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

WHEN: Tuesday, October 28, 2008
9:00 a.m.-12:30 p.m.

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

RESERVATIONS: (202) 741-6008

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–3 of October 9, 2008

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization Office

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 634(d) of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2008 (Division J, Public Law 110–161), as carried forward by the Continuing Appropriations Resolution, 2009 (Division A, Public Law 110–329), I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, October 9, 2008

[FR Doc. E8–25334
Filed 10–21–08; 8:45 am]
Billing code 4710–10–P

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–4 of October 15, 2008

Provision of U.S. Drug Interdiction Assistance to the Government of Brazil

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Brazil, that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.

THE WHITE HOUSE,
Washington, October 15, 2008

[FR Doc. E8–25337
Filed 10–21–08; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1336]

Capital Adequacy Guidelines: Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule with request for public comment.

SUMMARY: In order to support and facilitate the timely implementation and acceptance of the capital purchase program announced by the U.S. Department of Treasury (Treasury) and promote the stability of banking organizations and the financial system, the Board has adopted this interim final rule (interim final rule or rule). The rule specifically permits bank holding companies that issue new senior perpetual preferred stock to the Treasury under the capital purchase program announced by the Secretary of the Treasury on October 14, 2008, to include such capital instruments in Tier 1 capital for purposes of the Board's risk-based and leverage capital rules and guidelines for bank holding companies.

DATES: The interim final rule will become effective on October 17, 2008. Comments must be received by November 21, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R–1336, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street, NW) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Norah M. Barger, Deputy Director, (202) 452–2402, or John Connolly, Senior Project Manager, (202) 452–3621, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, Mark E. Van Der Weide, Assistant General Counsel, (202) 452–2263, or Benjamin W. McDonough, Senior Attorney, (202) 452–2036, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION: On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008 (Act)[1] into law. The Act expressly provides that it is intended, among other things, "to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States."[2] Pursuant to the authorities granted by the Act, and in order to restore liquidity and stability to the financial system, on October 14, 2008, the Secretary of the Treasury announced a program within the Troubled Asset Relief Program (TARP) established by section 102 of the Act to provide capital to eligible banks, bank holding companies and savings associations (collectively, banking organizations), as well as certain other financial institutions. Treasury has announced that eligible banking organizations will be able to submit applications to participate in the capital purchase program (the Capital Purchase Program) until November 14, 2008.

Under the Capital Purchase Program, the Treasury will provide capital to an eligible banking organization by purchasing newly issued senior perpetual preferred stock (Senior Perpetual Preferred Stock) of the banking organization. The Senior Perpetual Preferred Stock issued under the Capital Purchase Program will be perpetual preferred stock in the issuing banking organization and will be senior to the issuer's common stock and pari passu with the issuer's existing preferred shares (other than preferred shares which by their terms rank junior to any existing preferred shares). All Senior Perpetual Preferred Stock issued by bank holding companies will provide for cumulative dividends. The aggregate amount of Senior Perpetual Preferred Stock that may be issued by a banking organization to Treasury must be (i) not less than one percent of the organization's risk-weighted assets, and (ii) not more than the lesser of (A) $25 billion and (B) three percent of its risk-weighted assets. Treasury expects the issuance and purchase of the Senior Perpetual Preferred Stock to be completed no later than December 31, 2008.

To be eligible for the Capital Purchase Program, the Senior Perpetual Preferred Stock must include several features, which are designed to make it attractive to a wide array of generally sound banking organizations and encourage such banking organizations to replace the Senior Perpetual Preferred Stock with private capital once the financial markets return to more normal conditions.

In particular, the Senior Perpetual Preferred Stock will have an initial dividend rate of five percent per annum, which will increase to nine percent per annum five years after issuance. In addition, the stock will be callable by the banking organization at par after three years from issuance and may be called at an earlier date if the stock will be redeemed with cash proceeds from

[1] Division A of Public Law No. 110–342, 122 Stat. 3765 (2008).

