 8, 2008.

Frank Paskiewicz,

Manager, Production and Airworthiness Division.

[FR Doc. E8-8217 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 205/ EUROCAE Working Group 71: Software Considerations in Aeronautical Systems Eighth Joint Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 205/EUROCAE Working Group 71 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems.

DATES: The meeting will be held June 23-27, 2008, from 8:30 a.m.-5 p.m (variable see daily schedule).

ADDRESSES: The meeting will be held at ENSEEIHT (referred as N7) 2, rue Charles CAMICHEL, Boite Postale 7122, 31071 TOULOUSE Cedex 7, France.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>; (2) Joint Secretaries, *Europe*: Mr. Ross Hannon, telephone +44 78807-46650, e-mail: ross_hannon@binternet.com; US: Ms. Leslie Alford, telephone +1-678-363-5948, e-mail: leslie.a.alford@boeing.com.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 205/EUROCAE Working Group 71 meeting.

Note: On arrival at ENSEEIHT please have photo identification available (either a passport, a drivers license bearing a photograph or an identity card) to assist in your pass being issued.

- June 23:
- Registration.
- Review of Meeting Agenda and Agreement of Previous Minutes.

- Reports of Sub-Group Activity since January 2008.
- Other Committee/Other Documents Interfacing Reports.
- Plenary Text Acceptance (for papers posted, commented on and reworked prior to Plenary).
- New Members Introduction

Session.

- Sub-Group Break Out Sessions.
- Closed of Day.
- Executive Committee and SG

Chairs/Secretaries Meeting.

- June 24:
- Sub-Groups Break Out Session.
- Mandatory Paper Reading Session.
- Executive Committee and SG

Chairs/Secretaries Meeting.

- June 25:
- Sub-Group Break Out Sessions.
- Plenary Text Acceptance (for papers posted, commented on and reworked prior to Plenary).
- Sub-Group Break Out Sessions.
- Executive Committee and SG

Chairs/Secretaries Meeting.

- June 26:
- Sub-Group Break Out Sessions.
- Mandatory Paper Reading Session.
- Executive Committee and SG

Chairs/Secretaries Meeting.

- June 27:
- Sub-Group Break Out Sessions.
- Plenary Text Approval (reworked and later posted papers).
- SGs Reports.
- SGI: SCWG Document Integration

Sub-Group.

- SG2: Issue & Rationale Sub-Group.
- SG3: Tool Qualification Sub-Group.
- SG4: Model Based Design &

Verification Sub-Group.

- SG5: Object Oriented Technology
- SG6: Formal Methods Sub-Group.
- SG7: Special Considerations Sub-

Group.

- Closing Plenary Session (Other Business, Schedule Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 10, 2008.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. E8-8221 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Public Notice for Waiver of Aeronautical Land-use Assurance Aurora Municipal Airport, Sugar Grove, IL**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of a 0.1766-acre portion of Parcel 3 and a 0.9776 acre portion of Parcel 5, totaling 1.1542 acres. Presently the land is vacant and used as open land for control of FAR Part 77 surfaces and compatible land use and is not needed for aeronautical use, as shown on the Airport Layout Plan. The Parcels were acquired in 1988 with Federal participation. It is the intent of the City of Aurora, as owner and operator of the Aurora Municipal Airport (AMA), to sell the subject portions of Parcels 3 & 5 (1.1542 Acres) in fee to the Village of Sugar Grove, for the construction of Municipal Drive. AMA would, in return, receive land equivalent in acreage and value (a portion of Parcel 4) from the Village of Sugar Grove. This notice announces that the FAA is considering the proposal to authorize the disposal of the subject airport property at the Aurora Municipal Airport, Sugar Grove, IL. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before May 19, 2008.

ADDRESSES: Documents are available for review at the Airport Manager's office (Bob Rieser, Aurora Municipal Airport, 43 W 636 U.S. 30, Sugar Grove, IL 60554, Ph. 630-466-7000) and the FAA Airports District Office (Richard Pur, FAA, Chicago Airports District Office, 2300 E. Devon Ave., Des Plaines, IL 60018, Ph. 847-294-7527). Written

comments on the Sponsor's request must be delivered or mailed to: Richard Pur, FAA, Chicago Airports District Office, 2300 E. Devon Ave., Des Plaines, IL 60018, Ph. 847-294-7527.

FOR FURTHER INFORMATION CONTACT:

Richard Pur, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number 847-294-7527/Fax Number 847-294-7046.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Sugar Grove, Kane County, Illinois, and described as follows:

Portion of Parcel 3

That part of the east half of the Southeast Quarter of Section 17, Township 36 North, Range 7 East of the Third Principal Meridian described as follows: Commencing at the southeast corner of said Section 17; thence North 00 degrees 24 minutes 41 seconds West (assumed), along the east line of the Southeast Quarter of said Section 17, 1351.36 feet; thence South 89 degrees 35 minutes 19 seconds West, 80.00 feet to the west line of the east 80.00 feet of the north 1508.36 feet of the Southeast Quarter of said Section 17, for the Point of Beginning, thence South 00 degrees 24 minutes 41 seconds East, along said west line, 314.89 feet to the south line of the north 1508.36 feet of the Southeast Quarter of said Section 17; thence South 89 degrees 14 minutes 52 seconds West, 75.05 feet along said south line to a point on a curve; thence northerly along a curve to the left with radius of 700.00 feet, arc length of 327.11 feet, chord bearing North 12 degrees 56 minutes 33 seconds East, and chord length 324.14 feet to the Point of Beginning, in Sugar Grove Township, Kane County, Illinois. Containing 0.1766 acres, more or less.

Portion of Parcel 5

That part of the southerly 550.00 feet (except the east 80.00 feet) of the Northeast Quarter of Section 17, Township 36 North, Range 7 East of the Third Principal Meridian described as follows: Commencing at the southeast corner of the Northeast Quarter of said Section 17; thence South 89 degrees 14 minutes 54 seconds West (assumed), along the south line of the Northeast Quarter of said Section 17, 80.00 feet to the west line of the east 80.00 feet of the Northeast Quarter of said Section 17, and the Point of Beginning; thence north along a curve to the left with radius of 700.00 feet, arc length of 489.73 feet, chord bearing North 20 degrees 27 minutes 15 seconds West, and chord length of 479.81 feet to a point of tangency; thence North 40 degrees 29

minutes 48 seconds West, 127.82 feet to the north line of the northerly 438.36 feet of the southerly 550 feet of the Northeast Quarter of said Section 17; thence North 89 degrees 14 minutes 52 seconds East, along said north line, 242.69 feet to the west line of the east 80.00 feet of said Northeast Quarter; thence South 00 degrees 50 minutes 04 seconds East, along said west line, 550 feet to the Point of Beginning, in Sugar Grove Township, Kane County, Illinois. Containing 0.9776 acres, more or less.

The above described two parcels of land together contain 1.1542 acres, more or less.

Issued in Des Plaines, Illinois on April 9, 2008.

Mia Ratcliff,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8-8219 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Clarification of Solicitation of Applications and Notice of Funding Availability for the Capital Assistance to States—Intercity Passenger Rail Service Program

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

ACTION: Clarification regarding solicitation for applications and notice of funding availability.

SUMMARY: On February 19, 2008, FRA published a Solicitation of Applications and Notice of Funding Availability for the Capital Assistance to States—Intercity Passenger Rail Service Program. This notice provides clarifying information related to elements of the February 19, 2008 notice.

FOR FURTHER INFORMATION CONTACT:

Peter Schwartz, Office of Railroad Development (RDV-11), Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Phone: (202) 493-6360; Fax: (202) 493-6330.

SUPPLEMENTARY INFORMATION: Following publication of the notice, FRA received a number of inquiries from interested States seeking additional clarification from the agency with respect to some of the items included in the notice. In order to assist applicants, FRA is issuing this supplemental notice to provide additional clarification on three items of interest. Accordingly, the sections of the February 19, 2008 notice labeled “Eligible Projects” and “Eligible

Planning Projects” are amended to read as follows.

Eligible Projects: Eligible projects must be intended to result in significant benefits to intercity passenger rail service. Projects which meet this criterion, but for which the majority of benefits, as calculated by one or more measures of transportation production, may be projected to accrue to commuter or freight rail service, may be considered for funding subject to the reasonableness of the terms of the cost sharing arrangement between the parties affected by the proposed improvements. Only new projects will be eligible; projects for which construction has commenced before the date of the application will not be considered. Pre-award costs, dating from no earlier than the date of application, may be considered for funding, although an applicant will bear all risk for such costs in the event no award is made. Proposed projects must be specifically included in the applicant State’s Statewide Transportation Improvement Plan at the time of application to be eligible. Matching funding must be in the form of new financial commitments toward the proposed project by the applicant and/or its partners. Expenditures which occurred prior to the date of application and expenditures on unrelated projects will not be considered.

Eligible Planning Projects: Congress has allowed up to ten percent (\$3,000,000) of the funding available under the program to be used for planning activities that lead directly to the development of a passenger rail corridor investment plan. Only proposed planning projects which lead to (1) a programmatic Environmental Impact Statement for the purpose of route selection, and/or (2) a corridor transportation plan prepared in accordance with the methodologies set forth in FRA’s publication, entitled “Railroad Corridor Transportation Plans: A Guidance Manual,” available at http://www.fra.dot.gov/Downloads/RRdev/corridor_planning.pdf, will be considered for funding, subject to the Selection Criteria outlined below.

Issued in Washington, DC, on April 11, 2008.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E8-8424 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA-2008-0020]

Notice of Availability of Proposed Guidance on New and Small Starts Policies and Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of the Federal Transit Administration’s (FTA) Proposed Guidance on New and Small Starts Policies and Procedures and requests your comments on it. The guidance explains proposed changes to the New and Small Starts programs that will become effective upon the issuance of Final Guidance, which will be announced in a subsequent **Federal Register** notice. FTA requests comments on the Proposed Guidance, which is available in DOT’s electronic docket and on FTA’s Web site.

DATES: Comments must be received within 30 days after publication in the **Federal Register**. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by the Docket Number FTA-2008-0020] by any of the following methods:

Web site: <http://regulations.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202-493-2251.

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

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

Instructions: You must include the agency name (Federal Transit Administration) and the docket number (FTA-2007-0020). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to the federal government Web site located at <http://regulations.gov>. This means that if your

comment includes any personal identifying information, such information will be made available to users of Web site.

FOR FURTHER INFORMATION CONTACT: Ron Fisher, Office of Planning and Environment, telephone (202) 366-4033. FTA is located at 1200 New Jersey Ave., SE., East Building, Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

1. Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 3011 of SAFETEA-LU made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA) fixed guideway capital investment program known as "New Starts," and created a new program category known as "Small Starts." This notice announces the availability of FTA's Proposed Guidance on New and Small Starts Policies and Procedures and requests your comment as described below. The document is available in the docket, which can be accessed by going to <http://regulations.gov> at any time, or you can view the document on FTA's Web site at http://www.fta.dot.gov/planning/newstarts/planning_environment_5615.html.

A. Proposed Changes for the New and Small Starts Program

The purpose of this policy guidance is to solicit comments on the policies and procedures for the New and Small Starts programs. The changes, once announced as final, will apply to all New and Small Starts submittals received after the effective date announced in the Notice of Availability published in the **Federal Register** for the Final Guidance. FTA proposes minor changes to its ratings by introducing a rating for reliability, which could affect the project justification rating. FTA proposes this change to honor the spirit of SAFETEA-LU, which established this new criterion for project justification, while refraining from making the more significant changes in SAFETEA-LU that are appropriate for rulemaking. Other changes proposed will support FTA's efforts to streamline studies for projects seeking New and Small Starts funding. They include an initiation package for alternatives analysis, an easing of the eligibility requirements for the Small Starts program, and documentation of the uncertainties in

the predictions of capital costs and ridership. It is this last proposed provision that is expected to have the greatest impact on expediting FTA reviews, as a more explicit representation of project uncertainties should facilitate communication between FTA and project sponsors over capital cost and ridership uncertainties. FTA also proposes that its ratings include additional attention to the adequacy of the local financial commitment for ongoing recapitalization of the existing transit system. Finally, FTA proposes to allow review and comment by contractors of information submitted for the Before and After Study so that their roles can be accurately portrayed.

Comments received will be used to develop the ratings, evaluations, and procedures for projects seeking funds from the New and Small Starts programs, and will be issued in June 2008. FTA will respond to comments received in response to this Notice in a second **Federal Register** notice to be published after the close of the comment period. The notice will announce the availability of the Reporting Instructions for the section 5309 New Starts Criteria and the Interim Guidance for Small Starts, reflecting the changes implemented as a result of this policy guidance and comments received thereon.

Issued in Washington, DC this 9th day April 2008.

James S. Simpson,
Administrator.

[FR Doc. E8-8463 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2008 0035]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *FABIOLA II*.

SUMMARY: As authorized by Pub. L. 105-383 and Pub. L. 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is

listed below. The complete application is given in DOT docket MARAD-2008 0035 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 19, 2008.

ADDRESSES: Comments should refer to docket number MARAD-2008 0035. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *FABIOLA II* is:

Intended Use: "limited charter."
Geographic Region: "Maryland, Maine, Florida & Rhode Island."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may

review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: April 10, 2008.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E8–8431 Filed 4–17–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of General Motors Corporation (GM) for an exemption in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard*, for the Chevrolet Equinox vehicle line beginning with model year (MY) 2009. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated January 11, 2008, GM requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Chevrolet Equinox vehicle line beginning with MY 2009. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one of its vehicle lines per year. GM's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

GM's petition provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. GM will install its passive, transponder-based, electronic immobilizer device as standard equipment on its Chevrolet Equinox vehicle line beginning with MY 2009. GM stated that the device will provide protection against unauthorized use (i.e., starting and engine fueling), but will not provide any visible or audible indication of unauthorized vehicle entry (i.e., flashing lights or horn alarm).

GM stated that it will install the PASS-Key III+ on its MY 2009 Chevrolet Equinox vehicle line. The PASS-Key III+ device is designed to be active at all times without direct intervention by the vehicle operator. The system is fully armed immediately after the ignition has been turned off and the key removed. The system will provide protection against unauthorized starting and fueling of the vehicle engine. Components of the antitheft device include an electronically coded ignition key, a PASS-Key III+ controller module and an engine control module. The ignition key contains electronics molded into the key head. These electronics receive energy and data from the control module. Upon receipt of the data, the key will calculate a response to the data using secret information and an internal encryption algorithm, and transmit the response back to the vehicle. The controller module translates the radio frequency signal received from the key into a digital signal and compares the received response to an internally calculated value. If the values match, the key is recognized as valid and the vehicle can be operated.

GM indicated that the theft rates, as reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), are lower for GM models equipped with the "PASS-Key"-like systems which have exemptions from the parts-marking requirements of 49 CFR Part 541, than the theft rates for earlier, similarly constructed models which were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III systems on other GM models, and the advanced technology utilized by

the modification, GM believes that the PASS-Key III+ antitheft device will be more effective in deterring theft than the parts-marking requirements of 49 CFR Part 541.

In addressing the specific content requirements of 543.6, GM provided information on the reliability and durability of the proposed device. To ensure reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided its own test information on the reliability and durability of its device, and believes that the device is reliable and durable since it complied with the specified requirements for each test.

GM stated that the PASS-Key III+ system has been designed to enhance the functionality and theft protection provided by GM's first, second, and third generation PASS-Key, PASS-Key II, and PASS-Key III systems.

GM compared the device proposed for its vehicle line with other devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM stated that the reduction in theft rates for the Chevrolet Camaro and the Pontiac Firebird models equipped with a passive theft-deterrent system ("PASS-Key") without an alarm, GM finds that the lack of an alarm or attention attracting device does not compromise the theft deterrent performance of a system such as PASS-Key III+. The agency agrees that the device is substantially similar to devices for which the agency has previously approved exemptions.

Based on comparison of the reduction in the theft rates of GM vehicles using a passive theft deterrent device with an audible/visible alarm system to the reduction in theft rates for GM vehicle models equipped with a passive antitheft device without an alarm, GM finds that the lack of an alarm or attention attracting device does not compromise the theft deterrent performance of a system such as PASS-Key III+.

GM's proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lack an audible or visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR Part 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with devices similar to that which GM proposes. In these instances, the agency has concluded that the lack of a visual

or audio alarm has not prevented these antitheft devices from being effective protection against theft.

Based on the evidence submitted by GM, the agency believes that the antitheft device for the GM vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its device.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the Chevrolet Equinox vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If GM decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission

of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 15, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-8477 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Ford

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Ford Motor Company (Ford) in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard*, for the Ford Escape vehicle line beginning with model year (MY) 2009. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202)

366-0846. Her fax number is (202) 493-2290.

SUPPLEMENTARY INFORMATION: In a petition dated February 8, 2008, Ford requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Ford Escape vehicle line beginning with MY 2009. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one of its vehicle lines per year. Ford has petitioned the agency to grant an exemption for its Ford Escape vehicle line beginning with MY 2009. In its petition, Ford provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Ford Escape vehicle line. Ford will install its passive antitheft device as standard equipment on the vehicle line. Features of the antitheft device will include an electronic key, ignition lock, and a passive immobilizer. Ford's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

The antitheft device to be installed on the MY 2009 Ford Escape is the SecuriLock Passive Anti-Theft Electronic Engine Immobilizer System (SecuriLock). The Ford SecuriLock is a transponder-based electronic immobilizer system. Ford stated that the integration of the transponder into the normal operation of the ignition key assures activation of the system. When the ignition key is turned to the start position, the transceiver module reads the ignition key code and transmits an encrypted message to the cluster. Validation of the key is determined and start of the engine is authorized once a separate encrypted message is sent to the powertrain's control module (PCM). The powertrain will function only if the key code matches the unique identification key code previously programmed into the PCM. If the codes do not match, the powertrain engine starter will be disabled. Ford also stated that the SecuriLock electronic engine immobilizer device makes conventional theft methods such as hot-wiring or attacking the ignition lock cylinder ineffective and virtually eliminates drive-away thefts.

The agency's theft rate data is not available for calendar year/model year (CY/MY) 2007 and 2008. Ford stated that since the introduction of the Ford Escape in MY 2001, it has been equipped with the SecuriLock system (except the 2005 Escape Hybrid). Ford also provided theft rate data for the MY 2001 through 2005 Ford Escape vehicle line. The chart illustrates that the reported theft rate for the Escape is significantly below the agency's median theft rate of 3.5826 for all vehicles in each calendar year/model year. Ford stated that it believes that the exceptional low theft rate of 1.0342 for CY/MY 2005 is likely to continue or improve in future years.

Additionally, Ford noted the reduction in theft rate for other vehicle lines equipped with the SecuriLock device. Ford's SecuriLock device was first introduced as standard equipment on its MY 1996 Mustang GT and Cobra. In MY 1997, the SecuriLock system was installed on the entire Mustang vehicle line as standard equipment. Ford stated that the 1997 model year Mustang with SecuriLock shows a 70% reduction in theft compared to the MY 1995 Mustang, according to National Insurance Crime Bureau (NICB) theft statistics. There were 149 reported thefts for 1997 compared to 500 reported thefts in 1995.

In addressing the specific content requirements of 543.6, Ford provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Ford conducted tests based on its own specified standards. Ford also provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test.

The agency also notes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment anti-theft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of part 541. The agency finds that Ford has provided adequate reasons for its belief that the anti-theft

device for the Ford Escape vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Ford provided about its device.

For the foregoing reasons, the agency hereby grants in full Ford's petition for exemption for the Escape vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the anti-theft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Ford decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption.

Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an anti-theft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an anti-theft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency

before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 15, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-8479 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2007-27181 (Notice No. 08-5)]

Notice of Information Collection Approval

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Information Collection Approval.

SUMMARY: This notice announces Office of Management and Budget (OMB) approval and extension until March 31, 2010 for the following information collection requests (ICRs): OMB Control No. 2137-0572, "Testing Requirements for Non-Bulk Packaging"; and approval and extension until August 31, 2010 for OMB Control No. 2137-0039, "Hazardous Materials Incidents."

This notice also announces OMB approval and extension until October 31, 2010 for the following ICRs: OMB Control No. 2137-0018, "Inspection and Testing of Portable Tanks and Intermediate Bulk Containers"; and OMB Control No. 2137-0595, "Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service."

Additionally, this notice announces OMB approval and extension until February 28, 2011 for the following ICRs: OMB Control No. 2137-0014, "Cargo Tank Specification Requirements"; OMB Control No. 2137-0542, "Flammable Cryogenic Liquids"; OMB Control No. 2137-0582, "Container Certification Statements"; and OMB Control No. 2137-0591, "Response Plans for Shipments of Oil."

DATES: The expiration dates for these ICRs are either March 31, 2010, August 31, 2010, October 31, 2010, or February 28, 2011 as indicated under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH-11), Pipeline and

Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH-11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, Telephone (202) 366-8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) 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(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, PHMSA has received OMB approval for renewal of the following ICRs:

OMB Control Number: 2137-0572.

Title: "Testing Requirements for Non-Bulk Packaging."

Expiration Date: March 31, 2010.

OMB Control Number: 2137-0039.

Title: "Hazardous Materials Incident Reports."

Expiration Date: August 31, 2010.

OMB Control Number: 2137-0018.

Title: "Inspection and Testing of Portable Tanks and Intermediate Bulk Containers."

Expiration Date: October 31, 2010.

OMB Control Number: 2137-0595.

Title: "Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service."

Expiration Date: October 31, 2010.

OMB Control Number: 2137-0014.

Title: "Cargo Tank Specification Requirements."

Expiration Date: February 28, 2011.

OMB Control Number: 2137-0542.

Title: "Flammable Cryogenic Liquids."

Expiration Date: February 28, 2011.

OMB Control Number: 2137-0582.

Title: "Container Certification Statements."

Expiration Date: February 28, 2011.

OMB Control Number: 2137-0591.

Title: "Response Plans for Shipments of Oil."

Expiration Date: February 28, 2011.