[2] *See* Act, § 2.

the banking organization's issuance of common stock or perpetual preferred stock that (i) qualifies as Tier 1 capital of the organization and (ii) the proceeds of which are no less than 25 percent of the aggregate issue price of the Senior Perpetual Preferred Stock. In all cases, the redemption of the Senior Perpetual Preferred Stock will be subject to the approval of the banking organization's appropriate Federal banking agency. In addition, following the redemption of all the Senior Perpetual Preferred Stock, a banking organization shall have the right to repurchase any other equity security of the organization (such as warrants or equity securities acquired through the exercise of such warrants) held by Treasury.

The Board recognizes that some of the features of the Senior Perpetual Preferred Stock would otherwise render the preferred stock ineligible for Tier 1 capital treatment or limit its inclusion in Tier 1 capital under the Board's capital guidelines for bank holding companies. Bank holding companies generally may not include in Tier 1 capital perpetual preferred stock (whether cumulative or noncumulative) that has a dividend step-up rate. Furthermore, the amount of cumulative perpetual preferred stock that a bank holding company may include in its Tier 1 capital currently is subject to a 25 percent limit.[3]

The Board has adopted this interim final rule to provide that the Senior Perpetual Preferred Stock may be included without limit in the Tier 1 capital of bank holding companies.[4] The Senior Perpetual Preferred Stock will be issued to Treasury as part of a nationwide program, established by Treasury under the Act, to provide capital to eligible banking organizations that already are in generally sound financial condition in order to increase the capital available to banking organizations and thereby promote stability in the financial markets and the banking industry as a whole. These actions are being taken under special powers granted by Congress to the Secretary of the Treasury to achieve these important public policy objectives. A bank holding company also may redeem the Senior Perpetual Preferred Stock only with the approval of the Board. The dividend step-up rate for the Senior Perpetual Preferred Stock is included in the instrument to help achieve a fundamental public policy objective in the United States—the replacement of the equity capital provided by the U.S. government with private capital in a prompt fashion, consistent with the safety and soundness of the banking organization. Each of these factors is important to the determinations made by the Board with respect to the appropriate capital treatment of the Senior Perpetual Preferred Stock.

For these reasons and in order to support and facilitate the timely implementation and acceptance of the Capital Purchase Program and promote the stability of banking organizations and the financial system, the Board has adopted this interim final rule to permit bank holding companies that issue new Senior Perpetual Preferred Stock to the Treasury under the TARP to include such stock without limit as Tier 1 capital for purposes of the Board's risk-based and leverage capital rules and guidelines for bank holding companies.[5]

The Board expects bank holding companies that issue Senior Perpetual Preferred Stock, like all other bank holding companies, to hold capital commensurate with the level and nature of the risks to which they are exposed. In addition, the Board expects bank holding companies that issue Senior Perpetual Preferred Stock to appropriately incorporate the dividend features of the Senior Perpetual Preferred Stock into the organization's liquidity and capital funding plans.

The Board notes that as a matter of prudential policy and practice it generally has not allowed capital instruments with a dividend rate step-up to be included in Tier 1 or Tier 2 capital. The Board has long expressed concern that a rate step-up undermines the permanence of a capital instrument and poses safety and soundness concerns.[6] In light of these concerns, the Board previously has declined to allow, as would otherwise have been permitted by the 1998 Sydney Agreement of The Basel Committee on Banking Supervision, capital instruments with a moderate dividend step-up (up to 100 bps) to be included in Tier 1 capital up to a limit of 15 percent of Tier 1 capital. The Board also notes that capital instruments with step-up provisions issued by banking organizations in other countries that are members of the Basel Committee have become callable over the last several months. These securities have been widely redeemed, even though the stepped-up rate has been economical for the issuer. Such redemptions could lead to the undesirable outcome of the issuer either refinancing the capital instrument at a higher rate, placing further stress on an institution that may already be in strained condition, or simply not replacing the instrument, further depleting its capital resources.

However, as discussed above, issuance of the Senior Perpetual Preferred Shares is consistent with a strong public policy objective, which is to increase the capital available to banking organizations generally in the current environment and thereby promote stability in the financial markets and the banking industry as a whole. In addition, the Board notes that other terms and public policy considerations related to the Senior Perpetual Preferred Stock mitigate supervisory concerns over the rate step-up feature. Issuers of this instrument generally will not be allowed to repurchase other stock or increase common dividends for three years after issuance without the consent of the Treasury. These restrictions promote in an important way not only the overall safety and soundness of the issuer, but also the retention of the highest form of capital, common equity. Moreover, as discussed above, the Senior Perpetual Preferred Stock includes features designed to incentivize issuers to redeem the stock and replace it with Tier 1 qualifying perpetual equity as soon as practicable, a feature that also fosters a higher quality of capital. These features, which are unique to the Senior Perpetual Preferred Stock, countervail in many respects the Board's concerns with regard to a step-up feature.