Issued in Washington, DC on April 15, 2008.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. E8-8512 Filed 4-17-08; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 10)]

Railroad Cost-of-Capital—2006

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On April 15, 2008, the Board served a decision to update its computation of the railroad industry's cost-of-capital for 2006. The composite after-tax cost-of-capital rate for 2006 is found to be 9.94%, based on a current cost-of-debt of 5.97%; a cost of common equity capital of 11.13%; and a capital structure mix comprised of 23.05% debt and 76.95% common equity. The cost-of-capital finding made in this proceeding will be used in a variety of Board proceedings.

EFFECTIVE DATE: This action is effective April 15, 2008.

FOR FURTHER INFORMATION CONTACT:

Pedro Ramirez, 202-245-0333.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision, which is available on our Web site <http://www.stb.dot.gov>.

Environmental and Energy Considerations

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

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this action are to update the annual railroad industry cost-of-capital finding by the Board. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Authority: 49 U.S.C. 10704(a).

Decided: April 14, 2008.

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

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8-8386 Filed 4-17-08; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on April 29, 2008 at 10:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Pub. L. 103-202, § 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101-05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Pub. L. 103-202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Karthik Ramanathan, Director, Office of Debt Management, at (202) 622-2042.

Dated: April 10, 2008.

Anthony W. Ryan,

Assistant Secretary, Financial Markets.

[FR Doc. E8-8225 Filed 4-17-08; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee April 2008 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for April 22, 2008.

Date: April 22, 2008.

Time: Public Meeting Time: 1 p.m. to 4 p.m.

Location: United States Mint; 801 Ninth Street, NW.; Washington, DC 20220; 2nd floor conference room.

Subject: Review narratives for the Native American \$1 Coin, the 2009 First Spouse Gold Coin and Medal Designs, and other general business.

Interested persons should call 202-354-7502 for the latest update on meeting time and room location.

Public Law 108-15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.

- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220; or call 202-354-7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202-756-6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: April 14, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8-8373 Filed 4-17-08; 8:45 am]

BILLING CODE 4810-02-P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Loan Servicing and Claims Procedures Modifications Segment 2 Effective Date

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Applicability of Subpart F of 38 CFR Part 36 to Segment 2 of the Mortgage Servicing Industry.

SUMMARY: This publication is to serve as notice that on April 18, 2008, Subpart F of Title 38, Code of Federal Regulations, Part 36, will be applicable to industry segment 2. Program participants in the VA Home Loan

Guaranty Program's servicing and claims activities were assigned to one of nine industry segments as part of the planned phased implementation of the rules in Subpart F. All program participants were given notice of their respective segments and were afforded opportunity to comment during the regulatory development process (see Supplementary Information section of this notice). Segment 2 participants will be under the authority of Subpart F rules on April 18, 2008. VA continues to work with these participants to ensure that all necessary servicing system modifications, defect corrections, interface testing and data transmission are addressed.

FOR FURTHER INFORMATION CONTACT:

Mike Frueh, Assistant Director for Loan Management (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9521. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On Friday, February 1, 2008 (73 FR 6294), VA published final regulations that modify its Loan Guaranty Program's loan servicing and claims procedures modifications. In response to comments received to the proposed regulations published on February 18, 2005 (70 FR 8472) and to a supplemental notice published on November 27, 2006 (71 FR 68498), VA published a second supplemental notice on June 1, 2007 (72 FR 30505), in which the agency put forth a proposal to phase-in implementation of the new tracking system.

Based on comments received to the proposed regulations and the first supplemental notice, VA decided to proceed with gradual implementation of the new rules and its computer-based tracking system, the VA Loan Electronic Reporting Interface (VALERI), with nine separate industry segments to be phased in over a period of approximately 11 months. The first segment was subject to the new rules upon publication of the final regulations, when the rules became effective. Similar notices will be provided prior to the date that Subpart F will be applicable to each subsequent industry segment.

Approved: April 14, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8-8381 Filed 4-17-08; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Friday,
April 18, 2008**

Part II

Department of the Treasury

31 CFR Part 103

**Financial Crimes Enforcement Network;
Withdrawal of Notice and Proposed
Rulemaking Against the Republic of
Nauru; Notice and Proposed Rule**

DEPARTMENT OF THE TREASURY**Financial Crimes Enforcement Network; Withdrawal of Notice of the Finding of the Republic of Nauru as a Primary Money Laundering Concern**

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Withdrawal of the finding.

SUMMARY: This document withdraws the Department of the Treasury's December 26, 2002 notice of the finding of the Republic of Nauru ("Nauru") as a jurisdiction of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act.¹

DATES: The finding is withdrawn as of April 18, 2008.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 ("USA PATRIOT Act"). Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary of the Treasury ("the Secretary") to

administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.²

Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act, granting the Secretary the authority to find a foreign jurisdiction, financial institution, class of transactions, or type of account as being of "primary money laundering concern," and to impose one or more of five "special measures" with respect to such a jurisdiction, financial institution, class of transactions, or type of account.³ Section 5318A specifies those factors that the Secretary must consider before finding a jurisdiction, financial institution, transaction, or account as of "primary money laundering concern."

II. The 2002 Finding and Subsequent Developments**A. The 2002 Finding**

Based upon review and analysis of relevant information, consultations with relevant Federal agencies and departments, and after consideration of the factors enumerated in section 5318A, the Secretary found that reasonable grounds existed for concluding that Nauru was a jurisdiction of primary money laundering concern. This finding was published on December 26, 2002,⁴ pursuant to the authority under 31

² Therefore, references to the authority of the Secretary under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network.

³ Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)-(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

⁴ 67 FR 78859 (Dec. 26, 2002).

U.S.C. 5318A. The Department of the Treasury based its finding on the veil of secrecy surrounding the Republic of Nauru's banking system, its practice of selling offshore banking licenses, and its continued failure to enact adequate procedures for licensing, regulating, and supervising offshore banks. For many of the same reasons, the Financial Action Task Force had placed the Republic of Nauru on the Non-Cooperative Countries and Territories list in June 2000.

B. Subsequent Jurisdictional Developments

Since the Department of the Treasury's December 20, 2002 finding, Nauru has taken remedial measures to address the deficiencies in its anti-money laundering regime. In consideration of Nauru's remedial measures and in light of actions taken by the Financial Action Task Force we have decided to withdraw the finding of Nauru as a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A.⁵

III. Withdrawal of the Finding of Nauru as a Primary Laundering Concern

For the foregoing reasons, the finding that the Republic of Nauru is a jurisdiction of primary money laundering concern for purposes of section 5318A of title 31 as published in the **Federal Register** on December 26, 2002 (67 FR 78859), is hereby withdrawn.

Dated: April 14, 2008.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E8-8390 Filed 4-17-08; 8:45 am]

BILLING CODE 4810-02-P

¹ The Department of Treasury's December 26, 2002 notice with respect to Nauru was characterized as a "designation" rather than a "finding." In subsequent notices pertaining to similar actions, including in the present withdrawal, we have replaced the word "designation" with "finding."

⁵ For a discussion of Nauru's remedial measures and of the actions taken by the Financial Action Task Force, refer to Financial Crimes Enforcement Network; Withdrawal of the Notice of Proposed Rulemaking against the Republic of Nauru, published elsewhere in this issue of the **Federal Register**.

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA91

Financial Crimes Enforcement Network; Withdrawal of the Notice of Proposed Rulemaking Against the Republic of Nauru**AGENCY:** Financial Crimes Enforcement Network, Treasury.**ACTION:** Withdrawal of the notice of proposed rulemaking.**SUMMARY:** This document withdraws the April 17, 2003 Notice of Proposed Rulemaking proposing to impose a special measure pursuant to 31 U.S.C. 5318A.**DATES:** The notice of proposed rulemaking is withdrawn as of April 18, 2008.**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732.**SUPPLEMENTARY INFORMATION:****I. Background**

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107-56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary of the Treasury ("the Secretary") to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.¹

Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act, granting the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of international transactions, or type of account is of "primary money laundering concern," to require domestic financial

institutions and domestic financial agencies to take certain "special measures" against the primary money laundering concern.²

Taken as a whole, section 5318A provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options provide the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats and the ability to take steps to protect the U.S. financial system. Through the imposition of various special measures, we can: Gain more information about the concerned jurisdictions, financial institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, financial institutions, transactions, and accounts; and ultimately protect U.S. financial institutions from involvement with jurisdictions, financial institutions, transactions, or accounts that pose a money laundering concern.

II. The 2002 Notice of Proposed Rulemaking and Subsequent Developments**A. The 2002 Notice of Proposed Rulemaking**

On December 20, 2002, the Department of the Treasury issued a finding that Nauru was a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A.³ After the December 20, 2002 finding, based upon review and analysis of relevant information, consultations with relevant federal agencies and departments, and after consideration of the factors enumerated in section 5318A, on April 17, 2003, the Secretary, through his delegate, the Director of the Financial Crimes Enforcement Network issued a Notice of Proposed Rulemaking that would impose the fifth special measure

under section 5318A.⁴ The fifth special measure would prohibit all covered U.S. financial institutions from establishing, maintaining, administering or managing correspondent accounts⁵ for or on behalf of any financial institution from or in Nauru.⁶

B. Subsequent Jurisdictional Developments

Since the Department of the Treasury's December 20, 2002 finding of Nauru as a jurisdiction of primary money laundering concern and our April 17, 2003 issuance of the Notice of Proposed Rulemaking, Nauru has taken steps to address the deficiencies in its anti-money laundering regime that led to those actions. First, Nauru amended its anti-money laundering law to abolish the offshore banking sector and as a result, there are currently no offshore banks licensed to operate in Nauru. In particular, Nauru's Corporation Amendment Act of 2004 caused offshore banking licenses to expire without the possibility of renewal. Second, the legal framework was amended to criminalize money laundering. Third, Nauru law now mandates suspicious transaction reporting.

In October 2004, the Financial Action Task Force withdrew counter-measures against Nauru due to its efforts to reform its banking system, progress made in that regard, and its resolve to continue addressing any remaining anti-money laundering deficiencies.⁷ On October 13, 2005, the Financial Action Task Force removed Nauru from the Non-Cooperative Countries and Territories list due to the closure of its offshore financial center, which was the primary reason for Nauru being placed on the list.⁸ In consideration of Nauru's remedial measures that addressed deficiencies in its anti-money laundering regime, and in light of

⁴ 68 FR 18917 (Apr. 17, 2003, RIN 1506-AA43).

⁵ A correspondent account is defined as an account established by a bank for a foreign bank to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank. See 31 CFR § 103.175(d).

⁶ After the expiration of the comment period, we received one comment letter on the notice of proposed rulemaking from the Republic of Nauru.

⁷ Financial Action Task Force, "FATF Targets Cross-Border Cash Movements By Terrorists and Criminals" (Financial Action Task Force members have withdrawn the counter-measures against Myanmar and Nauru.) (Oct. 2004).

⁸ October 2005 Financial Action Task Force Plenary Meeting, "FATF will explore the symbiotic relationship among corruption, money laundering and terrorist financing" (The Financial Action Task Force removed Nauru from its list of non-cooperative countries and territories after Nauru abolished its 400 shell banks, thus removing this major money laundering risk.) (Oct. 13, 2005).

¹ Therefore, references to the authority of the Secretary of the Treasury under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network.

² If the Secretary of the Treasury determines that a foreign jurisdiction, financial institution, class of transactions, or type of account is of primary money laundering concern, the Secretary or his delegate, the Director of the Financial Crimes Enforcement Network, must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 of the USA PATRIOT Act provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence. Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)-(5).

³ 67 FR 78859 (Dec. 26, 2002).

actions taken by the Financial Action Task Force, we have decided to withdraw the notice of proposed rulemaking imposing the fifth special measure and the related finding of Nauru as a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A.⁹

⁹ See Financial Crimes Enforcement Network; Withdrawal of Notice of the Finding of the Republic

III. Withdrawal of the Notice of Proposed Rulemaking

For the foregoing reasons, the notice of proposed rulemaking imposing the fifth special measure for purposes of 31 U.S.C. 5318A, as published in the

of Nauru as a Primary Money Laundering Concern, published elsewhere in this issue of the **Federal Register**.

Federal Register on April 17, 2003 (68 FR 18917), is hereby withdrawn.

Dated: April 14, 2008.

James H. Freis, Jr.

Director, Financial Crimes Enforcement Network.

[FR Doc. E8-8392 Filed 4-17-08; 8:45 am]

BILLING CODE 4810-02-P



Federal Register

**Friday,
April 18, 2008**

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Sealing of Abandoned Areas; Final Rule

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Part 75****RIN 1219-AB52****Sealing of Abandoned Areas****AGENCY:** Mine Safety and Health Administration (MSHA), Labor.**ACTION:** Final rule.

SUMMARY: This final rule revises MSHA's Emergency Temporary Standard (ETS) and addresses sealing abandoned areas in underground coal mines. The final rule includes requirements for seal strength, design, construction, maintenance and repair of seals and monitoring and control of atmospheres behind seals in order to reduce the risk of seal failure and the risk of explosions in abandoned areas of underground coal mines. It also addresses the level of overpressure for new seals.

EFFECTIVE DATE: This final rule is effective April 18, 2008.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939, *silvey.patricia@dol.gov* (e-mail), (202) 693-9440 (voice), or (202) 693-9441 (telefax).

SUPPLEMENTARY INFORMATION:

The outline of the final rule is as follows:

- I. Background
- II. Discussion of the Final Rule
- III. Section-by-Section Analysis
- IV. Executive Order 12866
 - A. Mine Sector Affected
 - B. Benefits
 - C. Compliance Costs
- V. Feasibility
 - A. Technological Feasibility
 - B. Economic Feasibility
- VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
 - A. Definition of Small Mine
 - B. Factual Basis for Certification
- VII. Paperwork Reduction Act of 1995
 - A. Summary
 - B. Details
- VIII. Other Regulatory Considerations
 - A. The Unfunded Mandates Reform Act of 1995
 - B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
 - C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
 - D. Executive Order 12988: Civil Justice Reform

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

F. Executive Order 13132: Federalism

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

IX. References

I. Background

In the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), the predecessor to the existing Mine Act, Congress first recognized that mine operators must isolate abandoned areas of underground coal mines from active workings for the protection of miners' safety:

In the case of mines opened on or after the operative date of this title, or in the case of areas developed on or after such date in mines opened prior to such date, the mining system shall be designed, in accordance with a plan and revisions thereof approved by the Secretary and adopted by the operator, so that, as each set of cross entries, room entries, or panel entries of the mine are abandoned, they can be isolated from active workings of the mine with explosion-proof bulkheads.

Pub. Law 91-173 (Dec. 1969) Section 303(2)(3).

In the conference report filed in the House, the statement of the managers on the part of the House stated, regarding the requirement that an abandoned area of a mine either be ventilated or sealed, that:

[t]he determination of which method [(ventilated or sealed)] is appropriate and the safest at any mine is up to the Secretary or [her] inspector to make, after taking into consideration the conditions of the mine, particularly its history of methane and other explosive gases. The objective is that [s]he require the means that will provide the greatest degree of safety in each case. * * * When sealing is required, such sealing shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active working of the mine.

Under the conference substitute, paragraph (3) of section 303(z) provides that, in the case of mines opened on or after the operative date of this title, or in the case of areas developed on or after such date in mines opened prior to such date, the mining system shall be designed, in accordance with a plan and revisions thereof approved by the Secretary and adopted by the operator, so that, as each set of cross entries, room entries, or panel entries of the mine are abandoned, they can be isolated from active workings of the mine with explosion-proof bulkheads approved by the Secretary or his inspector.

The managers expect the Secretary to take the lead in improving technology in this area

of controlling methane accumulations in gob areas and to improve upon this important section 303(z).

Conf. Rep. No. 91-761, 91st Cong. 1st Sess., 82 (Dec. 16, 1969) (statement of the managers on part of the House) (emphasis added).

The Mine Act interim mandatory standards required seals to be "made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine." 30 U.S.C.863(z)(2).

On May 15, 1992, as part of a comprehensive revision of its standards for ventilation of underground coal mines, MSHA published standards for construction of seals in § 75.335 of the ventilation standards (57 FR 20868). The standard required seals to be constructed of solid concrete blocks at least six inches by eight inches by sixteen inches, but allowed seals to be constructed using alternative methods and materials, provided, among other things, that the seal was capable of withstanding a horizontal static pressure of 20 psi. MSHA based this threshold on a U.S. Bureau of Mines 1971 report entitled "Explosion—Proof Bulkheads—Present Practices."

A number of manufacturers developed materials, such as cementitious foams and glass-fiber material, which were tested and subsequently deemed suitable for use in alternative seals and marketed under various trade names. MSHA required the manufacturers to have full-scale seals be subjected to explosion testing at the National Institute for Occupational Safety and Health (NIOSH) Lake Lynn Experimental Mine (Lake Lynn). MSHA then intended for mine operators to construct seals as constructed and tested at Lake Lynn.

On January 2, 2006, an explosion at the Sago Mine in Upshur County, West Virginia caused the death of twelve miners. Later that year, on May 20, 2006, an explosion at the Darby Mine No. 1 in Harlan County, Kentucky, caused the death of five miners. Common to both of these accidents was the failure of the seals in the mine. The failed seals in both mines were constructed with the same approved alternative material for a 20-psi seal. None of the failed seals were constructed in the same manner as they were constructed at Lake Lynn. Therefore, MSHA issued a moratorium on alternative methods and materials for construction of new seals (Program Information Bulletin (PIB) No. P06-11, June 1, 2006, reissued on June 12, 2006 as PIB No. P06-12, reissued on June 21, 2006 as PIB No. P06-14).

Following these underground coal mine disasters in 2006, Congress passed and the President signed the MINER Act. Section 10 of the MINER Act requires the Secretary of Labor to finalize mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines, and to increase the 20 psi standard.

MSHA increased the strength of alternative seals to 50 psi and addressed a number of other issues related to the construction and the effectiveness of existing alternative and solid concrete block seals in Program Information Bulletin No. P06-16, "Use of Alternative Seal Methods and Materials Pursuant to 30 CFR 75.335(a)(2)," issued on July 19, 2006 (July 2006 PIB).

On February 8, 2007, NIOSH issued a draft report, "Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines" (2007 NIOSH Draft Report). The draft report states that "mine seals and their related systems such as the monitoring, inertization and ventilation systems require the highest level of engineering and quality assurance. Successful implementation of the seal design criteria and recommendations in this report should reduce the risk of seal failure due to explosions in abandoned areas of underground coal mines." (2007 NIOSH Draft Report at 40). In the executive summary of the draft report, NIOSH made recommendations for formulating seal design criteria.

On May 22, 2007, MSHA published an Emergency Temporary Standard; notice of public hearings; and notice of close of comment period (72 FR 28796). The comment period, scheduled to close on July 6, 2007, was extended to August 17, 2007 (72 FR 34609) and four public hearings were held. The hearings were held on July 10, 2007, in Morgantown, West Virginia; on July 12, 2007, in Lexington, Kentucky; on July 17, 2007, in Denver, Colorado; and on July 19, 2007, in Birmingham, Alabama.

On August 14, 2007, MSHA extended the comment period to September 17, 2007, (72 FR 45358) to allow commenters additional time to review recently posted documents on MSHA's Web site and a recently published report from NIOSH entitled "Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines," NIOSH Publication No. 2007-144, July 2007, IC-9500 (2007 NIOSH Final Report). With one exception, the final version of this report was little changed from the draft version of this report that was referenced in the ETS. The final report includes a new section 3.3, Homogeneous Methane-Air Mixtures in Sealed-Area Atmospheres. This new

section discusses methane layering in sealed areas and asserts that gaseous diffusion will result in a relatively homogeneous mixture within a matter of days after sealing. Other minor changes are related to rounding to metric units (sample pipes should extend 16 feet (5 meters) into the sealed area) and the inclusion of recent NIOSH research on methane flammability that lists the flammability range of methane-air mixtures at sea level as 5.0 percent to 16.0 percent methane.

On December 7, 2007, MSHA posted on the Agency's Web site the U.S. Army Corps of Engineer's Draft Report "CFD [Computational Fluid Dynamics] Study and Structural Analysis of the Sago Mine Accident" (USACE's Draft Report). The Agency placed the Report in the rulemaking record for the ETS on Sealing of Abandoned Areas. The Report summarizes the preliminary results of a study performed by the USACE under contract (MSHA NO IA-AR 600012) for MSHA's Technical Support Directorate (Technical Support). The USACE conducted research from August 2006 to April 2007. The USACE provided a draft of the Report of their findings to Technical Support in May of 2007. The Report details the USACE's efforts to mathematically model the methane explosion at the Sago Mine and potentially establish the seal overpressures.

On December 19, 2007, MSHA published a notice (72 FR 71791) to reopen the comment period; announce availability of the USACE's Draft Report; schedule a public hearing; and announce the close of the comment period. A public hearing was held in Arlington, Virginia on January 15, 2008 and the comment period closed on January 18, 2008.

In developing this final rule, MSHA considered the investigation reports of the Sago and Darby mine explosions, implementation and enforcement experience under the ETS, MSHA's in-mine seal evaluations and review of technical literature, the 2007 NIOSH Draft and Final Reports on explosion testing and modeling, the USACE's Draft Report, accident reports, research studies, public comments, hearing transcripts and supporting documentation from all segments of the mining community.

II. Discussion of the Final Rule

This final rule assures that miners can rely on seals to protect them from the hazardous and sometimes explosive environments within sealed areas. This final rule includes requirements for seal strengths; design applications and

installation; sampling and monitoring of sealed atmospheres; construction and repair of seals, training for persons conducting sampling and persons constructing or repairing seals, and recordkeeping to protect miners from hazards of sealed areas.

Underground coal mines are dynamic work environments in which the working conditions can change rapidly. Caved, mined-out areas may contain coal dust and accumulated gas which can be ignited by rock falls, lightning, and in some instances, fires started by spontaneous combustion. Seals are used to isolate this environment from the active workings of the mine. Seals are also installed to withstand overpressures resulting from explosions in abandoned areas and to prevent the potentially explosive methane/air mixtures from migrating to the working areas. Overpressure is the pressure above the background atmospheric pressure. For example, air pressure in a car tire is measured with a pressure gauge as 30 psi, which is an overpressure. The absolute pressure of the air inside the tire is 44.7 psi which is 14.7 psi or one atmosphere higher. Explosion pressures are normally expressed as an overpressure beyond standard atmospheric pressure.

A methane/air mixture becomes explosive when 5 percent to 15 percent methane is present with at least a 12 percent oxygen concentration. If an ignition source is available, then an explosion can occur and create overpressures. The homogeneity of the methane/air mixture contributes to the magnitude of the explosion. The homogeneity of the methane/air mixture can vary depending on the elevation and the methane liberation of the sealed area and outside factors such as the temperature and barometric pressure. The speed of an explosion and the physical characteristics of a sealed area can increase the force of the explosion such that detonations and significant pressure piling may be possible.

Pressure piling is the development of pressure in excess of normal atmospheric pressures as a result of the velocity-related compression of the gases in front of the flame. Pressure piling results from the rapid acceleration of the front of the flame. This acceleration process may be increased by cross-sectional restrictions, obstructions and other irregularities in the path of the flame. If the air flow ahead of the front of the flame is sufficiently turbulent, the flame speed may increase and transition from deflagration to detonation. A detonation occurs when the flame of an explosion propagates through the unburned fuel at

a velocity exceeding the speed of sound. A deflagration occurs when the flame of an explosion propagates through unburned fuel at a velocity below the speed of sound.

This final rule addresses seal strength design, construction, maintenance and repair of seals and monitoring and control of atmospheres behind seals in order to reduce the risk of seal failure and the risk of explosions in abandoned areas of underground coal mines. It also addresses the level of overpressure for new seals. This final rule will protect miners from hazards of sealed areas.

III. Section-by-Section Analysis

A. Section 75.335 Seal Strengths, Design Applications, and Installation

The final rule addresses the requirements for seal strengths, design applications, and seal installation.

1. Section 75.335(a) Seal Strengths

Final § 75.335(a) requires that seals constructed in underground coal mines after October 20, 2008 be designed, constructed and maintained in accordance with the provisions of this final rule.

Final § 75.335(a)(1)(i), like the ETS, requires that seals withstand at least 50-psi overpressure when the atmosphere in the sealed area is monitored and maintained inert. Final § 75.335(a)(1)(i) adds new requirements that these seals be designed using a pressure-time curve with an instantaneous overpressure of at least 50 psi, and that the minimum overpressure must be maintained for at least four seconds and then released instantaneously.

Final § 75.335(a)(1)(ii) addresses new requirements that seals constructed to separate the active longwall panel from the longwall panel previously mined be designed using a pressure-time curve with a rate of pressure rise of at least 50 psi in 0.1 second, and that a minimum overpressure of at least 50 psi be maintained.

Final § 75.335(a)(2)(i) revises the ETS and requires that seals withstand overpressures of at least 120 psi if the atmosphere in the sealed area is not monitored, is not maintained inert, and the conditions in final § 75.335(a)(3)(i) through (iii) of this section are not present. Final § 75.335(a)(2)(i) also adds new requirements that these seals be designed using a pressure-time curve with an instantaneous overpressure of at least 120 psi, and that a minimum overpressure of 120 psi be maintained for at least four seconds and then released instantaneously.

Final § 75.335(a)(2)(ii) adds new requirements that seals constructed to

separate the active longwall panel from the longwall panel previously mined be designed using a pressure-time curve with a rate of pressure rise of 120 psi in 0.25 second, and that a minimum overpressure of 120 psi be maintained.

Final § 75.335(a)(3) is essentially unchanged from the ETS. It requires seals to withstand overpressures greater than 120 psi if the atmosphere in the sealed area is not monitored and is not maintained inert, and either (i) the atmosphere in the sealed area is likely to contain homogeneous mixtures of methane between 4.5 percent and 17.0 percent and oxygen exceeding 17.0 percent throughout the entire area; or (ii) pressure piling could result in overpressures greater than 120 psi in the area to be sealed; or (iii) other conditions are encountered, such as the likelihood of a detonation in the area to be sealed.

Final § 75.335(a)(3)(iv) retains the ETS requirement that when homogenous explosive atmospheres, pressure piling or the likelihood of a detonation exists, the mine operator must revise the ventilation plan to address the potential hazards. In addition, the operator must conduct an analysis of the mining conditions and revise the plan to include seal strengths sufficient to address these conditions.

MSHA received many comments in response to its request on the appropriateness of the three-tiered approach to seal strength in the ETS. One commenter stated that the strength requirements in the first and second tier are arbitrary. Other commenters objected to the fixed seal strengths and requested that either a case-by-case determination or a risk analysis be made to determine which seal strength is needed. One commenter suggested that a two-tiered approach is adequate and that a third tier is not needed. A commenter stated that the 120-psi value proposed in the ETS is sufficient for design purposes and that the 120-psi load prescribed by the ETS is the highest design criterion for seals among all the coal producing countries. Another commenter stated that an explosion with a force greater than 120 psi could not occur in an underground coal mine. Other commenters, however, stated that greater than 120-psi explosion pressures can occur in sealed areas. Some commenters suggested that a 640-psi seal, as recommended by NIOSH, should be included in the standard. One commenter on the USACE's Draft Report stated that MSHA should consider a provision in the final rule that would assure that seals are explosion-proof.

The Agency believes that a risk based analysis to determine seal strengths on a case-by-case basis rather than the tiered approach is not appropriate for several reasons. In the ETS, the Agency requested comments on alternatives to the seal strength requirements in the ETS, including supporting data, feasibility, and costs. MSHA did not receive any specific information, relative to alternatives requested, that would support a risk-based analysis on a case-by-case basis in this final rule. The rulemaking record contains little information supporting a case for risk analysis or costs and feasibility of such an approach. Commenters did not address how risk analysis on a case-by-case basis would impact the final rule and miner safety. Since the rulemaking record does not support this alternative approach to determine seal strengths, MSHA has not included it in this final rule.

The strength requirements for final § 75.335(a) are based on MSHA's investigation of the explosion at the Sago mine and the 2007 NIOSH Final Report. NIOSH discovered through research testing and modeling that a 50-psi peak overpressure could occur in a limited-volume, unconfined situation. Small, unconfined pockets of gases in an explosive concentration could always exist in a sealed area. If any of these pockets were ignited, a 50-psi pressure pulse could be generated.

In addition, NIOSH stated that a 120-psi peak pressure could occur in a limited, confined-volume situation. According to NIOSH, in such a situation, even if the overall concentration of explosive gases in the gob is well above the explosive concentration, explosive concentrations could be present in some areas. NIOSH further stated that if an explosive mix of methane and oxygen is ignited in this situation, an explosion could generate a peak explosion pressure of 120-psi. Based on the 2007 NIOSH Final Report and the Agency's data and experience, this final rule retains the second tier of the ETS.

Unlike NIOSH's design curves for 50-psi and 120-psi overpressures, NIOSH did not recommend a static approximation to the 640-psi pressure-time curve because "Additional studies are required * * *." (2007 NIOSH Final Report at pg. 61). Although the NIOSH 640-psi pressure-time curve could be used to design seals, in this case a dynamic analysis would have to be conducted by the professional engineer. MSHA considered NIOSH's 640-psi seal design. However, a prescriptive specific dynamic load factor based on the 640-psi design was not determined and

requires further studies as stated in the 2007 NIOSH Final Report. As stated in the ETS, "Although the recommended maximum seal strength in the 2007 NIOSH Draft Report is 640 psi, MSHA has no empirical or other data at this time, demonstrating that mine conditions exist that will necessitate seals stronger than 120 psi." One commenter on the USACE's draft report questioned this statement. MSHA stated in a Memorandum from its Office of Technical Support that "these comparisons [between the USACE Report and known conditions after the Sago Mine explosion] again brought the practical applicability of results of the study into question." The Memorandum further states that: "Technical Support decided not to publish the study because the critical information necessary to develop an accurate simulation was not available, and therefore, any results could not be relied upon for decision-making. Much of the data provided to the USACE for the three simulations described in the draft report was speculative * * *"

Based on the Agency's available information and data, MSHA could not specifically recommend a 640-psi strength requirement. The final rule retains the third tier of the ETS and requires a seal stronger than 120 psi if certain conditions are encountered. Under the final rule, mine operators must perform a risk analysis and evaluate the atmosphere of the area to be sealed and determine when higher pressure seals should be used and at what strength. The seal design must be approved at the appropriate strength for the specific conditions to be encountered.

Most commenters expressed concern that under the ETS, it is virtually impossible to determine when the conditions requiring a seal greater than 120 psi are present. MSHA has structured the final rule to accommodate pressures greater than 120 psi in recognition of the fact that explosion pressures may exceed this limit under certain conditions. These conditions would be a concern only in sealed areas that are not monitored and not maintained inert. The final rule requires seal strengths greater than 120 psi if seals are constructed around areas that are not monitored and are not inert, and one of the following three conditions occurs: (1) A homogeneous explosive atmosphere exists, (2) pressure piling could result in pressures

exceeding 120 psi, or (3) detonation is likely.

MSHA expects that mine operators will sample an appropriate number of locations within the sealed area during the period when seals are reaching their design strength to address whether a homogeneous explosive atmosphere exists. These samples could be taken at various locations, including through seals constructed around the sealed area and possibly through boreholes or shafts within the sealed area. When these seals reach design strength of 120 psi, sampling is no longer required. If the methane concentration stabilizes between 4.5 percent and 17 percent and the oxygen concentration remains above 17 percent in all samples, then the atmosphere is considered homogeneous throughout the sealed area, and seal strengths must be designed to an adequate level above 120 psi, as determined by the professional engineer, which will provide adequate protection for miners underground. MSHA realizes that the seals surrounding the sealed area must be in place prior to sampling.

MSHA expects that mine operators will evaluate the physical characteristics of the underground workings near all seals surrounding the sealed area to address whether pressure piling can occur to a degree that causes explosion overpressures to exceed 120 psi. Overpressures that occurred during the 2006 explosion at the Sago Mine increased in magnitude due to a severe change in the physical characteristics of the underground workings near the seals. The seals at the Sago Mine were constructed to a height of approximately 7 feet. The workings in the sealed area had been previously second mined to a height of nearly 20 feet in some locations near the seals. As the explosion propagated toward the seals, pressure piling occurred and caused excessive pressure at the location of the seals. These factors must be considered by the mine operator to determine if a situation exists that will cause pressure piling, resulting in pressures above 120 psi. If this situation exists, then seal strengths must be designed to an adequate level above 120 psi, as determined by the professional engineer.

MSHA expects that mine operators will fully evaluate potential ignition sources, potential methane concentrations, and potential oxygen concentrations in the sealed areas to determine if detonation could occur.

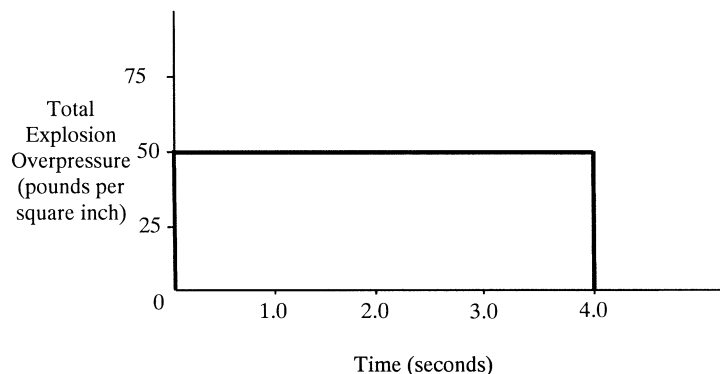
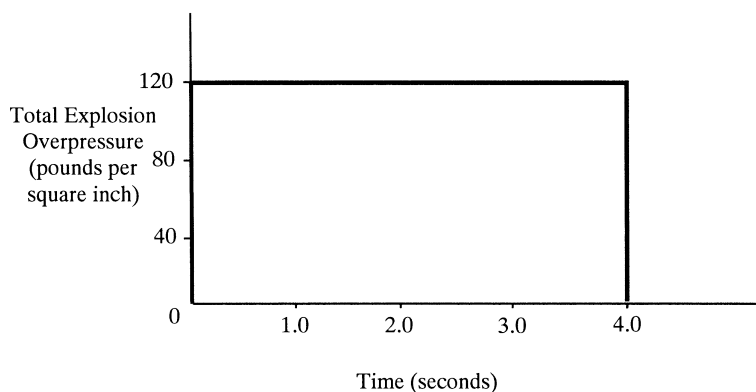
Mine operators should consider whether a high energy ignition source exists in the sealed area, whether extensive volumes of homogeneous mixtures of explosive methane concentrations may exist, and whether sufficient oxygen may be present in the sealed area.

MSHA received several comments on the USACE's Draft Report. The report details the USACE's efforts to mathematically model the methane explosion at the Sago Mine and potentially establish the seal overpressures. The report recommended that additional research was needed to refine the models in order to better predict an explosion pattern.

Commenters stated that computational fluid dynamics modeling could be used effectively to compare the effect of different variables on explosions, but that this type of modeling cannot accurately predict conditions. According to one commenter, their data collection and analysis of an actual gob composition is highly non-homogeneous, and the chance of methane gas detonation in a coal mine is almost zero. Therefore, this commenter stated that the 120-psi criterion in the ETS is adequate.

Final §§ 75.335(a)(1)(i) and (a)(2)(i) include requirements that seal designs must resist explosions of specific duration and intensity. The duration and intensity is characterized in pressure-time curves. A pressure-time curve gives engineers a mechanism to perform a dynamic analysis or to derive a dynamic load factor that they can use in a static analysis of a design. The pressure-time curves in Figures 1 and 2 yield a dynamic load factor (DLF) of 2.0, which is the theoretical maximum (Structures to Resist the Effects of Accidental Explosions, Department of the Army, Report TM 5-1300, November 1990) (1990 Department of the Army Report). Holding the applied pressure for at least four seconds assures that a seal could be loaded elastically at a DLF of 2.0 (1990 Department of the Army Report). The instantaneous release of the overpressure load after at least four seconds gives engineers a criterion to address the rebound effect that would occur in the seal after the explosive force was removed. Under this final rule, a professional engineer could submit, for MSHA approval, a unique design that is able to withstand the prescribed design criteria.

Figures 1 and 2 are the 50-psi and 120-psi pressure-time curves to be used for seal design.

Figure 1. 50-psi pressure-time curve.Figure 2. 120-psi pressure-time curve.

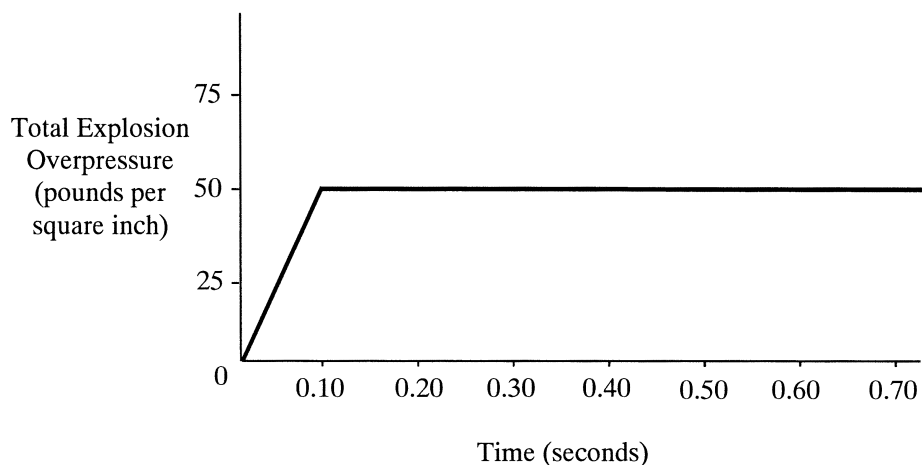
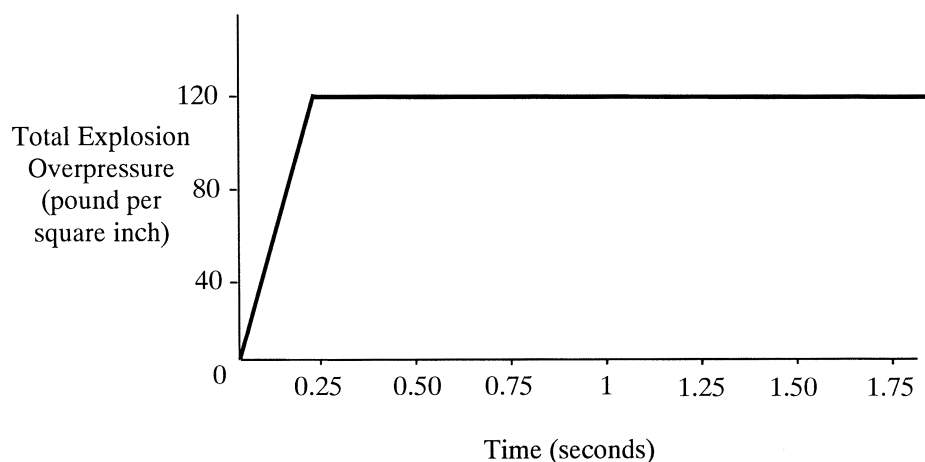
Several commenters requested a more prescriptive design standard identifying minimum overpressures. MSHA believes that a more prescriptive standard would eliminate ambiguity and result in greater protection of miners. In response to these comments and for clarity, final §§ 75.335(a)(1)(i) and (a)(2)(i) provide specific pressure-time curves for certain seal designs.

Some commenters requested that they be allowed to use seals constructed to separate the active longwall panel from the longwall panel previously mined. These commenters stated that such seals protect miners from explosions and help control spontaneous combustion, which

has historically been a problem in the western U.S. mines. MSHA's enforcement policy under the ETS is consistent with the prescriptive design requirements in final §§ 75.335(a)(1)(ii) and (a)(2)(ii) for these types of seals. These provisions allow seals to be designed using pressure-time curves that characterize an explosion having pressure venting and slower pressure rise times. Such pressure-time curves are published in the 2007 NIOSH Final Report.

Both NIOSH 50-psi and 120-psi pressure-time curves for these seals yield a dynamic load factor of 1.0. The caved roof gob adjacent to seals used to

separate the active longwall panel from the longwall panel previously mined minimizes run-up distances, which may otherwise be long enough to generate steeper rise times on either pressure pulse. Thus, both pressure-time curves enable engineers to analyze these seal designs based upon a dynamic analysis or a static, uniform pressure, which is equal to the peak overpressure in the applicable pressure-time curve. Figures 3 and 4 are the 50-psi and 120-psi pressure-time curves that can be used for the design of seals that separate the active longwall panel from the longwall panel previously mined.

Figure 3. Longwall panel 50-psi pressure-time curve.Figure 4. Longwall panel 120-psi pressure-time curve.

Several commenters asked that explosion wave mitigation procedures be allowed in lieu of seal designs to withstand overpressures greater than 120-psi. Based on MSHA's knowledge and experience, if a seal is to withstand overpressures at the design seal strength, then wave mitigation methods may not provide effective protection. Most wave mitigation techniques are designed for a one-time use, after which they do not offer any quantifiable resistance to explosion overpressure. While wave mitigation methods are not discouraged by MSHA, wave mitigation alone cannot be used to meet the requirements of the standard.

Several commenters inquired about a safety factor in the seal designs. Some commenters believed that the seal design requirement in the ETS included a safety factor of two. Like the ETS, this final rule does not require a safety factor in any seal designs. As mentioned above, for static-equivalent seal designs

using either of the two prescribed pressure-time curves having an instantaneous rise, a Dynamic Load Factor (DLF) of 2 would be applied to the peak overpressure. The DLF is multiplied by the peak overpressure for a static-equivalent overpressure for which the seal should be designed to resist. For example, a 120-psi seal designed with a static-equivalent procedure would have to withstand a design static overpressure of 240 psi. The two prescribed pressure-time curves that are permitted for use with seals constructed to separate the active longwall panel from the longwall panel previously mined have a DLF of 1. A DLF is not a factor of safety. It is a ratio used to equate a dynamic load with a static load for design purposes. Professional engineers are expected to incorporate load factors in their designs, in addition to the DLF, in accordance with current prudent structural engineering practices.

Many commenters questioned why Mitchell-Barrett seal designs were not permitted under the ETS. Some commenters stated that Mitchell-Barrett seals were tested by NIOSH and that they are capable of holding a static load over 95 psi. This maximum 95 psi overpressure was generated in a small-volume chamber behind the tested seal and was not generated by an explosion pressure wave traveling down a mine opening at the Lake Lynn Experimental Mine, as seals had been tested previously. NIOSH attempted to establish equivalency of a small-volume chamber to the full-scale explosion tests. NIOSH did not establish equivalency between the two types of tests. Also, the pressure-time curve in this final rule for 50-psi seals incorporates a DLF of 2 and results in a static equivalent load of 100 psi. This static equivalent load is greater than the 95 psi static load that NIOSH measured. Mitchell-Barrett seals that were tested

by NIOSH would not be permitted under this final rule for 50-psi seals requiring a DLF of 2.0.

One commenter stated that the ETS would cause existing seals in three mines operated by the mine operator to be replaced with 50-psi rated seals and that replacement of the existing seals would be costly. The final rule does not require replacement of existing seals; rather, for existing seals, it requires operators to monitor methane and oxygen concentration levels and to maintain an inert atmosphere in the sealed area.

Another commenter stated that the turnkey costs for seals used in the company's mines ranged from \$12,000 to \$25,000 and stated that MSHA had severely understated costs. However, the Agency's cost estimates are weighted averages of the costs for various types of seals. MSHA's estimated turnkey costs range from approximately \$7,370 to \$25,000 for 50 psi seals and \$11,330 to \$38,550 for 120 psi seals. The commenter's costs come within the range of seal costs MSHA used to develop its cost estimates.