[3] *See* 12 CFR part 225, Appendix A, sections II.A.1.a.ii., II.A. a.iv.(1), II.A.1.b.i. and II.A.1.c.ii.(2).

[4] This interim final rule addresses only regulatory capital. Details about the Capital Purchase Program, including eligibility requirements and the general terms and conditions of the Senior Perpetual Preferred Stock and warrants associated with such stock, are available on the Treasury's Web site at *http://www.treas.gov*. Banking organizations interested in participating in the Capital Program should contact Treasury and their appropriate Federal banking agency. The Board is issuing this rule for bank holding companies only at this time. The Board continues to work with Treasury, the other Federal banking agencies, and other parties on other capital and related matters associated with the Capital Purchase Program.

[5] *See* 12 CFR part 225, Appendix A and Appendix D.

[6] For example, in a 1992 policy statement on subordinated debt, the Board noted: "Although payments on debt whose rates increase over time on the surface may not appear to be directly linked to the financial condition of the issuing organization, such debt (sometimes referred to as expanding or exploding rate debt) has a strong potential to be credit sensitive in substance. Organizations whose financial condition has strengthened are more likely to be able to refinance the debt at a rate lower than that mandated by the preset increase, whereas institutions whose condition has deteriorated are less likely to be able to do so. Moreover, just when these latter institutions would be in the most need of conserving capital, they would be under strong pressure to redeem the debt as an alternative to paying higher rates and, thus, would accelerate depletion of their own resources." *See* 12 CFR 250.166(b)(4) at n. 4.

In light of the instrument- and circumstances-specific nature of the Board's determination, the Board strongly cautions bank holding companies against construing the inclusion of the Senior Perpetual Preferred Stock in Tier 1 capital as in any way detracting from the Board's longstanding stance regarding the unacceptability of a rate step-up in other regulatory capital instruments.

The Board requests comment on all aspects of this rule.

Regulatory Analysis

Administrative Procedure Act

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. 553(b) and (d)), the Board finds that there is good cause for issuing this interim final rule and making the rule effective on October 17, 2008, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the effective date. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will allow bank holding companies to immediately count the Senior Perpetual Preferred Stock as Tier 1 capital for purposes of their risk-based and leverage capital ratios and will help promote stability in the banking system and financial markets. The Board believes it is important to provide bank holding companies immediately with guidance concerning the capital treatment of the Senior Perpetual Preferred Stock so that bank holding companies may make appropriate judgments concerning their participation in the Capital Purchase Program. The Board is soliciting comment on all aspects of the rule and will make such changes that it considers appropriate or necessary after review of any comments received.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.[7] Under regulations issued by the Small Business Administration,[8] a small entity includes a bank holding company with assets of $175 million or less (a small bank holding company). As of June 30, 2008, there were 2,636 small bank holding companies.

The exact number of small bank holding companies that would be impacted by this rule will depend on the number of such entities that participate in the Capital Purchase Program.

As a general matter, the Board's risk-based and leverage capital rules and guidelines for bank holding companies apply only to a bank holding company that has consolidated assets of $500 million or more. Accordingly, this interim final rule will not affect any small bank holding company and, for this reason, the Board hereby certifies that the rule will not have a significant impact on a substantial number of small bank holding companies.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the interim final rule.

Solicitation of Comments on Use of Plain Language

Section 722 of the GLBA required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make the interim final rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. In appendix A to part 225:

■ a. Revise section II.A.1.a.ii.; and

■ b. Revise footnote 8 in section II.A.1.c.ii.(2) to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

II. * * *
A. * * *
1. * * *
a. * * *

ii. Qualifying noncumulative perpetual preferred stock, including related surplus, and senior perpetual preferred stock issued to the United States Department of the Treasury (Treasury) under the Troubled Asset Relief Program (TARP) established by the Emergency Economic Stabilization Act of 2008, Division A of Public Law No. 110–342 (which for purposes of this appendix shall be considered qualifying noncumulative perpetual preferred stock), including related surplus;

* * *
c. * * *
ii. * * *
(2) * * *

[8] Notwithstanding this provision, senior perpetual preferred stock issued to the Treasury under the TARP established by the Emergency Economic Stabilization Act of 2008, Division A of Public Law No. 110–342, may be included in tier 1 capital. In addition, traditional convertible perpetual preferred stock, which the holder must or can convert at a fixed number of common shares at a preset price, generally qualifies for inclusion in tier 1 capital provided all other requirements are met.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 16, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–25117 Filed 10–17–08; 11:15 am]

BILLING CODE 6210–02–P

[7] *See* 5 U.S.C. 603(a).

[8] *See* 13 CFR 121.201.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 721

RIN 3133–AD12

Incidental Powers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its regulation governing a federal credit union's (FCU's) incidental powers by adding illustrations of permissible activities under the categories of correspondent services, operational programs, and finder activities. These amendments will provide useful information to FCUs by clarifying and updating the illustrations regarding permissible activities.

DATES: This rule is effective November 21, 2008.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In May, the NCUA Board issued a proposed rule to update and clarify Part 721 of NCUA's regulations. 73 FR 30818 (May 29, 2008). The proposed rule recommended adding illustrations of permissible activities under the categories of correspondent services, operational programs, and finder activities.

B. Discussion

NCUA's policy is to review regulations periodically to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis so that a third of its regulations are reviewed each year. The proposed rule was the result of NCUA's 2007 review under IRPS 87–2, which covered the middle third of the regulations, including part 721. The proposed changes were intended to update and clarify the regulation.

C. Summary of Changes

Briefly summarized, the current incidental powers rule provides: A standard derived from well-established case law for recognizing an incidental powers activity; incorporates into broad, "pre-approved" categories of activities the activities legal opinions from NCUA's Office of General Counsel (OGC) have recognized; and describes an application process for adding new activities and seeking advisory opinions from NCUA's OGC on whether an activity would fit within an existing category. This final rule adds illustrations of permissible activities to the categories of correspondent services, operational programs, and finder activities. Under the category of correspondent services, this final rule recognizes FCUs may provide correspondent services to foreign as well as federal or state-chartered credit unions. This final rule also clarifies the category of finder activities includes an FCU's negotiation of group discounts and the performance of administrative functions for outside vendors. Finally, this final rule adds payroll services to the operational programs category. The regulatory text in this final rule is the same as the regulatory text in the proposed rule.

D. Summary of Comments

The NCUA Board received seven comment letters regarding the proposal: Three from credit union trade associations; two from state credit union leagues; and two from FCUs. All of the comment letters generally supported the amendments in the proposed rule.

On September 10, 2008, NCUA received notice that two comment letters submitted via the Federal eRulemaking Portal regarding this rulemaking had not been forwarded to NCUA. This was due to a minor software problem that has been corrected.[1] The comment period for this rule closed on July 28, 2008. As noted above, all seven comment letters NCUA received supported the amendments and the Board believes, given the identity of these commenters, which includes major credit union trade associations, state leagues, and individual credit unions, that these comment letters broadly and fairly represent the views of interested parties. The only suggested changes involved suggestions to expand provisions in the rule beyond the proposed rule.

The Board believes it is appropriate and fair in these circumstances to proceed with the final rule rather than delay implementation. This rule creates no burden for FCUs but merely incorporates as illustrations in the rule certain activities already recognized as permissible in legal opinions from NCUA's OGC. Moreover, the rule, itself, permits ongoing requests to the NCUA and OGC for consideration of whether an activity is permissible as an incidental powers activity. 12 CFR 721.4. NCUA's OGC may recognize an activity as permissible through an interpretive legal opinion without necessitating a rule change. For these reasons, the Board concludes there is no need to reopen the comment period and the interest of the public and FCUs is served by proceeding with the final rule. Commenters are free to submit requests for legal interpretation to OGC or follow the petition process provided in the rule. Id.