2. Section 75.335(b) Seal Design Applications

Final § 75.335(b) rennumbers and revises ETS § 75.336(a). It requires that seal design applications be based on either engineering design applications or full-scale explosion tests. The final rule permits the applicant to use other equivalent means of physical testing in lieu of full-scale explosion tests. The final rule also requires that seal design applications from seal manufacturers or mine operators be submitted for approval to MSHA's Office of Technical Support, Pittsburgh Safety and Health Technology Center, P.O. Box 18233, Cochran's Mill Road, Pittsburgh, PA 15236.

Final § 75.335(b)(1), like the ETS, sets forth specific requirements for an engineering design application. Under final § 75.335(b)(1)(i), an engineering design application must address the following: Gas sampling pipes, water drainage systems, methods to reduce air leakage, pressure-time curve, fire resistance characteristics, flame spread index, entry size, engineering design and analysis, elasticity of design, material properties, construction specifications, quality control, design references, and other information related to seal construction.

Section 75.335(b)(1)(i) has been revised to include elasticity of design in the engineering design application. MSHA has included this requirement in the final rule for clarity. It is based on the 2007 NIOSH Final Report and on

MSHA's experience with seal design approvals under the ETS. NIOSH notes in the 2007 NIOSH Final Report that repeated pressure waves will likely impact the seal structure. Applications for seals designed for overpressures of 120 psi or greater must address elasticity in their design in order to withstand repeated, independent overpressures. This is consistent with current prudent engineering practices and with MSHA's seal approval process under the ETS. Addressing elasticity in seal design does not require a higher seal strength than that under the ETS. The final rule is consistent with MSHA's approved seal designs under the ETS. This final rule retains the other requirements of the ETS.

Final § 75.335(b)(1)(ii), like the ETS, requires that an engineering design application be certified by a professional engineer that the design of the seal is in accordance with current, prudent engineering practices. In addition, it clarifies the ETS requirement and specifies that the professional engineer certify that the seal design is applicable to conditions in an underground coal mine. In the ETS, MSHA discussed the engineering decisions and actions that must be made by and must be the responsibility of the professional engineer. Those included (1) the selection or development of design standards or methods, and materials to be used in seal construction; (2) the development and preparation of the structural analyses and design computations, drawings, and specifications; (3) the selection or development of techniques or methods of testing to be used in evaluating materials used either during seal construction or following completion of seal construction; and (4) the development of construction procedures. This final rule clarifies MSHA's intent that a seal design must reliably function given a set of specific conditions in an underground coal mine, and that a professional engineer must certify that the seal design is applicable to conditions in an underground coal mine.

Several commenters stated that professional engineers who are required to comply with the engineering design application requirements in the ETS could lose complete dominion and control over the design of a seal. A commenter stated that West Virginia state law requires a professional engineer to maintain complete direction and control over all specifications, reports, drawings, plans, design information, and calculations to be certified. Commenters raised an issue concerning a seal designed by MSHA

but requiring certification by a professional engineer. Under the ETS, this particular seal approval required a separate review and certification by a professional engineer before it could be used. However, the professional engineer may also use that particular design as basis for a new seal design and submit it to MSHA for approval.

A commenter stated that the design of mine seals for use in West Virginia is engineering work and requires that it be done by a registered West Virginia professional engineer. MSHA accepts the certification of a professional engineer from any state and allows that certification to be used in other states. Each state is responsible for enforcing its rules and regulations.

Another commenter stated that because field conditions change the professional engineer must be allowed to make the necessary field changes to meet those conditions in order to protect the public safety. MSHA acknowledges that some field conditions may change but because of the importance and complexity of the seal designs, the final rule does not permit field changes. Like the ETS, the final rule allows the mine operator to make revisions to the original approved design by submitting those changes that are certified by a professional engineer to MSHA's office of Technical Support for approval.

Final § 75.335(b)(1)(iii) revises ETS § 75.336(a)(1)(iii) and requires that an engineering design application include a summary of the installation procedures related to seal construction. Based on MSHA's field experience under the ETS, the requirement for a summary of installation procedures is more appropriate than that in the ETS for specific information to be included in a Seal Design Table. Under the final rule, the summary should include all of the information necessary to construct a seal including quality control and other necessary information. The application must list provisions that specify quality control procedures for construction and include requirements for material sampling and testing. Material testing should be conducted by a certified laboratory and by qualified personnel. The certification for the laboratory must be from a professional organization such as the International Organization for Standardization (ISO) and the personnel must be able to demonstrate qualifications to ensure proper quality control testing. MSHA's experiences under the ETS reveal that some information included in the seal design application is proprietary. Although this information is required to be submitted to Technical Support for evaluation of

the design, it is not necessary to include it in the ventilation plan for approval by the District Manager. The requirement for the summary information will eliminate the need to disseminate any proprietary information. It will provide the District Manager with information needed to approve the seal design in the ventilation plan.

Final § 75.335(b)(2) requires that seal design applications can be based on full-scale explosion tests or equivalent means of physical testing. During discussions with MSHA on alternatives to full-scale testing, NIOSH indicated that equivalent testing conditions can be represented in suitable hydrostatic test chambers similar to those at the NIOSH Lake Lynn Experimental mine. MSHA believes that an equivalent means of physical testing, that has at least the same level of confidence as full-scale explosion testing, is an acceptable means of compliance and the Agency has included it in the final rule.

Final § 75.335(b)(2)(i), like ETS § 75.336(a)(2)(i), requires certification by a professional engineer that the testing was done in accordance with current, prudent engineering practices for construction in a coal mine. This final rule deletes the requirement in the ETS that the professional engineer be knowledgeable in structural engineering. MSHA deleted this requirement because there is no certification available to assure that a professional engineer is knowledgeable in structural engineering. MSHA's experience with seal design approvals under the ETS reveals that the Professional Engineers who successfully submit seal designs are knowledgeable in structural engineering. MSHA received one comment on this provision which recommended the words "knowledgeable in structural engineering" be removed.

Final § 75.335(b)(2)(ii), like ETS § 75.336(a)(2)(ii), requires the applicant to provide technical information related to the methods and material used to construct and test the seals. MSHA received no comments on this provision.

Final § 75.335(b)(2)(iii) requires that the application include supporting documentation. This clarifies ETS § 75.336(a)(2)(iii) that required proper documentation. The term "supporting" more accurately describes the type of documentation required. This documentation includes: Engineering analyses, construction drawings and specifications, and data that address seal material, fire resistance and flame-spread index. The applicant must establish the materials and material properties required for adequate seal construction. Construction documentation is required to assure that

the seals are properly built and reliable to address air leakage, and to verify that the material properties of the seal will meet the specified strength criteria. MSHA received no comments on this provision.

Final § 75.335(b)(2)(iv), like ETS § 75.336(a)(2)(iv), requires the application to include an engineering analysis addressing differences between the seal support during test conditions and the range of test conditions in a coal mine. MSHA received no comments on this provision.

Final § 75.335(b)(2)(v) revises ETS § 75.336(a)(2)(v) and requires that a summary of the installation procedures be included in the application. This requires that applicants submit more appropriate information in the form of a summary of installation procedures rather than specific information included in a Seal Design Table as required by the ETS. This summary should include the installation procedures related to mine specific seal construction. For example, it would include the maximum entry width and height for which the specific design is applicable, the specified strength of the seal material, the thickness of the seal, and the reinforcement and anchorage requirements for the seal. Additional information may be provided at the discretion of the Professional Engineer. MSHA received no comments on this provision.

Final § 75.335(b)(3), like ETS § 75.336(a)(3), provides that MSHA will notify the applicant if additional information or testing is required. It also requires the applicant to provide this information, arrange any additional or repeat tests, and provide prior notification to MSHA of the location, date, and time of such tests. MSHA received no comments on this provision.

Final § 75.335(b)(4), like ETS § 75.336(a)(4), provides that MSHA will notify the applicant, in writing, whether the design is approved or denied. It also provides that if the design is denied, MSHA will specify, in writing, the deficiencies of the application, or necessary revisions. MSHA received no comments on this provision.

Final § 75.335(b)(5), like ETS § 75.336(a)(5), requires that once the seal design is approved, the approval holder must promptly notify MSHA, in writing, of all deficiencies of which they become aware. MSHA received no comments on this provision.

3. Section 75.335(c) Seal installation approval

Final § 75.335(c), like ETS § 75.336(b), requires that the installation of the

approved seal design be approved in the ventilation plan.

Final § 75.335(c)(1), like the ETS, requires the mine operator to retain the seal design approval and installation information for as long as the seal is needed to serve the purpose for which it was built. One commenter stated the requirement to retain approval and installation information for an indefinite period places an onerous burden on both the professional engineer and the mine operator, and suggested that the final rule include a definite duration for retaining this information. Based on MSHA's experience under the ETS, the requirement for approval and installation information provides a reliable reference should any problems occur during the service life of the seal. This provides valuable information as to how the seal was constructed and identifies the person responsible for certifying that the provisions in the approved seal design were addressed. In some instances, this information may enable persons to question individuals responsible for designing and constructing the seal to gain an insight as to the circumstances surrounding the construction and identify any problems that may have been encountered during the construction. Accordingly, this provision remains unchanged from the ETS.

Final § 75.335(c)(2), like the ETS, requires that the mine operator designate a professional engineer to conduct or have oversight of seal installation and certify that the provisions in the approved seal design specified in this section have been addressed and are applicable to the conditions in the mine. This final rule also requires that a copy of the certification be submitted to the District Manager with the information provided in final § 75.335(c)(3) and that a copy of the certification be retained for as long as the seal is needed to serve the purpose for which it was built.

One commenter supported this provision and stated that creating accountability in the construction process is a critical component if MSHA is to assure that coal operators take very seriously their obligation to provide a safe workplace with properly designed and constructed seals.

Several commenters opposed this provision. They stated that the requirement to conduct or have oversight of seal installation should be deleted because it would be expensive, difficult because there are many variables in the construction process, and unnecessary because a mine operator must also certify construction. Some commenters stated that a

professional engineer's function is the design of a seal, not oversight of the construction. Several commenters stated that the provision would require a professional engineer to be on site prior to, during, and following construction of every seal to insure that all parameters are met and that would be unnecessary.

Under the final rule, MSHA does not intend that the professional engineer take part in the construction process or be at the seal installation site during the entire construction process. MSHA stated its intent with respect to this requirement at the public hearings. MSHA's existing enforcement policy states that the professional engineer must inspect the set of seals during construction as part of the oversight and certification required by ETS § 75.336(b)(2). To accomplish this oversight, MSHA would expect the professional engineer to: (1) Verify that the seal application is suitable for the specific conditions, (2) confirm that the site preparation is adequate, (3) confirm that the workforce is adequately trained to properly build the seals, (4) verify that the correct materials and procedures are being used to construct the seal, and (5) confirm that adequate quality controls are in place and are being followed. The professional engineer however, does not have to be onsite the entire time that seals are being built.

Based on the Agency's knowledge and experience, MSHA has determined that the oversight by the professional engineer, who would be most familiar with the seal design, will help assure that appropriate seal design implementation and related analyses are performed properly. In addition, it will assure that seals are constructed according to the drawings and specifications of a professional engineer.

Final § 75.335(c)(3), like the ETS, lists specific information that a mine operator must address in the ventilation plan. The information will be used by the District Manager to evaluate a seal installation and determine whether the seal design is appropriate for a particular site.

Final § 75.335(c)(3)(i), like the ETS, requires that mine operators include the MSHA Technical Support Approval Number of the seal design in the ventilation plan. MSHA did not receive any comments on this section. This final rule is unchanged from the ETS.

Final § 75.335(c)(3)(ii) revises ETS § 75.336(b)(3)(iii)(D). It requires a summary of the installation procedures for approval to be included in the ventilation plan. This final rule is derived from the ETS requirement that the mine operator specify construction

techniques for each type of seal. It revises the ETS requirement to be consistent with the language in final § 75.335(b)(1)(iii). The information required in this final rule, however, is essentially the same as that required in the ETS. Examples of information required by this provision include: Maximum entry width and height for which the design is applicable; specified strength of the seal; construction steps; and reinforcement and foundation anchorage requirements. In addition, when frame work is used, information should specify frame work size, spacing and materials used, a description of how the frame work is erected, size of other material used, such as concrete block size, wood products used and spacing, and, if needed, an anchorage table for rebar showing lengths, hole size, and other material used with the rebar. If hitching is required, information should specify hitching location, width and depth, calibration of equipment where required, sequence of pouring materials and thickness, sequence and type of roof support used, surface preparation, a description of the material pouring techniques and how cold joints may or may not be permitted, set back distances, a diagram of the water drainage system and air sampling installation, methods for preventing water retention during the curing process, rockdust removal from rib at the seal site, thickness of the seal, and other additional information in the seal design application.

Final § 75.335(c)(3)(iii) revises the ETS. It requires that mine operators provide, in the ventilation plan, a mine map of the area to be sealed and proposed seal locations that include the deepest points of penetration prior to sealing. This final rule revises the ETS by requiring that locations include the deepest points of penetration prior to sealing. This provision will help assure that the area was surveyed, a map of the area to be sealed was completed and the map was submitted by the mine operator. In addition, this final rule requires that the mine map be certified by a professional engineer or a professional land surveyor. It revises the ETS by including a professional land surveyor to certify the mine map to be consistent with existing § 75.1201 which permits a professional land surveyor to certify the mine map.

Final § 75.335(c)(3)(iv), like the ETS, requires that mine operators submit specific mine site information in the ventilation plan. Final § 75.335(c)(3)(iv)(A) requires that the type of seal be included in the

ventilation plan. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(B), like the ETS, requires mine operators to include information in the ventilation plan on the safety precautions taken prior to seals achieving design strength. Some commenters stated that this provision should require withdrawal of miners. According to commenters, this would be consistent with NIOSH's recommendation that miners be withdrawn from the affected area until seals reach design strength and the atmosphere in the sealed areas reaches an inert status. Other comments stated that withdrawal is not necessary because the sealed areas contain no likely ignition source, and if an inert atmosphere is present, uncured seals do not present an imminent danger as there is no explosion potential. In addition, some of these commenters stated that withdrawal of miners during seal curing time, which could be up to 28 days, would be too costly.

Based on MSHA's knowledge and experience under the ETS, miners could be exposed to the dangers of an explosion prior to seals achieving their design strength. Accordingly, MSHA believes that safety precautions need to be taken prior to seals achieving design strength. Safety precautions could include withdrawing miners from the entire mine or other area approved by the District Manager. They could also include the use of seals that reach their design strength in considerably less time than 28 days. In addition, the mine operator could inert the atmosphere prior to or during seal installation. If an inert atmosphere is present behind seals that have not reached their design strength, miners would not need to be withdrawn from the affected area. This provision remains unchanged from the ETS.

Final § 75.335(c)(3)(iv)(C) revises the ETS. It requires that the mine operator provide information in the ventilation plan on methods used to address site-specific conditions that may affect the strength and applicability of the seal, including set-back distances. The set-back distance, which is the distance from the corner of a pillar block to a seal, is critical to the long term stability and protection of a seal. Although the ETS did not specifically address set-back distances, many professional engineers included this concept in their design applications.

Based on MSHA's experience under the ETS, professional engineers designing seals have listed a minimum set-back distance of 10 feet when applying for a seal design approval in most instances. MSHA believes,

however, that set-back distances need to be addressed on a mine-by-mine basis. Some coal is softer or harder than others; and the overburden varies, which has an effect on the stability of the coal seam pillar. This means that some coal pillars will remain more or less stable than others over a long period of time. It is also possible to artificially reinforce the stability of less stable coal pillars, for example, by injecting materials into the pillars. Therefore, MSHA is including a requirement that the set-back distance of a seal be addressed in the mine ventilation plan during the seal plan approval process.

Final § 75.335(c)(3)(iv)(D), like the ETS, requires the mine operator to submit information in the ventilation plan on site preparation. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(E), like the ETS, requires the mine operator to include information on the sequence of seal installations in the ventilation plan. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(F), like the ETS, requires that the mine operator provide information in the ventilation plan on the projected date of completion of each set of seals. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(G), like the ETS, requires the mine operator to provide information in the ventilation plan on the supplemental roof support inby and outby each seal. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(H), like the ETS, requires the mine operator to provide information in the ventilation plan on the water flow estimation and dimensions of the water drainage system through the seals. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(I), like the ETS, requires that the mine operator provide information in the ventilation plan on the methods used to ventilate the outby face of seals once completed. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(J), like the ETS, requires the mine operator to provide information in the ventilation plan on the methods and materials used to maintain each type of seal. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(K), like the ETS, requires the mine operator to provide information in the ventilation plan on methods used to address shafts and boreholes in the sealed area. MSHA did not receive any comments on this provision.

Final § 75.335(c)(3)(iv)(L) is derived from ETS § 75.335(a)(3)(iv). This final rule requires the mine operator to provide information in the ventilation plan on an assessment of potential for overpressures greater than 120 psi in the sealed area. ETS § 75.335(a)(3)(iv) required the mine operator to revise the ventilation plan when conditions that would necessitate a seal greater than 120 psi are encountered. This final rule is consistent with the ETS. It includes this provision to assure that the mine operator evaluates the area to be sealed and addresses the need for seals greater than 120 psi.

Final § 75.335(c)(3)(iv)(M) rennumbers and clarifies ETS § 75.335(b)(5)(ii). It requires mine operators to provide information in the ventilation plan on additional sampling locations. This final rule is consistent with ETS § 75.335(b)(5)(ii), which required the location of sampling points to be included in the mine operator's action plan. Under this final rule, additional sampling locations could include sampling through boreholes and capped shafts with vent pipes.

Final § 75.335(c)(3)(iv)(N), like the ETS, requires the mine operator to provide, in the ventilation plan, any additional information required by the District Manager. This final rule will help assure that any new developments in technology or any problems related to site-specific conditions in sealing may be addressed by the mine operator through the ventilation plan. MSHA did not receive any comments on this provision.

B. Section 75.336 Sampling and Monitoring Requirements

Final § 75.336, derived from ETS § 75.335(b), revises and rennumbers sampling and monitoring requirements for sealed atmospheres. In the final rule, the terms "sampling" and "monitoring" are used interchangeably. The final rule deletes the requirement in the ETS for mine operators using seals designed to withstand less than 120 psi to develop and follow a protocol to monitor methane and oxygen concentrations in sealed atmospheres. The ETS required that the protocol be approved by the District Manager in the ventilation plan. Requirements to maintain and restore an inert atmosphere in the sealed area are discussed in final § 75.336(b); requirements for sampling pipes are discussed in final § 75.337(g). Requirements for welding, cutting and soldering are discussed in final § 75.337(f); requirements for water drainage systems are discussed in final § 75.337(h); and requirements for training of certified persons conducting

sampling are discussed in final § 75.338(a).

Section 75.336(a) of the final rule retains the requirement in ETS § 75.335(b) for a certified person, as defined under existing § 75.100, to monitor sealed atmospheres for methane and oxygen concentrations. Unlike the ETS, the final rule requires sealed atmospheres to be monitored through each sampling pipe and approved sampling location whether seals are ingassing or outgassing. Training requirements for certified persons are addressed in final § 75.338(a) and are unchanged from the ETS.

Final §§ 75.336(a)(1)(i) through (iii) address ETS requirements for sampling frequencies, including initial sampling periods and sampling on a continuing basis. Atmospheres with seals less than 120 psi constructed prior to October 20, 2008, and atmospheres with seals of less than 120 psi constructed after October 20, 2008 must be sampled through each sampling pipe and approved location at least every 24 hours. Under the final rule, the operator may request that the District Manager approve different frequencies and locations in the ventilation plan. Under the final rule, seals of 120 psi or greater must be monitored until they reach their design strength. After they reach their design strength, the final rule does not require the atmosphere in these sealed areas to be monitored and maintained inert.

Final § 75.336(a)(2) is derived from ETS §§ 75.335(b)(1) and (b)(5) and requires the mine operator to evaluate the atmosphere in the sealed area to determine whether sampling through required sampling pipes under final § 75.337(g) provides appropriate sampling locations. The final rule specifies the conditions under which the evaluation must be conducted. When the evaluation results indicate the need for additional sampling locations, the mine operator must establish additional sampling locations and include them in the ventilation plan for approval by the District Manager.

Final § 75.336(a)(3) requires mine operators with an approved ventilation plan addressing spontaneous combustion under existing § 75.334(f) to monitor sealed atmospheres in accordance with the plan.

Final § 75.336(a)(4) is derived from ETS § 75.335(b)(5)(vi) and allows the District Manager to approve the use of a continuous monitoring system in lieu of monitoring provisions in the final rule.

Final § 75.336(b)(1), like ETS § 75.335(b)(3), defines an inert atmosphere as one in which the oxygen concentration is less than 10 percent, or

the methane concentration is less than 3.0 percent or greater than 20.0 percent. Final § 75.336(b)(2) addresses corrective action necessary if the atmosphere is not inert. It requires that when a sealed atmosphere with less than 120-psi seals is not inert, the mine operator must take immediate action to reestablish an inert atmosphere and monitor the sealed atmosphere every 24 hours until it is restored to an inert status.

Final § 75.336(c) revises and clarifies ETS § 75.335(b)(4) and specifies when persons must be withdrawn from the mine due to a hazardous atmosphere in the sealed area.

Final § 75.336(d) clarifies existing MSHA policy that allows the operator to request that the District Manager approve in the ventilation plan a different oxygen concentration if the atmosphere in the sealed area contains carbon dioxide. It also addresses sealed areas where inert gas has been injected, and sampling methods and equipment.

Final §§ 75.336(e)(1) and (e)(2) are the same as ETS §§ 75.335(b)(6) and (b)(7) and include requirements for recording sampling results and any hazardous condition found in accordance with existing § 75.363.

1. Section 75.336(a)

Section 75.336(a) retains the requirement in ETS § 75.335(b) for a certified person, pursuant to § 75.100, to monitor sealed atmospheres. The final rule continues to require the certified person to monitor the sealed area for methane and oxygen concentrations. Under the final rule, unlike the ETS, sealed atmospheres must be monitored whether seals are ingassing or outgassing. Mine operators must also determine the direction of air leakage during monitoring which will indicate whether seals are ingassing or outgassing. Seals outgas when the pressure in the sealed area exceeds the pressure on the outby side of the sealed area. Seals ingas when the pressure outby the sealed area exceeds the pressure in the sealed area.

ETS § 75.335(b)(1) required mine operators to sample sealed atmospheres only when seals were outgassing. MSHA requested comments regarding: its sampling approach; sampling frequency; sampling only when a seal is outgassing; whether a different sampling approach would be more appropriate for the final rule, such as when seals are ingassing; and information and experiences of the mining community concerning sampling sealed areas.

Commenters' views were divided regarding appropriate conditions for monitoring seals, especially on the issue of outgassing and/or ingassing. MSHA

received comments in support of the ETS strategy of requiring monitoring when seals were outgassing, while some other comments supported monitoring whether outgassing or ingassing. Several commenters suggested that sampling only during outgassing is inadequate to protect miners, since a greater concern exists when a seal is ingassing and adds oxygen to a fuel-rich environment in the sealed area. One commenter stated that ingassing creates zones of explosive methane-air mixtures and is more dangerous than when the seals are outgassing. A number of other commenters stated that sampling inby an ingassing seal or a seal that is in barometric pressure transition is a recipe for inaccurate sampling, and MSHA should not require sampling during ingassing. Finally, one commenter who supported sampling when seals are outgassing recommended that balance chambers could reduce incidences of barometric pressure changes exceeding the ventilating pressure produced by main mine fans causing seals to ingas. According to this commenter, the sealed atmosphere continues to change at least at the perimeter of the sealed area, and in some parts of the country, this change occurs on a daily or even more frequent basis. This commenter also suggested that MSHA provide incentives for mine operators such as allowing them to use lower-strength seals than required in the ETS. According to the commenter, these incentives should include allowing lower strength seals where balance chambers are used. MSHA acknowledges that a number of sealed atmospheres fluctuate from outgassing to ingassing on a frequent basis. MSHA believes that the sampling strategy under the final rule, based on ingassing or outgassing, would remove the need for balance chambers.

The Agency has reviewed the comments, hearing transcripts, data and other information contained in the rulemaking record regarding sampling and monitoring. MSHA also reviewed the Agency's enforcement history and field experience with implementation under the ETS. The Agency believes that sealed atmospheres should be monitored whether outgassing or ingassing. Since promulgation of the ETS, some operators have experienced significant delays in monitoring sealed areas, especially during the 14-day baseline period and while seals are reaching their design strength. The preamble to the ETS stated:

If the seal is ingassing during the examination, the certified person must attempt to take a sample during the next

weekly examination. After a second attempt is made and the seal is still ingassing, attempts must be made daily until the seal outgases. If repeated sampling indicates that a seal is not likely to outgas, then the mine operator must submit an alternative protocol to the District Manager. (72 FR at 28802)

At the time of promulgation of the ETS, MSHA did not envision that the sampling and monitoring procedure would result in the significant delays that have been experienced in the mining industry. MSHA inspectors also experienced delays in monitoring sealed atmospheres because of having to wait for seals to outgas before a sample could be taken. Also, limiting monitoring to outgassing affected the operators' ability to promptly implement the ETS monitoring requirements for determining whether the sealed atmosphere had reached the explosive range. After a review of the rulemaking record, the Agency does not believe that the record evidence supports limiting monitoring sealed areas to when seals are outgassing. In response to comments and in light of its own experience, the Agency has revised the monitoring requirement in this final rule to require mine operators to monitor sealed atmospheres whether seals are outgassing or ingassing. MSHA expects the final rule provisions to resolve many existing problems with monitoring sealed areas and to enhance safety and health of underground coal miners.

Final §§ 75.336(a)(1) requires monitoring through each sampling pipe and at each approved sampling location. Under § 75.336(a)(1)(i), mine operators must sample atmospheres with seals of 120 psi or greater until the design strength is reached, after which time they may cease sampling. Initial sampling for all newly-constructed seals is necessary to protect miners if an explosive atmosphere forms behind seals before they reach their design strength.

Under § 75.336(a)(1)(ii) of this final rule, like the ETS, the mine operator must monitor for methane and oxygen and maintain an inert atmosphere in the sealed area when using seals less than 120 psi constructed prior to the date of this final rule. Final § 75.336(a)(1)(iii) requires that atmospheres with seals of less than 120 psi constructed after the date of this final rule must be monitored and the atmosphere must be maintained inert.

Final §§ 75.336(a)(1)(ii) and (iii) allow the operator to request that the District Manager approve different sampling locations and frequencies in the ventilation plan provided at least one sample is taken at each set of seals at least every 7 days. Under final

§ 75.335(a)(1)(iii) for less than 120 psi seals constructed after April 18, 2008, the District Manager cannot approve different sampling locations and frequencies in the ventilation plan until after a minimum of 14 days and after seals have reached design strength. MSHA will consider pertinent information supplied by the mine operator, such as the results of the 14-day sampling period and any other previous sampling results, in an operators' request to change sampling locations and frequencies. The 7-day interval is the same as the ETS monitoring frequency and is consistent with weekly examinations required in existing § 75.364. MSHA believes the sealed atmosphere must be sampled at least every 7 days in the event seal leakage, strata fracturing, roof convergence or another problem has developed and is affecting the sealed atmosphere. Under the final rule, MSHA emphasizes that mine operators must monitor sealed atmospheres at a frequency of every 24 hours unless the District Manager approves a different frequency in the ventilation plan. For newly constructed seals of less than 120 psi, the final rule requires a 14-day sampling period before the District Manager may approve different sampling locations and frequencies. The final rule deletes ETS § 75.335(b)(5)(iii) which required mine operators to specify procedures in the sampling protocol to establish a baseline analysis of oxygen and methane concentrations at each sampling point over a 14-day sampling period to be approved in the ventilation plan. In the final rule, in response to commenters and for clarity, MSHA has included specific parameters for sampling sealed atmospheres. As such, there is no need for a sampling protocol.

Several commenters said that the atmosphere behind all seals should be monitored and maintained inert. One commenter stated that sealed areas cannot be adequately monitored or maintained inert; therefore, all seals must be designed to withstand an explosion. Another commenter stated that monitoring is inadequate to protect miners and that it provides a false sense of security. MSHA believes that monitoring sealed areas informs the mine operator of the presence of potentially hazardous gases in sealed areas. Under the final rule, use of seals designed for less than 120-psi overpressure requires the mine operator to maintain an inert atmosphere in the sealed area since explosions cannot occur within inert atmospheres. MSHA believes that in mines which liberate

significant volumes of methane, the atmosphere in sealed areas may become inert naturally. In mines that produce very small volumes of methane, the atmosphere in sealed areas may never become explosive. However, some mines may need to use other means to inert the atmosphere in the sealed area, such as injecting inert gas or pressure balancing of the ventilation system; or injecting material into the strata surrounding the seals to reduce leakage. These methods could inert the atmosphere in the sealed area. Other mines may need to construct new seals that are 120 psi or greater in front of all existing seals. MSHA's existing standards at § 75.334(a)(1) and (a)(2) require that worked-out areas be sealed or ventilated.

Commenters stated that the ETS sampling and monitoring requirements were confusing. A number of commenters criticized the need for District Manager approval of the sampling protocol. Several commenters said that there was no scientific basis for the monitoring, while others said that the final seal regulation should be more prescriptive. Several commenters criticized MSHA's weekly sampling intervals as being too lengthy to protect the miners. One commenter said that their data showed sealed areas never reach equilibrium and that barometric pressure changes continue to affect the sealed atmosphere. Commenters stated that when a sealed area has reached a stable atmospheric composition, weekly sampling is unnecessary.

MSHA continues to believe that weekly samples are necessary to protect miners' safety and health. Barometric pressure changes, ventilation changes, water accumulations, methane liberation, subsidence, cracked strata near seals, and other changes may render a previously inert atmosphere explosive. Periodic monitoring is necessary to detect these potentially hazardous conditions in the sealed area. The final rule, like the ETS, requires periodic sampling.

Final § 75.336(a)(2) clarifies MSHA's intent under ETS § 75.335(b) for the mine operator to have responsibility for evaluating the atmosphere in the sealed area to determine whether sampling through seal sampling pipes, in accordance with final § 75.337(g), will provide an appropriate sample of the sealed atmosphere. Appropriate sampling must be capable of reliably detecting significant accumulations of explosive methane in the sealed area.

MSHA specifies in the final rule when the mine operator must conduct the evaluation which includes: the planning phase for sealing the area; immediately

after the minimum 14-day required sampling; when the mine ventilation system is reconfigured; if changes in the mine occur that could adversely affect the sealed area; or if the District Manager requests an evaluation. When the results of the evaluations indicate the need for additional sampling locations, the mine operator must provide the additional locations and have them approved in the ventilation plan. The District Manager may require additional sampling locations and frequencies in the ventilation plan.

The mine operator shall evaluate the sealed area using the sampling results from the minimum 14-day required sampling and any other relevant information available to confirm that the initial evaluation is valid. A mine ventilation system reconfiguration may affect the direction of air leakage through seals and consequently alter the interpretation of sampling results in order to determine the inert status of the sealed atmosphere. The composition of the sealed atmosphere can be affected by changes in air currents, water accumulations, convergence, cracks in the strata leading to the surface, and the rate and/or location of methane liberation. These changes may affect the distribution of methane and oxygen concentration throughout the sealed area. The District Manager may request an evaluation based on other factors as appropriate.

Many variables affect the atmospheric composition of the sealed area, including size, methane liberation, leakage, ventilation pressures, and barometric changes. Mine operators must analyze each sealed area when determining appropriate sampling locations and frequencies. If the mine operator's analysis indicates that sampling through seal sampling pipes does not render an appropriate evaluation of the sealed atmosphere, the mine operator must establish additional sampling locations and specify them in the ventilation plan for the District Manager's approval.

Under the final rule, the District Manager may require additional sampling locations and sampling frequencies in the mine ventilation plan such as when MSHA sampling results differ from the operator's sampling results, or the District Manager's review of the mine operator's data indicates the atmosphere in the sealed area is not being adequately evaluated. In the ETS, the Agency expressed its intent that under ETS § 75.335(b), mine operators had to evaluate the sealed atmosphere to determine whether additional sampling locations were necessary.

In the ETS, MSHA also emphasized that all seals and the strata around them leak, resulting in an air exchange near the seal during barometric pressure changes. Seals may leak air into a methane-rich sealed atmosphere that can result in explosive methane concentrations. Due to this, MSHA stressed in the ETS the significance of obtaining appropriate samples of atmospheric conditions in the larger portion of the sealed area as opposed to the smaller area immediately in by the seal.

Some commenters objected to the requirement in ETS § 75.335(b) for the mine operators to obtain a representative sample solely through sampling pipes. MSHA acknowledges the limitations of the ETS sampling method for large sealed areas. While sampling a limited number of times or at a reduced frequency may result in an effective evaluation of the sealed area, additional sampling locations can be necessary to determine if a sealed atmosphere is inert. For instance, a sealed atmosphere may have one set of seals ingassing fresh air from the mine while another set of seals is outgassing high concentrations of methane. A transition zone exists where the atmosphere experiences an explosive range of methane between the two sets of seals. Thus, final § 75.336(a)(2) addresses the mine operator's responsibility to include adequate sampling locations and frequencies in the ventilation plan.

Several commenters stated that it is impractical to drill boreholes from the surface due to cost implications, surface topography, or land ownership. Although MSHA recognizes that there may be situations in which it may be impractical to drill boreholes from the surface, the Agency is aware that directional drilling from the surface or from within the mine is commonly practiced in the mining industry and may be used when topographic or land ownership problems are encountered. It is common practice in the mining industry to remove all persons from the affected area when the borehole approaches an unexamined or unventilated area. Other commenters supported a requirement for drilled boreholes to adequately monitor large or unusual sealed areas.

A commenter suggested that it is unreasonable for MSHA to assume that localized samples, regardless of the technique, establish the inert status of the sealed area. MSHA believes that sampling through seals, supplemented with additional sampling locations, where necessary, provides a safe and feasible method of ascertaining

atmospheric conditions in the sealed area. Final § 75.336(a)(2) provides that the District Manager can require additional sampling locations, such as boreholes, and frequencies in a mine operator's ventilation plan.

One commenter expressed that it is not a significant hazard when a large sealed area in a mine has explosive mixtures when sampled through pipes, because coalbed methane production wells located above the sealed area produce almost pure methane (greater than the upper explosive limit). MSHA believes that methane extracted from the gob vent borehole primarily comes from the strata above the active coal mine. (Mucho, T.P., W.P. Diamond, F. Garcia, J.D. Byars and S.L. Cario, *Implications of Recent NIOSH Tracer Gas Studies on Bleeder and Gob Gas Ventilation Design*, The Society of Mining Engineers Annual Meeting, 2000). MSHA determined that boreholes used to sample sealed areas must be connected to the open entries within the sealed area. Degasification boreholes typically stop about 30 to 40 feet above the coal seam and do not extend into the sealed area and will not provide an accurate sample of the sealed atmosphere.

Some commenters recommended a risk analysis of sealed areas rather than monitoring. As appropriate, mine operators may include an analysis of the risks in the sealed area in their evaluation of the sealed area for MSHA's consideration. An evaluation under final § 75.336(a)(2) may include size of the sealed area, frequency of sampling, likelihood of spontaneous combustion, depth of the mine, and the patterns of methane liberation. However, the Agency concludes that the rulemaking record does not support a requirement of a risk analysis in lieu of monitoring. Monitoring of the sealed atmosphere in areas where seals less than 120 psi are used, and until the design strength is reached for seals of 120 psi or greater, provides optimum safety for miners because of the unforeseen changes that can occur within the sealed area.

Final § 75.336(a)(3) requires mine operators with an approved ventilation plan addressing spontaneous combustion under existing § 75.334(f) to sample the sealed area as specified in the approved ventilation plan. Section 75.334(f) addresses mines with a demonstrated history of spontaneous combustion and those located in coal seams determined to be susceptible to spontaneous combustion. It requires that the approved mine ventilation plan for these mines specify the measures that will be used to detect methane, carbon monoxide, and oxygen

concentrations during and after pillar recovery, and in worked-out areas where no pillars have been recovered; the actions that will be taken to protect miners from the hazards of spontaneous combustion; and the methods that will be used to control spontaneous combustion, accumulations of methane-air mixtures, other gases, dusts, and fumes in the worked-out area. Sampling and maintaining an inert atmosphere are critical in sealed areas in coal mines that are subject to spontaneous combustion of the coal seam due to this inherent ignition source.

Several commenters stated that MSHA should continue to require mine operators to control spontaneous combustion in sealed areas through compliance with § 75.334(f). These commenters stated that the sampling requirements of a spontaneous combustion plan should be more comprehensive than the requirements of § 75.336 to safely manage the combustion potential. MSHA allows the spontaneous combustion monitoring requirements in the approved ventilation plan to be used in lieu of the monitoring requirements of this section which is more protective for miners.

Final § 75.336(a)(4), derived from ETS § 75.335(b)(5)(vi), allows the District Manager to approve the use of a continuous monitoring system in lieu of the monitoring provisions in this section. A continuous monitoring system may include bundles of sampling tubes that sample a frequency of every few hours and monitor at numerous sampling locations in the sealed area. MSHA standards addressing atmospheric monitoring systems are in existing § 75.351 and are applicable to belt air courses, primary escapeways, return air splits, and electrical installations. These standards do not address monitoring in sealed areas. The final rule broadens the scope and applicability of the ETS requirement in that it addresses continuous monitoring systems rather than atmospheric monitoring systems. Since promulgation of the ETS, MSHA does not believe that all of the provisions of § 75.351, atmospheric monitoring systems, are applicable to monitoring sealed atmospheres.

One commenter stated that MSHA did not adequately address continuous gas monitoring systems in the ETS. The final rule allows for use of these monitoring systems. Several commenters expressed that current atmospheric monitoring sensors could not be used in sealed areas due to calibration and maintenance requirements. The final rule deletes

reference to atmospheric monitoring systems.

Mine operators using continuous monitoring systems to monitor sealed atmospheres must submit a revised ventilation plan to the District Manager. The District Manager will review the revised plan to assure that the continuous monitoring system will perform effectively. In making a decision to approve this system, MSHA expects the mine operator to address calibration, recordkeeping, oversight of the continuous monitoring system, maintenance features of the monitoring system and sampling locations.

2. Section 75.336(b)

Final §§ 75.336(b)(1) and 75.336(b)(2) address inert atmospheres in sealed areas. Section 75.336(b)(1), unchanged from ETS § 75.335(b)(3), defines an inert atmosphere as one in which the oxygen concentration is less than 10.0 percent; the methane concentration is less than 3.0 percent; or the methane concentration is greater than 20.0 percent. MSHA has included a margin of safety in the definition of an inert atmosphere so that mine operators can address potential explosion hazards before having to withdraw miners. As the Agency stated in the ETS, the explosive range of methane is 5 to 15 percent when the oxygen level is 12 percent or more (2007 NIOSH Draft Report) which are the traditional values used in the coal mining industry. According to the 2007 NIOSH Draft Report, methane is explosive in air when the concentration ranges from 5 percent to 15 percent by volume. As in the ETS, to allow for the inaccuracy of methane and oxygen detection equipment and potential contamination of samples, oxygen less than 10.0 percent, methane concentration less than 3.0 percent and methane concentration greater than 20.0 percent are used to determine an inert atmosphere.

For atmospheres behind seals with design strengths less than 120-psi, final § 75.336(b)(2) requires the mine operator to take immediate action to restore the sealed atmosphere to an inert condition. Mine operators also must sample sealed atmospheres at least every 24 hours. In addition, MSHA requires withdrawal of miners when methane is between 4.5 and 17 percent and oxygen is 10 percent or greater.

Some commenters stated that until seals “cure” all sealed atmospheres must be inert, including seals of 120 psi or greater, or miners must be withdrawn from the mine. A critical time period for seals is immediately after construction prior to seals reaching their design

strength. Miners must be protected from the hazard of an explosive atmosphere behind seals prior to seals reaching their design strength. Under the final rule, hazardous conditions are controlled by frequently monitoring and maintaining an inert atmosphere or withdrawing miners from the mine. Under MSHA’s final rule, mine operators must monitor and maintain an inert atmosphere behind all newly-constructed seals. After 120-psi seals or greater reach their design strength, they are not required to be monitored under § 75.336. MSHA noted in the ETS that its accident history covering mines in the United States does not include documentation of an explosion in an underground mine that has generated an overpressure greater than 120 psi. One commenter addressing the final draft U.S. Army Corps of Engineers report stated that the chance of having a methane gas detonation in a coal mine is almost zero and further stated that with using actual gob compositions the constant volume explosion loads were found to not exceed 100 psi. Based on the Agency’s experience under the ETS and other record evidence, the final rule does not require seals with a design strength of 120 psi or greater to be monitored after they reach their design strength.

Several commenters stated that MSHA’s definition of an inert atmosphere in the ETS was overly conservative and recommended the generally accepted definition of a non-explosive atmosphere of oxygen less than 12.0 percent, and methane less than 5.0 percent or greater than 15.0 percent. A commenter suggested an expanded explosion risk buffer zone based on a Queensland, Australia underground coal mining standard. Commenters also stated that MSHA should take a tiered approach to address varying levels of methane and oxygen in the sealed area. Some of these commenters used the term “explosive buffer zone” when addressing broader gas concentrations to incorporate a margin of safety into the definition of inert and protocol requirements in ETS §§ 75.335(b)(4) and 75.335(b)(5). The ETS required an action plan for which mine operators were required to address hazards presented and actions to be taken when gas samples indicated that oxygen was 10.0 percent or greater and methane concentrations were 3.0 percent or greater but less than 4.5 percent; 4.5 percent or greater but less than 17.0 percent; and 17.0 percent to 20.0 percent. Several commenters said that no buffer zones are necessary if a gas chromatograph is used to analyze the samples. MSHA believes that

chromatographic analyses are more accurate than handheld instruments. MSHA also believes that handheld detectors can be an adequate sampling method to determine the methane and oxygen concentration at a sample location. The definition of an inert atmosphere in the final rule includes a margin of safety to account for sampling less than the entire sealed area and time-related changes in the sealed atmosphere.

A number of commenters said that explosive atmospheres that periodically develop when the barometric pressure is rising or the seals are ingassing are not hazardous. The effects of ingassing depend on several factors including the duration and magnitude of the pressure differential across seals, leakage rates, and the typical methane concentration for the sealed area. Therefore, MSHA believes that hazards may exist when the seals are ingassing and the final rule is structured to address such hazards.

Commenters objected to the ETS requirement for a 14-day baseline sampling period or questioned its benefit. MSHA considered these comments, but the final rule retains a 14-day initial sampling requirement for seals less than 120 psi constructed after April 18, 2008. MSHA believes that monitoring of the sealed area during the initial 14-day period provides optimum safety for miners because of the unforeseen changes that can occur within the sealed area. For newly constructed seals, the final rule is structured so that mine operators can establish the appropriate number of sampling locations. Several commenters expressed concern with the alternative ventilation plan requirements for seals that only ingas or rarely outgas. MSHA has reexamined this issue and believes that monitoring and maintaining an inert atmosphere is protective only when the sealed area is inert at all times. The final rule requires mine operators to establish and maintain an inert atmosphere behind seals less than 120 psi.

Some other commenters stated that all sealed atmospheres must be monitored and maintained inert. Another commenter said monitoring is not the answer and that MSHA must require stronger seals. The final rule is structured so that the mine operator can address unique characteristics of sealed areas through either monitoring and maintaining an inert atmosphere or using seals designed to address the potential overpressures which may develop in the sealed area.

Another commenter stated that MSHA should require gas concentrations in the sealed area to be maintained sufficiently

outside the explosive range to prevent any excursions into the explosive zone during normal changes in barometric pressure. Finally, a commenter suggested that one way to reduce the possibility that a detonation may occur in the sealed area is to keep the methane air behind the seal far from the explosive range so that changes in pressure conditions due to foreseeable events are not possible. This commenter also stated that methane concentration greater than 50 percent could assure that the methane range in the sealed area will not fall within the 5 to 15 percent explosive range. In addition, this commenter stated that the ETS required more frequent monitoring for specified ranges of gases, but the provision does not provide a margin of safety that would prevent swings into the explosive range for foreseeable events such as weather, will not prevent detonations, and sampling, regardless of the technique, will not confirm an inert status of the sealed area.