Three commenters, however, suggested additional changes to Part 721, including some comments suggesting NCUA permit FCUs to offer particular services to nonmembers. As discussed below, the suggested changes are either outside the scope of this rule, prohibited by statute, or addressed in another section of NCUA's regulations. The Board notes the incidental powers rule addresses only those activities and services an FCU can offer to its members and this authority is generally not a basis for FCUs to provide services to nonmembers.

One commenter suggested including, as an incidental power, the ability to sell or lease "excess capacity" that the credit union does not anticipate ever using. Alternatively, this commenter suggested extending the time period for an FCU to implement an expansion policy. The Federal Credit Union Act (the Act) authorizes FCUs to "purchase, hold, and dispose of property necessary or incidental to its operations." 12 U.S.C. 1757(4). The Act does not otherwise authorize FCUs to purchase or hold property. The current incidental powers rule recognizes the authority to sell "excess capacity." Given that an FCU is generally only authorized to purchase and hold property for "its operations," the excess capacity authority granted in the rule requires an FCU to make investments in facilities, equipment, or services in good faith with the intent of serving its members and the expectation the "excess capacity" will be taken up by future expansion of services to members. 12 CFR 721.3(d). The suggested change, therefore, would expand the powers of FCUs beyond the statutory authority

[1] The interagency "eRulemaking Program" launched the Web site *http://www.regulations.gov* in January 2003 to provide access and an opportunity to comment on all proposed federal regulations at one online portal. NCUA's understanding is that the software problem has been corrected and safeguards are now in place to ensure this error will not occur for future proposed rules. Questions about this matter may be directed to John Moses, Chief, eRulemaking Program Branch, Environmental Program Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202/566–1352, *Moses.John@epamail.epa.gov*.

granted by the Act. With regard to expanding the time frame for taking up "excess capacity of fixed assets," the fixed asset regulation, and not Part 721, specifically addresses the time frames for the future use of fixed assets. 12 CFR 701.36. The commenter's suggestion is outside the scope of this rule. The Board notes the fixed asset rule is among the first third of NCUA's regulations scheduled for review in 2009 and public comments for potential rulemaking concerning that rule are welcome.

This commenter also suggested NCUA should permit FCUs to engage in three additional activities under the incidental powers regulation. First, the commenter suggested NCUA allow FCUs to buy and sell loan portfolios of other credit unions as investments. Part 703 of NCUA's regulations addresses the permissible investments an FCU can hold. 12 CFR Part 703. The commenter's suggestion is outside the scope of the proposed rule. Like the fixed asset regulation, NCUA's investment rule is among the first third of NCUA's regulations scheduled for review in 2009, and the public is welcome to submit comments. The Board also notes the sale and purchase of loans among credit unions is generally permissible, subject to other provisions in NCUA's regulations. 12 CFR 701.22, 701.23, 741.8, 742.4.

Second, the commenter suggested NCUA permit FCUs to establish Interest on Lawyers Trust Accounts (IOLTAs). In brief, an IOLTA is an interest bearing account set up by attorneys to hold client funds. The interest, which lawyers cannot keep for themselves because the funds belong to their clients, can be donated to charities. The issue for credit unions regarding IOLTAs is that the Nation Credit Union Share Insurance Fund generally only provides insurance to the beneficial owners of an account, and they must be members. Under NCUA's insurance rules, all the clients whose funds are in the IOLTA would have to be members of the credit union where the account is established for the client funds in the IOLTA to be fully insured. NCUA's position on insurance coverage of IOLTAs currently remains as set out in an opinion from the OGC, OGC Op. 96–0841 (September 17, 1996), and is available on the agency Web site at *http://www.ncua.gov.*

Finally, the commenter suggested NCUA allow FCUs to sell gift cards and travelers checks to nonmembers. Generally, FCUs may only provide financial products and services to members, and the incidental powers rule only addresses activities and services for members. In 2006, NCUA adopted a new regulation authorizing FCUs to provide certain services to nonmembers within the field of membership, which implemented authority the Financial Services Reform Act granted. 12 CFR 701.30. The Board notes § 701.30(a) specifically authorizes an FCU to sell travelers checks to nonmembers who are within its field of membership; the rule does not, however, specifically address gift cards. Consideration of whether gift cards or other stored value products would be permissible under § 701.30 is outside the scope of this rulemaking on incidental powers activities.