The Agency's definition of an inert atmosphere incorporates a margin of safety which accounts for sampling less than the entire sealed area and time-related changes in the sealed atmosphere. MSHA believes that the increased sampling frequencies required by the final rule along with the definition of inert and the requirements for withdrawal of miners will provide appropriate and necessary protection of miners.

3. Section 75.336(c)

Final § 75.336(c) revises and clarifies ETS §§ 75.335(b)(4) and (b)(5) and addresses requirements for potentially explosive atmospheres in sealed areas with less than 120-psi seals. Final § 75.336(c) requires that when a sample is taken from the sealed atmosphere with seals of less than 120 psi and the sample indicates that the oxygen concentration is 10 percent or greater and methane is between 4.5 percent and 17 percent, the mine operator must immediately take an additional sample and then immediately notify MSHA. In addition, final § 75.336(c) requires that when the additional sample indicates that the oxygen concentration is 10 percent or greater and methane is between 4.5 percent and 17 percent, persons must be withdrawn from the affected area which is the entire mine or other affected area identified by the operator and approved by the District Manager in the ventilation plan, except those persons referred to in § 104(c) of the Act. Under this final rule, the operator may identify areas in the ventilation plan to be approved by the District Manager where persons may be

exempted from withdrawal. The operator's request must address the following factors regarding the location of seals in relation to: (1) Areas where persons work and travel in the mine; (2) escapeways and potential for damage to the escapeways; and (3) ventilation systems and controls in areas where persons work or travel and where ventilation is used for escapeways. The District Manager, in making a determination concerning the area where persons may be exempted from withdrawal, would take these factors into consideration. The operator's request shall also address the gas concentration of other sampling locations in the sealed area and other required information.

Final § 75.336(c) clarifies when miners may reenter the mine and requires the mine operator to have an approved and revised ventilation plan specifying the actions to be taken by the mine operator to protect miners.

MSHA requested comments on the ETS action plan approach to potentially explosive sealed atmospheres and whether that approach provides adequate protection for miners. Several commenters stated that persons should not be withdrawn merely due to explosive samples in the sealed area and that other factors such as the size of the sealed area, roof and weather conditions, or the volume of non-inert atmosphere should be considered. Several commenters wanted MSHA to consider the possibility of defining safety zones around seals. Other commenters said that miners should unconditionally be evacuated from the mine when any sealed atmosphere is in the explosive range. Several commenters questioned whether an action plan could provide protection to miners which would be equivalent to withdrawal. One commenter suggested that rather than withdrawing miners, a "safety zone," or a specific distance, should be established around seals with explosive atmospheres. A commenter stated that keeping miners underground with a sealed atmosphere within the explosive range is an unacceptable risk due to the enormous potential for a catastrophe if a seal fails.

Some action plans approved under the ETS require the withdrawal of miners from the entire mine. MSHA now believes that some large mines with multiple fans, multiple shafts, multiple portals, or multiple escapeways may not require evacuation of the entire mine to protect miners from the hazards presented by an explosion in a sealed area. Accordingly, this final rule allows an operator to identify areas in the ventilation plan to be approved by the

District Manager where persons may be exempted from withdrawal. The operator's request must address the factors in this provision of the final rule. For example, in a large mine, the District Manager may approve an area where persons may be exempted from withdrawal if: (1) The area where persons work or travel is remote from the sealed area; (2) the area is on separate air splits that would not be contaminated from the gaseous products of an explosion; and (3) those areas are served by escapeways that would not be impacted by an explosion.

One commenter said that MSHA district offices do not have the resources to properly evaluate proposed action plans required by the ETS and the rule should provide specificity about the actions required to be taken by mine operators. Action plans are not required in the final rule. MSHA has replaced action plans with specific actions to be taken under certain circumstances.

Several commenters said that withdrawal should only be required when oxygen levels in the sealed area exceeded 12 percent because this is the minimum oxygen level that will sustain an explosion at normal atmospheric pressure. Another commenter said that introduction of oxygen caused the formation of an explosive atmosphere. Other commenters said that the explosive gas range is too broad. Another commenter said the Queensland Australia regulation specifies, for continuous monitoring, the maximum oxygen concentration should be 8 percent and the methane concentration should be less than 2.5 percent or greater than 22 percent. Several commenters said that withdrawal should only be required when the atmosphere in sealed area is in the explosive range of methane which they defined as 5 percent to 15 percent.

A commenter recommended using mapping software to generate isopach maps of methane concentration throughout the sealed area in order to determine potentially explosive zones. MSHA does not believe that isopach mapping software, based on arbitrary mathematical interpolations, will accurately represent the complex methane liberation, diffusion and convection processes in the sealed area in combination with leakage through or around seals to predict explosive zones with any degree of reliability.

In the ETS, MSHA referenced the 2007 NIOSH Draft Report which stated that the explosive range is 5 to 15 percent when the oxygen level is 12 percent or more. NIOSH, in its Final Report, stated that methane is explosive in air when the concentration ranges

from 5 percent to 16 percent by volume. The NIOSH Final Report stated: "A desirable sealed area atmosphere, from a safety perspective is fuel-rich and oxygen-low, which is * * * less than 10% oxygen." The final rule continues to account for the inaccuracies of sampling and monitoring equipment, and for potential contamination of the gas sample. The final rule retains the methane range of 4.5 percent to 17.0 percent with oxygen 10 percent or greater for withdrawal of miners as specified in the ETS. This range of methane concentration is slightly broader than the explosive range specified by NIOSH (2007 NIOSH Draft Report and "Handbook for Methane Control in Mining," Information Circular 9486, 2006 (2006 NIOSH IC 9486), and "Flammability of Methane, Propane, and Hydrogen Gases," Cashdollar (2000). The slightly broader range of methane includes a safety measure to help assure the mine operator has time to safely evacuate the mine. MSHA has considered these comments and continues to accept the methane in air mixtures provided by NIOSH as the most appropriate basis for the final rule. The levels in the final rule are the same as those provided in the ETS.

The ETS allowed mine operators to take three samples at one hour intervals before requiring evacuation of the mine. Several commenters objected to this provision. A commenter suggested that three consecutive samples be taken at 24 hour intervals to allow the sealed area to react to changes in the barometer. MSHA believes that it is neither appropriate nor protective of miners' safety to allow them to remain underground two additional hours before a mine operator confirms a hazardous sealed atmosphere. The final rule requires that a second sample be taken immediately and that MSHA be immediately notified regardless of the results of the second sample.

4. Section 75.336(d)

For sealed areas with a demonstrated history of carbon dioxide or where inert gas has been injected, final § 75.336(d) allows the mine operator to use an alternative method to determine if a particular atmosphere is inert as defined in § 75.336(b)(1). This provision also allows the mine operator to use an alternative method to determine when to withdraw miners as provided in § 75.336(c). The mine operator shall address the specific levels of methane, carbon dioxide, nitrogen and oxygen in the ventilation plan; the sampling methods and equipment used; and the

methods to evaluate these concentrations underground at the seals.

Some commenters requested MSHA to consider carbon dioxide concentrations when making a determination for inert and explosive atmospheres, because it is slightly more effective at preventing an explosion than nitrogen in normal air. A commenter stated that it is unrealistic to ignore the effects of carbon dioxide on methane explosibility and that MSHA must let mine operators use both the Coward flammability triangle and Zabetakis nose curve to assess whether a sealed atmosphere is explosive. Commenters also requested that MSHA consider excess nitrogen concentrations when determining the sealed atmosphere.

A methane explosion requires the presence of sufficient amounts of methane and oxygen. The presence of carbon dioxide and excess nitrogen affects the concentrations of oxygen and methane needed for an explosion to occur. The two most common gases used for purposes of maintaining a sealed area inert are nitrogen and carbon dioxide. Both gases may be obtained as cryogenic liquids transported to the mine site on tanker trucks. Nitrogen may also be extracted from compressed air using filter technology and carbon dioxide may be produced as the exhaust gas from combustion processes (Tomlinson boiler, diesel engine or jet engine). Both the ETS and final rule implicitly consider nitrogen as an inert gas. Fresh air contains 78% nitrogen and nitrogen is typically the most prevalent gas in sealed atmospheres. If additional nitrogen is injected in a sealed atmosphere, it helps move the gas mixture toward an inert status merely by diluting and rendering harmless the methane and oxygen levels. Carbon dioxide is slightly more effective at producing an inert atmosphere than nitrogen.

This final rule allows mine operators to use carbon dioxide and nitrogen levels to determine how to manage the sealed atmosphere. If the mine operator chooses an alternative method to determine if the sealed atmosphere is inert, the operator must specify the types of instruments that will be used to measure the gas levels and how these more complicated evaluations will be performed at the seal. Because of the critical nature of these measurements and determinations, the use of gas chromatographs and computers located on the surface is not practical except where continuous monitoring systems are used. This surface analytical equipment cannot be used since this final rule requires that a second sample

be taken and analyzed immediately after any near explosive gas concentrations are identified.

Although the Zabetakis nose curve or the Coward flammability triangle is designed to show whether a methane mixture is explosive after inert gas is added, the nose curve or flammability triangle is not intended for the purpose of establishing an inert atmosphere under this final rule or the explosibility range contained in the final rule.

The concentration of gases for methane in the nose curve and flammability triangle ranges from approximately 5% to 15%. The nose curve and flammability triangle were not designed to account for the methane ranges specified in the final rule of 4.5% to 17% where a safety factor is used. In addition, the use of the R-Ratio, or ratio of methane to total combustibles, to compensate for the safety factor is not appropriate. The alternative gas concentrations of methane, carbon dioxide, nitrogen and oxygen must be based on sound scientific principles. For example, operators may consider the Bureau of Mines Bulletin 503 (Coward, H.F. and G.W. Jones, "Limits of Flammability of Gases and Vapors," Bulletin 503, U.S. Dept. of the Interior, Bureau of Mines, 1952). The alternative gas concentrations must provide the same levels of protection to the miners as the gas concentrations specified in § 75.336(b) and (c) of this final rule.

MSHA intends that samples of gas concentrations be analyzed promptly. At present, handheld detectors are available to measure carbon dioxide, methane and oxygen. The operator shall address several related issues in the ventilation plan including handheld equipment and methods to take these measurements underground and methods to make the calculations necessary to evaluate the gas concentrations at the seal. The operator should also include methods to ensure the reliability of the sampling equipment, the training of the certified persons who must take these samples and perform these calculations, a system to validate these determinations and the expanded recordkeeping requirements (additional gas concentrations).

5. Section 75.336(e)

Final § 75.336(e), like ETS § 75.335(b)(6) and (b)(7), requires that the mine operator promptly record sampling results and that these records be maintained at the mine for at least one year. MSHA received no comments on this provision.

C. Section 75.337 Construction and repair of seals

Final § 75.337 is derived from the ETS requirements on construction and repair of seals.

1. Section 75.337(a)

Final § 75.337(a) clarifies the ETS and requires mine operators to maintain and repair seals to protect miners from hazards of sealed areas. MSHA is including this provision in this final rule in response to comments concerning seal repairs. This final rule addresses non-structural repairs only. Non-structural repairs are those that are related to general maintenance and include: excessive air leakage through and around seals; repair of minor cracks; spalling of seal coating; water drainage systems; and sampling pipes. One commenter expressed concern that seals may become inaccessible, deteriorate, weaken, and be impossible to repair. This section does not apply to seals that require structural repairs. MSHA will continue to require that seals in need of structural repairs be replaced since they would no longer serve their necessary function. Seals, with the exception of seals used to separate the active longwall panel from the panel previously mined that are in by the longwall face, must be maintained accessible or be replaced.

2. Section 75.337(b)

Final § 75.337(b) renumbers § 75.337(a) of the ETS, and specifies requirements that a mine operator must follow prior to sealing.

Under final § 75.337(b)(1), mine operators must remove insulated cables from the area to be sealed. Final § 75.337(b)(1) clarifies the ETS and requires that mine operators remove batteries and other potential electric ignition sources from the area to be sealed. Because an electric arc can occur if a length of insulated cable were inductively coupled to an electromagnetic pulse such as a lightning strike, this final rule reduces the hazard of an explosion caused by an electric discharge.

Several commenters stated that the removal of insulated cables is unnecessary, infeasible, unrealistic and can be unsafe. One commenter suggested that grounding the ends of a cable may safeguard cables that cannot be removed. Other commenters stated that as mine operators complete mining activities in an area, they recover the more useful cables and may only leave behind damaged or deteriorated cables. Another commenter stated that there can be miles of cables to pumps or

electric installations that must continue to run to within days or hours of final sealing, and that it would be impossible to remove these cables prior to sealing. One commenter suggested that cable removal would be unnecessary if seals are constructed to withstand explosive forces. One commenter suggested that the final rule include a provision for removing batteries from the area to be sealed.

To reduce the hazard of an explosion from an electric discharge, and to assure miners' safety, MSHA believes that it is necessary to remove cables, batteries, and other potential ignition sources prior to sealing unless it is not safe to do so. Other potential ignition sources include motors, transformers and electromagnetic devices. Potential electric ignition sources that may expose miners to dangerous conditions, such as those that are buried under a roof fall, would not have to be removed.

Based on MSHA's knowledge and experience, if one end of an insulated cable is grounded and one is not, a potential ignition source remains. Also, a potential ignition source remains even if both ends of a cable are grounded because the condition of the conductors within the cable would not be known. Based on MSHA testing, cable cannot generally be considered safe by grounding either one or both ends.

The final rule includes a clarifying change that if ignition sources cannot be safely removed from the area to be sealed, seals must be constructed to at least 120 psi. NIOSH indicated in their 2007 NIOSH Final Seal Report that a 50 psi peak overpressure could occur in a limited-volume, unconfined situation. Leaving a potential ignition source, such as a cable, in the sealed area could increase the probability that larger pockets of gas, which may be undetected through sampling, could be ignited, resulting in an explosion. An explosion in a larger area could result in overpressures greater than 50 psi. Therefore, the final rule provides appropriate protection for miners if ignition sources cannot be safely removed from the area to be sealed. The installation of at least 120 psi seals would provide protection for miners and prevent the explosion in the sealed area from propagating to the active workings of the mine.

Final § 75.337(b)(2), like the ETS, requires removal of metallic objects that pass through or across seals. Screens, straps, rails, and channels are examples of the types of metallic objects that are required to be removed under this final rule. In addition, this final rule does not include the exception in the ETS for metal sampling pipes, water drainage

pipes, and form ties. Removal of metallic objects before seals are built reduces the hazard of methane explosions and improves miner safety.

Several commenters suggested that metal sampling pipes, water drainage pipes, and form ties need not be removed because nonmetallic materials can be used as alternatives. MSHA agrees. Alternative nonmetallic materials exist and can be used for gas sampling pipes, water drainage systems, and form ties. The use of these alternative materials will reduce methane explosion hazards and enhance miner safety.

Several commenters stated that removal of metallic roof support is hazardous. One commenter noted that an accident occurred during removal of wire mesh at a seal location. Based on MSHA's experience, removal of metallic roof support can be accomplished safely so long as appropriate precautions are taken. Under the final rule, the best option would be for an operator to plan the location of the seals and the roof supports, such as cribs and non-metallic mesh, to be used in the area to be sealed.

One commenter requested clarification of the hazards associated with metallic roof mesh or mats that are grounded. Based on MSHA's experience, metallic roof mesh or mats are not always adequately grounded. In addition, metallic roof mesh or mats are potential conductive paths into the sealed area and need to be removed.

One commenter stated that MSHA should not require removal of de-gassing, inerting, or pre-sealing ventilation pipes that may be needed to effectively control the gob atmosphere. Based on MSHA's experience, these metallic objects can provide a conduit for electric current to enter the sealed area and ignite methane/air mixtures. Removal of these objects before seals are built reduces the hazard of methane explosions and improves miner safety. Therefore, in response to its request for comments in the ETS on information concerning the removal of metallic objects, the final rule requires removal of metallic objects through or across seals.

Final § 75.337(b)(3) is new. It requires mine operators to breach or remove all stoppings in the first crosscut in by the seals immediately prior to sealing the area. This procedure is a recognized common practice in the coal mining industry.

One commenter stated that monitoring could easily provide a false sense of security. Another commenter said that sampling behind one seal in a set would not be able to detect a pocket

of explosive gas that may exist. In response to commenters' concerns, the final rule includes the requirement to remove or breach the stopping in the first connecting crosscuts inby seal locations. Under MSHA's experience, breaching or removing stoppings allows the same atmosphere to exist immediately inby each seal as exists throughout the sealed area. Ventilation stoppings in the first connecting crosscut inby the seal locations are used to maintain ventilation, through the area to be sealed, during seal construction. These stoppings should not be breached or removed until immediately prior to installing the final seal. The timing of the breaching or removing of stoppings is critical and should be addressed in the mine ventilation plan under § 75.335(c)(3)(iv)(N).

3. Section 75.337(c)

Final § 75.337(c), renumbers ETS § 75.337(b), and requires a certified person designated by the mine operator to directly supervise seal construction and repair. Existing § 75.100 defines a certified person as one certified by the Secretary of Labor or the State in which the coal mine is located. Following explosions at the Sago and Darby mines in 2006, MSHA inspected seals in underground coal mines across the country and concluded that some seals were not correctly built. The supervision requirement will help assure that seal construction and repair are performed correctly.

Under final § 75.337(c)(1), the certified person must examine each seal site immediately prior to construction or repair to assure that the site is in accordance with the approved ventilation plan. Under final § 75.337(c)(2), the certified person must examine each seal under construction or repair during each shift to assure that the seal is being constructed or repaired in accordance with the approved ventilation plan. Under final § 75.337(c)(3), the certified person must examine each seal upon completion of construction or repair to assure that construction or repair is in accordance with the approved ventilation plan.

Some commenters objected to these provisions stating that it was unnecessary and burdensome for the certified person to supervise the entire construction process. They stated that trained qualified persons should be permitted to repair or construct seals in accordance with the approved plan and that the certified person can then conduct an examination to assure the plan was followed. Other commenters, however, supported a requirement for a

certified person to be on site during each step of seal construction.

MSHA believes that a certified person needs to be in the vicinity of the seal site to address problems and questions during seal construction or repair. Under the final rule, MSHA does not intend that a certified person continuously observe construction or repair of all seals in a set. The certified person should be available at each seal site during the shift to assure proper construction or repair.

Some commenters expressed concern regarding potential conflicts created by requiring that certain tasks be performed, under the ETS, by both professional engineers and certified persons. Based on MSHA's experience under the ETS, the Agency has not encountered any potential conflicts and does not believe any are likely to arise. The role of the professional engineer to have oversight of seal installation is more fully discussed in § 75.335(c).

Final § 75.337(c)(4), like the ETS, requires that the certified person certify by initials, date, and time that the examinations were made. MSHA did not receive any comments on this provision.

Final § 75.337(c)(5), like the ETS, requires that the certified person make a record of the examination at the completion of any shift during which an examination was conducted, and include each deficiency and the corrective action taken. The record must be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift, and the record must be kept at the mine for one year. This recordkeeping requirement allows MSHA and other persons to determine that examinations have been conducted, that results are valid, and that deficiencies in site preparation, construction and repairs were found and corrected. In addition, the record must identify seal completion dates.

One commenter stated that countersigning simply identifies the person to blame in the event of an accident or seal failure. Another commenter stated that countersigning was unnecessary. Historically, the countersigning requirement has been an integral part of MSHA's enforcement of coal mining standards. It is consistent with other recordkeeping requirements in 30 CFR part 75; such as §§ 75.360 (pre-shift examination) and 75.361 (supplemental examination), 75.362 (on-shift examination), 75.363 (hazardous conditions), and 75.364 (weekly examination). The countersignature must be made by the end of the mine

foreman's or equivalent mine official's next regularly scheduled working shift. If the mine foreman or equivalent mine official is absent, the person acting in that position would review and countersign the record. Based on MSHA's experience under the ETS, this provision assures that a mine foreman or equivalent mine official is responsible for seal installation.

4. Section 75.337(d)

Final § 75.337(d) renumbers § 75.337(c) of the ETS, and requires that upon completion of construction of each seal, a senior mine management official, such as a mine manager or superintendent, certify that the construction, installation, and materials used were in accordance with the approved mine ventilation plan. It also requires the mine operator to retain the certification for as long as the seal is needed to serve the purpose for which it was built.

Some commenters stated that this certification was unnecessarily duplicative of the certification required by the certified person during construction and repair and the certification required by the professional engineer during the plan approval process. Some commenters stated that the certification requirement by a senior mine official is unreasonable and redundant because the official may not have expertise to make certification; the official may not have knowledge unless present during construction; a professional engineer is required to have "oversight"; the certified person directly supervises construction and makes a record of the exam; and the mine foreman countersigns the certified person's record. Other commenters suggested modification of the ETS requirement to either allow a senior mine official to rely on reports from the professional engineer and certified person, or to allow a senior mine management official to countersign the official seal record book.

Based on MSHA's experience regarding methane explosions in sealed areas and MSHA's experience regarding the same certification requirements under the ETS, the Agency believes that some amount of redundancy is necessary in the review of these critical seal construction tasks; this provides an added margin of safety for miners. Certifications by certified persons, and senior mine management officials protect miners by helping assure that the seal is correctly designed and constructed.

5. Section 75.337(e)

Final § 75.337(e) renumbers § 75.337(d) of the ETS, and remains essentially unchanged. Final § 75.337(e)(1) requires the mine operator to notify the District Manager between two and fourteen days prior to commencement of seal construction. This final rule revises the ETS requirement to notify the MSHA local field office.

One commenter supported the notification requirement stating that it is necessary so that MSHA can oversee seal construction. This commenter recommended that an MSHA inspector be present at least part of the time during seal construction.

One commenter opposed the notification requirement. This commenter stated that it is inefficient to require contacting MSHA since an MSHA inspector is at the mine over 150 days during the year. In the final rule, MSHA has retained the notification requirement because the Agency believes that it is necessary and it is also responsive to comments.

This requirement gives MSHA the opportunity to observe seal construction and to help assure that the construction, installation and materials were in accordance with the ventilation plan approved by MSHA. The requirement to notify the District Manager establishes consistency with other MSHA notification requirements. Like other notification provisions, the District Manager either contacts the appropriate field office or inspectors from the District Office may make the inspection.

Final § 75.337(e)(2), like the ETS, requires the mine operator to notify the MSHA District Manager, in writing, within five days of completion of each set of seals and provide a copy of the certification required in § 75.337(d) of this section. The purpose of this provision is to give the District Manager notice of completed seal construction. The period immediately following construction of the seal is the time during which seals are achieving full strength and the atmosphere in by the seals may be transitioning into or through a potentially explosive methane/air mixture. During this critical time period, the District Manager may decide to inspect the seals or sample the sealed area.

Final § 75.337(e)(3), like the ETS, requires the mine operator to submit a copy of quality control test results for seal material properties specified in § 75.335 to the District Manager. To clarify the performance required, the final rule includes a requirement that the test results be submitted within 30

days of completion of the tests. The final rule, like the ETS, requires that test results include all tests of seal construction materials. Some commenters expressed concern over a specified time requirement for the submission of quality control tests results because some results are often not available for weeks after the tests are completed. Sampling must be continued on a 24-hour basis for all seals until MSHA receives the test results and determines that they are adequate. Based on MSHA's experience under the ETS, MSHA believes that a 30-day period will provide sufficient time to obtain results and assures that test results are submitted promptly. MSHA has not experienced any problems with this timeframe under the ETS.

6. Section 75.337(f)

Final § 75.337(f) renumbers § 75.335(c) of the ETS, and like the ETS, prohibits welding, cutting, and soldering with an arc or flame within 150 feet of a seal. This final rule revises the ETS by allowing this work within 150 feet of a seal unless it is not safe to do so. The operator may request that the District Manager approve a different location in the ventilation plan. The purpose of this provision is to protect miners from the hazards of open flames near seals. A methane enriched atmosphere can leak through the seal, accumulate out by the seal, and if ignited, the flame can propagate into the sealed area causing an explosion.

The 150-foot limit in the final rule is consistent with an existing MSHA requirement in § 75.1002(a) that non-permissible equipment be excluded within 150 feet of pillar workings or longwall faces. To measure the 150 feet, MSHA recommends that mine operators use the longstanding industry practice of following the shortest distance that air can travel (tight string distance) through crosscuts, entries or other openings (MSHA Program Policy Manual, Volume V, Subpart J (February 2003)).

In response to MSHA's request for comments, some commenters supported and others opposed the provision. Commenters who supported the provision stated that the protection was necessary to prevent another explosion like the one that occurred at the Darby Mine. Commenters who opposed the provision stated that it was too restrictive and unenforceable under current mining conditions. Some of these commenters stated that the provision could significantly interrupt mining operations where the next entry from the seal contains a pre-existing belt, belt-drive, shop area, travelway, or

track. In addition, some commenters requested that MSHA consider that some belt drives in underground coal mines have separate splits of large quantities of air, and that compliance flexibility should be included in the final rule to accommodate different mining conditions.

In response to comments and based on MSHA's experience under the ETS, MSHA has revised the ETS. An operator may request that the District Manager approve in the ventilation plan welding, cutting, and soldering with an arc or flame within 150 feet of a seal. The operator's request must address methods the mine operator will use to continuously monitor atmospheric conditions in the sealed area during welding or burning; the airflow conditions in and around the work area; the rock dust and water application methods; the availability of fire extinguishers on hand; the procedures to maintain safe conditions, and other relevant factors. MSHA believes that welding, cutting and soldering with an arc or flame near a sealed area may be allowed depending upon mining conditions at the mine, and that determination should be made by the District Manager on a case-by-case basis.

7. Section 75.337(g)

Final § 75.337(g) renumbers and revises § 75.335(d) of the ETS. Final § 75.337(g)(1) requires one non-metallic sampling pipe in each seal that extends into the center of the first connecting crosscut in by the seal. The final rule requires that if an open crosscut does not exist, the sampling pipe shall extend into the center of the length of the open entry in by the seal. The requirement that only non-metallic materials be used for sampling pipes is consistent with other provisions of this final rule that require the removal of metallic objects through or across seals.

MSHA received many comments regarding the ETS requirements on the locations and number of sampling pipes. Many commenters questioned the requirement of two sampling pipes in each seal. They stated that it is doubtful that two sampling pipes in each seal will provide much additional information and they could result in conflicting and confusing information. In addition, several commenters disagreed with the need for a sampling pipe in each seal. Some commenters questioned whether a representative sample could be obtained by using a sampling pipe through a seal. Several commenters suggested putting a sampling pipe at the high and low points of the seals. One commenter stated that the location and number of

sampling pipes should be based on the mining conditions.

MSHA reviewed sampling data collected under the ETS 14-day baseline requirement and other sampling data, including that associated with the Agency's citations and withdrawal orders. Based on this review, MSHA believes that one sampling pipe provides adequate information and that two sampling pipes in each seal are not necessary and could result in conflicting and confusing information. In addition, the Agency's evaluation of its sampling data from the 15-foot pipe found significant variation of methane concentrations at different seals in the set and between sets of seals for the same sealed area. MSHA attributes this to different ventilation pressures at the various seals and differences in leakage characteristics through the ribs and strata surrounding the seals (cracks, joints, etc), depending on the location of the seals. MSHA believes that sampling points with a longer pipe located within the first connecting crosscut will provide a more representative sample of the sealed area because this atmosphere is less likely to be affected by ingassing. In addition, this sampling location is less susceptible to swings in oxygen levels associated with changes in barometric pressure. Based on comments, data, and Agency experience, MSHA has revised the ETS to remove the requirement that a sampling pipe extend 15 feet into the sealed area.

One commenter stated that gob isolation seals are installed in crosscuts immediately behind the longwall face and, therefore, it would be impossible to meet the requirements to extend one tube into the center of the first connecting crosscut inby the seal as that intersection will no longer exist once the longwall mines pass the crosscut where the seal is to be installed. In addition, this commenter stated that installing sampling pipes near the intersection is not practical as crosscut conditions often quickly deteriorate on the gob side of the seal. Under circumstances where gob isolation seals will have no connecting crosscut inby the seal, or under similar circumstances, the sampling pipe must be extended to the center of the expected open space to obtain a sample that is representative of the gas in the sealed area. In addition, under circumstances where crosscut conditions may deteriorate, sampling pipes should be located so that they are subjected to the least amount of deterioration. Even if some pipes deteriorate, it is unlikely that all pipes will deteriorate at every sampling location. In addition, under this final

rule, the District Manager may require additional sampling locations in the ventilation plan under § 75.336.

Final § 75.337(g)(2) retains the ETS requirement that each sampling pipe be equipped with a shut-off valve and appropriate fittings for taking gas samples. MSHA received no comments on this provision.

Final § 75.337(g)(3) is new. It requires the sampling pipes to be labeled to indicate the location of the sampling points when more than one sampling pipe is required under § 75.337(g)(4).

Final § 75.337(g)(4) is derived from and is consistent with existing MSHA enforcement policy under the ETS. If a new seal is constructed to replace or reinforce an existing seal with a sampling pipe, final § 75.337(g)(4) requires the sampling pipe in the existing seal to be extended through the new seal. It also requires that an additional sampling pipe be installed through each new seal to sample the area between seals, as specified in the approved ventilation plan. Final § 75.337(g)(4) is consistent with existing MSHA policy that addresses requirements for placement of the sampling pipe when a new seal is constructed outby an existing seal to replace or reinforce an existing seal.

Final § 75.337(g)(4) was added to clarify requirements gained as a result of MSHA's experience under the ETS concerning construction of new seals immediately outby existing seals that had been either damaged, or had had significant structural defects. In addition, some operators of mines with potentially explosive atmospheres decided to construct new 120-psi seals outby existing seals under the ETS. Under these circumstances, MSHA found that if a new seal is constructed as an extension or reinforcement of an existing seal, there may be no additional sealed area to sample. In addition, most existing seals have only one sampling pipe per set of seals and some sets of seals that predate MSHA's 1992 ventilation standards may have no sampling pipes.

If the new seals are close to the existing seals, an explosion in the area inby the old seals could damage the new seals. By maintaining the area inert between the new seals and the old seals, the possibility of an explosion between the seals effectively is eliminated. MSHA considered requiring the mine operator to drill holes through existing seals to install sampling pipes. MSHA rejected this approach due to the possibility of sparking or frictional ignition associated with drilling.

The final rule requires that sampling pipes in existing seals be extended

through the new seals to permit the sampling of the atmosphere inby the existing seals. If there is a space between the new seals and the existing seals, this area will need to be sampled and maintained inert and will require a sample pipe through each new seal. If the space between the seals does not include a connecting crosscut, the new sampling pipe must be extended to the center of the open space.

8. Section 75.337(h)

Final § 75.337(h) renumbers and revises § 75.335(e) of the ETS. It requires that for each set of seals, the seal at the lowest elevation shall have a corrosion resistant, non-metallic water drainage system. In addition, seals must not impound water or slurry, and water or slurry cannot be allowed to accumulate within the sealed area to any depth that can adversely affect a seal.

This final rule revises the ETS requirement by allowing only non-metallic materials to be used for a drainage system. This requirement is consistent with other provisions of this final rule regarding the removal of metallic objects through or across seals. MSHA experience shows that alternatives to metallic materials are readily available for use in drainage systems.

In response to MSHA's request, several commenters stated that the ETS requirement that a seal not impound water is vague, that it is impossible to guarantee that there will be no water at a seal, and that there will always be some minimal amount of standing water in some mines. Seals should not be designed to impound water other than to a minimal depth, such as the height of the water trap. Based on MSHA's experience, drainage systems can be designed to prevent the accumulation and impoundment of mine water inby the seals. The actual size and number of pipes used in a drainage system should be based on the anticipated maximum flow rate at the seal location. In addition to being corrosion resistant and made of non-metallic material, drainage pipes must have strength properties consistent with the design strength of the seal, and the drainage system must have blast resistance equivalent to that of the seal. If the seal design does not allow any impoundment of water, the drainage system design could incorporate a water diversion or pumping system. For example, a low weir or catchment could be constructed across the entry inby the seal to trap sediment and debris that may impede drainage and prevent water from adversely affecting the seal. These provisions addressing water drainage systems and impoundment of water or

slurry accommodate varied mining conditions and assure safe and effective workplaces for miners.

D. Section 75.338 Training

Final § 75.338 addresses training for sampling and seal construction. This final rule consolidates the training requirements of ETS §§ 75.335(b)(2) and 75.337(e) into this new section. The final rule changes the retention period for training certifications from one year to two years from the date of training. This change is made to be consistent with existing MSHA training standards at part 48. It provides that mine operators maintain training records under the final rule for the same period as existing training records. Consistent with the burden cost in MSHA's information collection package for part 48, under OMB Control Number 1219-0009, the Agency determined that increasing the retention period from one year to two would not affect operator costs.

1. Section 75.338(a)

Final § 75.338(a), like the ETS, requires that certified persons conducting sampling be trained in the use of appropriate sampling equipment, procedures, location of sampling points, frequency of sampling, size and condition of the sealed area, and the use of continuous monitoring systems, if applicable, before they conduct sampling, and annually thereafter. The final rule also requires the mine operator to certify the date of training and retain each certification for two years, instead of one year under the ETS. This provision is similar to other certification requirements in 30 CFR part 75.

2. Section 75.338(b)

Final § 75.338(b), like the ETS, requires the mine operator to provide training to miners constructing or repairing seals, designated certified persons, and designated senior mine management officials. This training must be conducted prior to constructing or repairing a seal and annually thereafter. The final rule also requires the mine operator to certify the date of training provided each miner, certified person, and senior mine management official, and retain each certification for two years.

One commenter stated that the record showing certification of training for miners doing the construction of seals is required to be kept for only one year. If there is a seal failure outside of that time period, those records are no longer available during the investigation process. The commenter recommended

that the certification be kept for as long as the seal is satisfying the purpose for which it was built.

This final rule revises the ETS by requiring operators to retain training certifications for two years from the date of training. This change is consistent with existing § 48.9 (records of training) which requires training certificates be kept at the mine site for two years. Training certifications need not be kept longer than two years because the final rule requires annual training for miners constructing or repairing seals. Annual training assures that miners are capable of repairing seals when necessary and therefore, the training certification would be up-to-date.

Several commenters requested clarification as to whether the training provisions are included in part 48 training. Training required by the final rule should not be included in part 48 training, although the mine operator may choose to conduct the training at the same time. However, even though the ventilation plan review is required as part of the eight-hour annual refresher training, additional time must be allotted since the training is required by this section, not part 48.

The final rule does not require a minimum amount of time for training. MSHA expects mine operators to determine the time necessary for this training based on the complexity of the seal design in the ventilation plan, construction or repair procedures, materials used, and knowledge and skill levels of persons receiving training. In addition, changes in the approved seal design or approved ventilation plan will necessitate that persons be retrained.

E. Section 75.339 Seals records

Final § 75.339, like ETS § 75.338, addresses seals records.

1. Section 75.339(a)

Final § 75.339(a) lists the records a mine operator is required to maintain and the retention time for those records.

2. Section 75.339(b)

Final § 75.339(b), like the ETS, requires that records be retained at a surface location at the mine in a secure book that is not susceptible to alteration. The final rule allows records to be retained electronically in a computer system that is secure and not susceptible to alteration, if the mine operator can immediately access the record from the mine site.

One commenter stated that after seal construction is completed and quality control test results have been provided to MSHA, the operator should be permitted to retain seal construction

certification records at a central location. Because electronic storage of records is a practical and reliable method of records storage, the final rule allows records to be stored electronically, provided that the records are secure and not susceptible to alteration.

3. Section 75.339(c)

Final § 75.339(c) of the final rule remains unchanged from the ETS. It requires that, upon request from an authorized representative of the Secretary of Labor or Secretary of Health and Human Services, or from the authorized representative of miners, mine operators must promptly provide access to any record listed in the table in this section.

4. Section 75.339(d)

Final § 75.339(d), like the ETS, requires that whenever an operator ceases to do business, that operator must transfer all records required to be maintained by this part, or a copy thereof, to any successor operator who must maintain them for the required period. In addition, in response to comments, this final rule revises the ETS to require an operator who transfers control of the mine to another entity to transfer all records to that successor entity. Having access to records will allow MSHA and the new mine operator to determine if seals were designed, constructed, and repaired as approved and maintained to assure their reliability.

F. Section 75.371 Conforming Changes to Other Sections of Part 75

Final § 75.371(ff) requires the mine operator to provide in the ventilation plan the information provided in the sampling requirements in § 75.336 and the seal installation requirements in § 75.335. The sampling requirements in ETS § 75.335(b) are revised and moved to final § 75.336. The installation requirements provided by ETS § 75.336(b)(3) are revised and moved to final § 75.335. Therefore, this provision is revised to conform to the new section numbers.

IV. Executive Order 12866

Executive Order (E.O.) 12866, as amended by E.O. 13258 (Amending Executive Order 12866 on Regulatory Planning and Review), requires that regulatory agencies assess both the costs and benefits of regulations. To comply with E.O. 12866, MSHA has prepared a Regulatory Economic Analysis (REA) for the final rule. The REA contains supporting data and explanation for the summary materials presented in this

preamble, including the covered mining industry, costs and benefits, feasibility, small business impacts, and paperwork. The REA is located on MSHA's Web site at <http://www.msha.gov/REGSINFO.HTM>. A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances at the address in the **ADDRESSES** section of this preamble.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a "significant regulatory action" is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. Based on the REA, MSHA has determined that the final rule does not have an annual effect of \$100 million or more on the economy. Therefore, it is not an economically "significant regulatory action" under section 3(f) of E.O. 12866. MSHA, however, has determined that the final rule is a "significant action" under Executive Order 12866 because it raises novel legal or policy issues.

A. Mine Sector Affected

The final rule applies to all underground coal mines in the United States. Based on MSHA data as of February 5, 2008, there were 624 underground coal mines, employing 42,207 miners, operating in the U.S. in 2007. Based on an MSHA survey conducted in November 2006, 372 underground coal mines have seals. In 2007, these mines employed 32,412 miners, of which 28,009 worked underground.

B. Benefits

To provide a quantitative estimate of the benefits of this final rule, MSHA analyzed the explosions in sealed areas that have taken place since 1993 including the two accidents in 2006 where the seals failed and fatalities occurred. At the Sago Mine, 12 miners died, and at the Darby Mine, 5 miners died. If this final rule had been in effect, these lives might not have been lost.

For purposes of estimating benefits for this final rule, MSHA attributes the potential saving of the 5 miners' lives from the Darby Mine accident to this final rule. MSHA also attributes the potential saving of half of the miners' lives from the Sago Mine accident. (MSHA attributes the remaining miners'

lives from the Sago Mine accident to MSHA's 2006 emergency mine evacuation rule.) The total potential saving is 11 lives attributed to this final rule.

One commenter stated that under the ETS, MSHA should not have included as a benefit potential lives saved from the Sago and Darby Mine accidents. This commenter stated that the design of the seals used at both the Sago and Darby Mines was not established as the cause of the deaths, that MSHA's accident reports focus on construction deficiencies of seals at both mines, and that the Darby Mine explosion resulted from miners attempting to cut a metal strap on the inby and outby side of a previously constructed seal. Based on MSHA's experience under the ETS, MSHA believes that the lives lost at the Sago and Darby Mine accidents might have been saved had this final rule been in effect. This final rule, like the ETS, addresses the design, construction, and maintenance of seals, and training of persons involved in seal construction and repair. The final rule requires insulated cables be removed from the area to be sealed, unless it is not safe to do so. In addition, this final rule does not permit welding, cutting, and soldering with an arc or flame within 150 feet of a seal unless such work is approved by the District Manager in the ventilation plan.

MSHA has data on explosions that occurred in sealed areas. From 1993 through 2006, there were 13 explosions in sealed areas. Of the 13 explosions, 11 caused seal damage and had the potential to cause fatalities or injuries, and two caused fatalities or injuries. If the explosions followed approximately the same distribution as they did since 1993, MSHA estimates that this final rule would save approximately one life per year.

Based on the Agency's knowledge and experience, MSHA determined that the risk from explosions in sealed areas was increasing from 1993 through 2006 because the number of seals being installed was increasing during that period. After adjusting this estimate to account for the increased risk during the period, this final rule will save approximately 2 lives per year. The estimate that the final rule will save approximately 2 lives per year is based on an increased risk of an explosion during 1993–2006 because the number of seals in mines increased and the number of mines with seals increased. This is MSHA's best estimate of the number of lives saved per year due to the final rule.

MSHA also developed a higher risk estimate based on the distribution of

miners at risk and the characteristics of the explosions. If an explosion with the characteristics of the explosions at Sago or Darby Mines were to occur at a large mine, many lives potentially could be lost. Assuming that the risk of fatality from an explosion in a sealed area does not vary with the size of the mine, and that the number of potential fatalities is proportional to the number of miners working underground, MSHA estimates that approximately 6 lives will be saved per year under this final rule.

MSHA also calculated the cumulative risk over a 45-year working life of a miner. If, under MSHA's best estimate, this final rule saves approximately 2 lives per year, the risk of fatality from an explosion in a sealed area is approximately 3 per 1,000 miners over a 45-year working lifetime. If the final rule saves 6 lives per year under MSHA's higher estimate, the reduction in the lifetime risk of a fatality from an explosion in a sealed area is approximately 9 per 1,000 miners over a 45-year working lifetime.

Under this final rule, an explosion is less likely to occur where the atmosphere behind seals is monitored and maintained inert. This final rule also requires stronger seals to better withstand explosions. The stronger seals will reduce miner injuries and fatalities should an explosion occur.

C. Compliance Costs

MSHA estimates that the final rule will result in total yearly costs for underground coal mine operators of approximately \$45.4 million. Total first year costs are estimated to be approximately \$46.4 million. Disaggregated by mine size for mines that use seals, yearly costs are \$2.8 million for the 83 mine operators with fewer than 20 employees; \$37.8 million for the 279 mine operators with 20–500 employees; and \$4.8 million for the 10 mine operators with more than 500 employees. Most of the compliance costs occur in the mine size category with 20–500 employees because 75 percent of the mines that use seals are in this category.

V. Feasibility

MSHA has concluded that the requirements of the final rule are technologically and economically feasible. For atmospheres behind seals where the atmosphere will not inert naturally, operators may choose any of the following alternatives for inerting the atmosphere: (1) Injecting inert gas; or (2) pressure balance of the ventilation system; or (3) injecting material into the strata surrounding the seals to reduce leakage. Other mines may choose to

construct new seals that are 120 psi or greater in front of all existing seals in the sealed area.

A. Technological Feasibility

MSHA concludes that the final rule is technologically feasible. This conclusion is based on the requirements of the final rule for training, sampling, construction and repair. Compliance with these requirements is technologically feasible because the materials, equipment, and methods for implementing these requirements currently exist. In addition, this feasibility determination is supported by MSHA's approval of several seal designs at overpressures of 50 psi and 120 psi.

B. Economic Feasibility

The yearly compliance cost of the final rule is \$45.4 million, which is 0.3 percent of all revenue for all underground coal mines. MSHA concludes that the final rule is economically feasible because the total yearly compliance cost is well below one percent of the estimated annual revenue for all underground coal mines.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA analyzed the impact of the final rule on small businesses. Based on that analysis, MSHA notified the Chief Counsel for Advocacy, Small Business Administration, and certified under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the final rule does not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is in Chapter V of the REA, and is summarized below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the final rule on small entities, MSHA must either use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA uses the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees. MSHA concludes that it can certify that the final rule does not have a significant economic impact on a substantial number of small

entities, those mines with 500 or fewer employees.

B. Factual Basis for Certification

MSHA initially evaluates the impacts on "small entities" by comparing the estimated compliance cost of a rule for small entities in the sector affected by the rule to the estimated revenue for the affected sector. When the estimated compliance cost is less than one percent of the estimated revenue, the Agency concludes that the rule does not have a significant economic impact on a substantial number of small entities. When the estimated compliance costs exceeds one percent of revenue, MSHA determines whether a further analysis is required.

For underground coal mines, the estimated 2007 production was 277,830,429 tons for mines that had 500 or fewer employees. Using a 2007 price of underground coal of \$40.37 per ton and total 2007 underground coal production in tons, underground coal revenue is estimated to be approximately \$11.2 billion for mines employing 500 or fewer employees. Thus, the yearly cost of the final rule for mines that have 500 or fewer employees is 0.36 percent of annual revenue. Using SBA's definition of a small mine (one having 500 or fewer employees), the yearly cost for underground coal mines to comply with the final rule is less than 1 percent of estimated annual revenue. Accordingly, MSHA has certified that the final rule does not have a significant impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

A. Summary

The information collection requirements contained in the final rule are listed by the Office of Management and Budget (OMB) under control numbers 1219-0142 and 1219-0088.

The final rule contains information collection requirements that MSHA estimates will result in 33,560 burden hours and approximately \$2.36 million related burden costs to mine operators and seal manufacturers. This final rule contains information collection requirements in the following sections: § 75.335 seal requirements, strengths, design applications, and installation; § 75.336 sampling and monitoring requirements; § 75.337 construction and repair of seals; and § 75.338 training.

A detailed explanation of the burden hours and related costs are in the Paperwork Reduction Act section of the Regulatory Economic Analysis (REA) for the final rule. The REA is located on MSHA's Web site at <http://www.msha.gov/REGSINFO.HTM>.

A print copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances.

B. Details

The information collection package has been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act of 1995, as amended. A copy of the information collection package can be obtained from the Department of Labor by e-mail request to king.darrin@dol.gov or by phone request at (202) 693-4129.

The information collection package for the ETS, which also served as the proposal for this final rule, was approved by OMB under control numbers 1219-0142, for Sealing of Abandoned Areas; and 1219-0088, for Ventilation Plans, Tests, and Examinations in Underground Coal Mines. MSHA estimated that the information collection requirements in the ETS would result in 82,037 annual burden hours and approximately \$4.7 million in related annual burden costs. MSHA has reduced these estimates in the final rule to 33,553 annual burden hours and approximately \$2.36 million related annual burden costs. MSHA's estimated reduction in burden hours is due to: (1) The removal of approximately 41,600 hours of sampling time that was inadvertently included with recordkeeping time and counted as paperwork; (2) the removal of approximately 900 hours of time to prepare for training that was inadvertently included as paperwork; (3) the removal of approximately 3,000 hours of paperwork associated with the deleted requirement for a sampling protocol and action plan; and (4) approximately 3,000 hours of paperwork due to various other changes in the final rule.

Several commenters raised concerns regarding the ETS requirement that multiple persons must certify that seal construction was done correctly. These comments are addressed in earlier sections of this preamble.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that the final rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than \$100

million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq*) requires no further agency action or analysis.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that the final rule has no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that the final rule does not impact family well-being.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The final rule does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

D. Executive Order 12988: Civil Justice Reform

The final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, the final rule meets the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The final rule has no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

F. Executive Order 13132: Federalism

The final rule 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." Accordingly, under E.O. 13132, no further Agency action or analysis is required.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The final rule does not have "tribal implications" because it will not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Accordingly, under E.O. 13175, no further Agency action or analysis is required.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution or use. MSHA has reviewed the final rule for its energy effects because the final rule applies to the underground mining sector. Because this final rule will result in yearly costs of approximately \$45.4 million to the underground coal mining industry, relative to annual revenues of \$14.1 billion in 2007, MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule will not have a significant economic impact on a substantial number of small entities.

IX. References

- ACI 318–05, "Building Code Requirements for Structural Concrete and Commentary," American Concrete Institute.
- ACI 440.2R–02, "Design and Construction of Externally Bonded FRP Systems for Strengthening Concrete Structures," American Concrete Institute.
- Army TM 5–1300, Navy NAVFAC P0397, Air Force AFR 88–22, Departments of the Army, the Navy, and the Air Force, "Structures to Resist the Effects of Accidental Explosions," November 1990.
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List of Subjects in 30 CFR Part 75

Mine safety and health, Reporting and recordkeeping requirements,
Underground coal mines, Ventilation.

Dated: April 14, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

■ Chapter I of Title 30, part 75 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Revise § 75.335 to read as follows:

§ 75.335 Seal strengths, design applications, and installation.

(a) *Seal strengths.* Seals constructed on or after October 20, 2008 shall be designed, constructed, and maintained to withstand—

(1)(i) At least 50-psi overpressure when the atmosphere in the sealed area is monitored and maintained inert and designed using a pressure-time curve with an instantaneous overpressure of at least 50 psi. A minimum overpressure of at least 50 psi shall be maintained for at least four seconds then released instantaneously.

(ii) Seals constructed to separate the active longwall panel from the longwall panel previously mined shall be designed using a pressure-time curve with a rate of pressure rise of at least 50 psi in 0.1 second. A minimum overpressure of at least 50 psi shall be maintained; or

(2)(i) Overpressures of at least 120 psi if the atmosphere in the sealed area is not monitored, is not maintained inert, the conditions in paragraphs (a)(3)(i) through (iii) of this section are not present, and the seal is designed using a pressure-time curve with an instantaneous overpressure of at least 120 psi. A minimum overpressure of 120 psi shall be maintained for at least four seconds then released instantaneously.

(ii) Seals constructed to separate the active longwall panel from the longwall panel previously mined shall be designed using a pressure-time curve with a rate of pressure rise of 120 psi in 0.25 second. A minimum overpressure of 120 psi shall be maintained; or

(3) Overpressures greater than 120 psi if the atmosphere in the sealed area is not monitored and is not maintained inert, and

(i) The atmosphere in the sealed area is likely to contain homogeneous mixtures of methane between 4.5 percent and 17.0 percent and oxygen exceeding 17.0 percent throughout the entire area;

(ii) Pressure piling could result in overpressures greater than 120 psi in the area to be sealed; or

(iii) Other conditions are encountered, such as the likelihood of a detonation in the area to be sealed.

(iv) Where the conditions in paragraphs (a)(3)(i), (ii), or (iii) of this section are encountered, the mine operator shall revise the ventilation plan to address the potential hazards. The plan shall include seal strengths sufficient to address such conditions.

(b) *Seal design applications.* Seal design applications from seal manufacturers or mine operators shall be in accordance with paragraphs (b)(1) or (b)(2) of this section and submitted for approval to MSHA's Office of Technical Support, Pittsburgh Safety and Health Technology Center, P.O. Box 18233, Cochrans Mill Road, Pittsburgh, PA 15236.

(1) An engineering design application shall—

(i) Address gas sampling pipes, water drainage systems, methods to reduce air leakage, pressure-time curve, fire resistance characteristics, flame spread index, entry size, engineering design and analysis, elasticity of design, material properties, construction specifications, quality control, design references, and other information related to seal construction;

(ii) Be certified by a professional engineer that the design of the seal is in accordance with current, prudent engineering practices and is applicable to conditions in an underground coal mine; and

(iii) Include a summary of the installation procedures related to seal construction; or

(2) Each application based on full-scale explosion tests or equivalent means of physical testing shall address the following requirements to ensure that a seal can reliably meet the seal strength requirements:

(i) Certification by a professional engineer that the testing was done in accordance with current, prudent engineering practices for construction in a coal mine;

(ii) Technical information related to the methods and materials;

(iii) Supporting documentation;

(iv) An engineering analysis to address differences between the seal support during test conditions and the range of conditions in a coal mine; and

(v) A summary of the installation procedures related to seal construction.

(3) MSHA will notify the applicant if additional information or testing is required. The applicant shall provide this information, arrange any additional or repeat tests, and provide prior notification to MSHA of the location, date, and time of such test(s).

(4) MSHA will notify the applicant, in writing, whether the design is approved or denied. If the design is denied, MSHA will specify, in writing, the deficiencies of the application, or necessary revisions.

(5) Once the seal design is approved, the approval holder shall promptly notify MSHA, in writing, of all deficiencies of which they become aware.

(c) *Seal installation approval.* The installation of the approved seal design shall be subject to approval in the ventilation plan. The mine operator shall—

(1) Retain the seal design approval and installation information for as long as the seal is needed to serve the purpose for which it was built.

(2) Designate a professional engineer to conduct or have oversight of seal installation and certify that the provisions in the approved seal design specified in this section have been addressed and are applicable to conditions at the mine. A copy of the certification shall be submitted to the District Manager with the information provided in paragraph (c)(3) of this section and a copy of the certification shall be retained for as long as the seal is needed to serve the purpose for which it was built.

(3) Provide the following information for approval in the ventilation plan—

(i) The MSHA Technical Support Approval Number;

(ii) A summary of the installation procedures;

(iii) The mine map of the area to be sealed and proposed seal locations that include the deepest points of penetration prior to sealing. The mine map shall be certified by a professional engineer or a professional land surveyor.

(iv) Specific mine site information, including—

(A) Type of seal;

(B) Safety precautions taken prior to seal achieving design strength;

(C) Methods to address site-specific conditions that may affect the strength and applicability of the seal including set-back distances;

(D) Site preparation;

(E) Sequence of seal installations;

(F) Projected date of completion of each set of seals;

(G) Supplemental roof support inby and outby each seal;

(H) Water flow estimation and dimensions of the water drainage system through the seals;

(I) Methods to ventilate the outby face of seals once completed;

(J) Methods and materials used to maintain each type of seal;

(K) Methods to address shafts and boreholes in the sealed area;

(L) Assessment of potential for overpressures greater than 120 psi in sealed area;

(M) Additional sampling locations; and

(N) Additional information required by the District Manager.

■ 3. Revise § 75.336 to read as follows:

§ 75.336 Sampling and monitoring requirements.

(a) A certified person as defined in § 75.100 shall monitor atmospheres of sealed areas. Sealed areas shall be monitored, whether ingassing or outgassing, for methane and oxygen concentrations and the direction of leakage.

(1) Each sampling pipe and approved sampling location shall be sampled at least every 24 hours.

(i) Atmospheres with seals of 120 psi or greater shall be sampled until the design strength is reached for every seal used to seal the area.

(ii) Atmospheres with seals less than 120 psi constructed before October 20, 2008 shall be monitored for methane and oxygen concentrations and maintained inert. The operator may request that the District Manager approve different sampling locations and frequencies in the ventilation plan, provided at least one sample is taken at each set of seals at least every 7 days.

(iii) Atmospheres with seals less than 120 psi constructed after October 20, 2008 shall be monitored for methane and oxygen concentrations and maintained inert. The operator may request that the District Manager approve different sampling locations and frequencies in the ventilation plan after a minimum of 14 days and after the seal design strength is reached, provided at least one sample is taken at each set of seals at least every 7 days.

(2) The mine operator shall evaluate the atmosphere in the sealed area to determine whether sampling through the sampling pipes in seals and approved locations provides appropriate sampling locations of the sealed area. The mine operator shall make the evaluation immediately after the minimum 14-day required sampling, if the mine ventilation system is reconfigured, if changes occur that

adversely affect the sealed area, or if the District Manager requests an evaluation. When the results of the evaluations indicate the need for additional sampling locations, the mine operator shall provide the additional locations and have them approved in the ventilation plan. The District Manager may require additional sampling locations and frequencies in the ventilation plan.

(3) Mine operators with an approved ventilation plan addressing spontaneous combustion pursuant to § 75.334(f) shall sample the sealed atmosphere in accordance with the ventilation plan.

(4) The District Manager may approve in the ventilation plan the use of a continuous monitoring system in lieu of monitoring provisions in this section.

(b)(1) Except as provided in § 75.335(d), the atmosphere in the sealed area is considered inert when the oxygen concentration is less than 10.0 percent or the methane concentration is less than 3.0 percent or greater than 20.0 percent.

(2) Immediate action shall be taken by the mine operator to restore an inert sealed atmosphere behind seals with strengths less than 120 psi. Until the atmosphere in the sealed area is restored to an inert condition, the sealed atmosphere shall be monitored at each sampling pipe and approved location at least once every 24 hours.

(c) Except as provided in § 75.335(d), when a sample is taken from the sealed atmosphere with seals of less than 120 psi and the sample indicates that the oxygen concentration is 10 percent or greater and methane is between 4.5 percent and 17 percent, the mine operator shall immediately take an additional sample and then immediately notify the District Manager. When the additional sample indicates that the oxygen concentration is 10 percent or greater and methane is between 4.5 percent and 17 percent, persons shall be withdrawn from the affected area which is the entire mine or other affected area identified by the operator and approved by the District Manager in the ventilation plan, except those persons referred to in § 104(c) of the Act. The operator may identify areas in the ventilation plan to be approved by the District Manager where persons may be exempted from withdrawal. The operator's request shall address the location of seals in relation to: Areas where persons work and travel in the mine; escapeways and potential for damage to the escapeways; and ventilation systems and controls in areas where persons work or travel and where ventilation is used for escapeways. The operator's request shall

also address the gas concentration of other sampling locations in the sealed area and other required information. Before miners reenter the mine, the mine operator shall have a ventilation plan revision approved by the District Manager specifying the actions to be taken.

(d) In sealed areas with a demonstrated history of carbon dioxide or sealed areas where inert gases have been injected, the operator may request that the District Manager approve in the ventilation plan an alternative method to determine if the sealed atmosphere is inert and when miners have to be withdrawn. The mine operator shall address in the ventilation plan the specific levels of methane, carbon dioxide, nitrogen and oxygen; the sampling methods and equipment used; and the methods to evaluate these concentrations underground at the seal.

(e) *Recordkeeping.* (1) The certified person shall promptly record each sampling result including the location of the sampling points, whether ingassing or outgassing, and oxygen and methane concentrations. The results of oxygen and methane samples shall be recorded as the percentage of oxygen and methane measured by the certified person and any hazardous condition found in accordance with § 75.363.

(2) The mine operator shall retain sampling records at the mine for at least one year from the date of the sampling.

■ 4. Revise § 75.337 to read as follows:

§ 75.337 Construction and repair of seals.

(a) The mine operator shall maintain and repair seals to protect miners from hazards of sealed areas.

(b) Prior to sealing, the mine operator shall—

(1) Remove insulated cables, batteries, and other potential electric ignition sources from the area to be sealed when constructing seals, unless it is not safe to do so. If ignition sources cannot safely be removed, seals must be constructed to at least 120 psi;

(2) Remove metallic objects through or across seals; and

(3) Breach or remove all stoppings in the first crosscut inby the seals immediately prior to sealing the area.

(c) A certified person designated by the mine operator shall directly supervise seal construction and repair and—

(1) Examine each seal site immediately prior to construction or repair to ensure that the site is in accordance with the approved ventilation plan;

(2) Examine each seal under construction or repair during each shift to ensure that the seal is being

constructed or repaired in accordance with the approved ventilation plan;

(3) Examine each seal upon completion of construction or repair to ensure that construction or repair is in accordance with the approved ventilation plan;

(4) Certify by initials, date, and time that the examinations were made; and

(5) Make a record of the examination at the completion of any shift during which an examination was conducted. The record shall include each deficiency and the corrective action taken. The record shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The record shall be kept at the mine for one year.

(d) Upon completion of construction of each seal a senior mine management official, such as a mine manager or superintendent, shall certify that the construction, installation, and materials used were in accordance with the approved ventilation plan. The mine operator shall retain the certification for as long as the seal is needed to serve the purpose for which it was built.

(e) The mine operator shall—

(1) Notify the District Manager between two and fourteen days prior to commencement of seal construction;

(2) Notify the District Manager, in writing, within five days of completion of a set of seals and provide a copy of the certification required in paragraph (d) of this section; and

(3) Submit a copy of quality control results to the District Manager for seal material properties specified by § 75.335 within 30 days of completion of quality control tests.

(f) *Welding, cutting, and soldering.* Welding, cutting, and soldering with an arc or flame are prohibited within 150 feet of a seal. An operator may request a different location in the ventilation plan to be approved by the District Manager. The operator's request must address methods the mine operator will use to continuously monitor atmospheric conditions in the sealed area during welding or burning; the airflow conditions in and around the work area; the rock dust and water application methods; the availability of fire extinguishers on hand; the procedures to maintain safe conditions, and other relevant factors.

(g) *Sampling pipes.* (1) For seals constructed after April 18, 2008, one non-metallic sampling pipe shall be installed in each seal that shall extend into the center of the first connecting crosscut in by the seal. If an open crosscut does not exist, the sampling pipe shall extend one-half of the distance of the open entry in by the seal.

(2) Each sampling pipe shall be equipped with a shut-off valve and appropriate fittings for taking gas samples.

(3) The sampling pipes shall be labeled to indicate the location of the sampling point when more than one sampling pipe is installed through a seal.

(4) If a new seal is constructed to replace or reinforce an existing seal with a sampling pipe, the sampling pipe in the existing seal shall extend through the new seal. An additional sampling pipe shall be installed through each new seal to sample the area between seals, as specified in the approved ventilation plan.

(h) *Water drainage system.* For each set of seals constructed after April 18, 2008, the seal at the lowest elevation shall have a corrosion-resistant, non-metallic water drainage system. Seals shall not impound water or slurry. Water or slurry shall not accumulate within the sealed area to any depth that can adversely affect a seal.

■ 5. Revise § 75.338 to read as follows:

§ 75.338 Training.

(a) Certified persons conducting sampling shall be trained in the use of appropriate sampling equipment, procedures, location of sampling points, frequency of sampling, size and condition of the sealed area, and the use of continuous monitoring systems if applicable before they conduct sampling, and annually thereafter. The mine operator shall certify the date of training provided to certified persons and retain each certification for two years.

(b) Miners constructing or repairing seals, designated certified persons, and senior mine management officials shall be trained prior to constructing or repairing a seal and annually thereafter. The training shall address materials and procedures in the approved seal design and ventilation plan. The mine operator shall certify the date of training provided each miner, certified person, and senior mine management official and retain each certification for two years.

■ 6. Add § 75.339 to read as follows:

§ 75.339 Seals records.

(a) The table entitled "Seal Recordkeeping Requirements" lists records the operator shall maintain and the retention period for each record.

TABLE—§ 75.339(a) SEAL RECORDKEEPING REQUIREMENTS

Record	Section reference	Retention time
(1) Approved seal design	75.335(c)(1)	As long as the seal is needed to serve the purpose for which it is built.
(2) Certification of Provisions of Approved Seal Design is Addressed.	75.335(c)(2)	As long as the seal is needed to serve the purpose for which it is built.
(3) Gas sampling records	75.336(e)(2)	1 year.
(4) Record of examinations	75.337(c)(5)	1 year.
(5) Certification of seal construction, installation, and materials.	75.337(d)	As long as the seal is needed to serve the purpose for which it is built.
(6) Certification of Training for Persons that Sample	75.338(a)	2 years.
(7) Certification of Training for Persons that Perform Seal Construction and Repair.	75.338(b)	2 years.

(b) Records required by §§ 75.335, 75.336, 75.337 and 75.338 shall be retained at a surface location at the mine in a secure book that is not susceptible to alteration. The records may be retained electronically in a computer

system that is secure and not susceptible to alteration, if the mine operator can immediately access the record from the mine site.

(c) Upon request from an authorized representative of the Secretary of Labor,

the Secretary of Health and Human Services, or from the authorized representative of miners, mine operators shall promptly provide access to any record listed in the table in this section.

(d) Whenever an operator ceases to do business or transfers control of the mine to another entity, that operator shall transfer all records required to be maintained by this part, or a copy thereof, to any successor operator who

shall maintain them for the required period.

■ 7. Amend § 75.371 by revising paragraph (ff) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(ff) Seal installation requirements provided by § 75.335 and the sampling provisions provided by § 75.336.

* * * * *

[FR Doc. 08–1152 Filed 4–16–08; 2:14 pm]

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Federal Register

**Friday,
April 18, 2008**

Part IV

The President

**Proclamation 8239—National Park Week,
2008**

Presidential Documents

Title 3—

Proclamation 8239 of April 15, 2008

The President

National Park Week, 2008

By the President of the United States of America**A Proclamation**

President Franklin D. Roosevelt once said, “There is nothing so American as our National Parks.” During National Park Week, we underscore our commitment to conserving these magnificent places and recognize the many employees and volunteers who give their time and energy to keep them beautiful for all Americans to enjoy.

This year’s theme for National Park Week, “Kids In Parks,” highlights youth programs and initiatives offered by the National Park Service to encourage children to be good stewards of the land. The Junior Ranger program is one such program that encourages America’s youth to explore, protect, and learn about our national parks. Today, many national parks have active Junior Ranger programs. By visiting nps.gov/webrangers, young people can sign up to become WebRangers, enabling them to learn about different parks, monuments, and historic sites right from their homes.

Across the United States, the Federal Government plays a vital role in protecting our natural and historical treasures. My Administration launched the National Park Centennial Initiative to preserve and enhance these scenic wonders and to prepare for the 100th anniversary of the National Park Service in 2016. Serving as the Honorary Chair of the National Park Foundation, First Lady Laura Bush has also played a significant role in preserving our national parks. The First Lady is actively involved in programs such as First Bloom, which teaches children how to preserve native plants across America. In addition, this past Christmas, the White House highlighted our national parks with the theme “Holiday in the National Parks.”

Our National Parks belong to each of us, and they are natural places to learn, exercise, volunteer, spend time with family and friends, and enjoy the magnificent beauty of our great land. During National Park Week and throughout the year, Americans of all ages can pledge to help maintain and enhance America’s national treasures for future generations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 19 through April 27, 2008, as National Park Week. I invite all my fellow citizens to join me in celebrating America’s national parks by visiting these wonderful spaces, discovering all they have to offer, and becoming active participants in park conservation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

A handwritten signature in black ink, appearing to be "GWB", written in a cursive style.

[FR Doc. 08-1166

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws

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Second Chance Act of 2007: Community Safety Through Recidivism Prevention (Apr. 9, 2008; 122 Stat. 657)

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