Another commenter suggested NCUA include four additional activities in the incidental powers regulation. First, the commenter suggested NCUA should permit FCUs to engage in activities authorized as incidental for state credit unions in the state or states in which they operate. Many states currently have parity provisions in state laws permitting a state-chartered credit union to engage in any activity permissible for an FCU. The Act does not have a similar provision allowing FCUs to engage in incidental powers authorized by the states in which the operate, and the Board cannot grant by regulation broader authority than that provided in the Act.

Second, the commenter suggested NCUA allow FCUs to manage repossessed properties for other credit unions. FCUs can hold repossessed assets only temporarily and NCUA restricts FCUs from holding these types of assets permanently in an income-producing manner. NCUA Accounting Manual § 300. An FCU, however, could manage repossessed property for another credit union if it has excess capacity in this area of its operations, subject to the "good faith" limits of the rule. 12 CFR 21.3(d).

Third, the commenter suggested NCUA should permit FCUs to accept pre-paid funeral home accounts. Generally, a pre-paid funeral home account involves a funeral director receiving pre-payment of funds for services and establishing a type of trust account at a financial institution to hold the funds. Subject to membership limitations, FCUs can accept funds for pre-paid funeral accounts. This subject is addressed in a legal opinion from the OGC, OGC Op. 01–0120 (March 29, 2001), and is available on the agency Web site at *www.ncua.gov.* Briefly summarized, if the trust account is a revocable trust where the consumer can get a refund of payments, then, like the comment on IOLTAs discussed above, account insurance coverage depends on whether the beneficial owner of the funds in the account is a member.

Finally, the commenter suggested NCUA permit a foreign currency investment pilot program. Investments are generally addressed in Part 703 of NCUA's regulations. The Board notes it considered a pilot program in 2007 similar to the one suggested by the commenter; however, a lack of support led to its withdrawal. 72 FR 41956 (Aug. 1, 2007) (advance notice of proposed rulemaking titled, "Permissible Foreign Currency Investments for Federal Credit Unions and Corporate Credit Unions"); withdrawn Spring 2008 Semiannual Regulatory Agenda.

Two commenters also urged NCUA to expand the test used to determine if an activity is within an FCU's incidental powers. One commenter contended the Office of the Comptroller of the Currency (OCC) has a broader test for determining what activities are incidental and suggested NCUA mirror that test. The test NCUA uses is derived from the statutory authority in the Act that permits FCUs to engage in activities that are "necessary or requisite to enable it [FCUs] to carry on effectively the business for which it is incorporated." 12 U.S.C. 1757(17). The OCC evaluates incidental activities under substantially identical statutory authority, which states banks can carry out activities that are necessary to carry on the business of banking. 12 U.S.C. 24(Seventh). In addition, OCC's current regulations contain a test substantially similar to NCUA's. For example, OCC's regulation states "a national bank may conduct * * * activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking as determined by the OCC, or otherwise under statutory authority." 12 CFR § 5.34(e)(1). Also, OCC's guidance on permissible activities for banks tracks its aforementioned regulation and shows no significant departure from the statutory authority or the test NCUA currently uses. Office of the Comptroller of the Currency, "Activities Permissible for a National Bank 2007" (June 2008 ed.).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This proposed rule adds to the language of preexisting permissible activities for FCUs. The proposed rule,

therefore, will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

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

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

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

List of Subjects in 12 CFR Part 721

Credit unions, Functions, Implied powers, and Insurance.

By the National Credit Union Administration Board on October 16, 2008.

Mary Rupp,

Secretary of the Board.

■ For the reasons stated in the preamble, the National Credit Union Administration is amending 12 CFR part 721 as set forth below:

PART 721—INCIDENTAL POWERS

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 12 U.S.C. 1757(17), 1766 and 1789.

■ 2. Amend § 721.3 as follows:

■ a. Amend the first sentence in paragraph (b) by adding the phrase "including foreign credit unions" after the words "other credit unions."

■ b. Revise paragraph (f) to read as set forth below:

■ c. Amend the second sentence in paragraph (j) by adding "payroll services" after the phrase "payroll deduction,".

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

* * * * *

(f) *Finder activities.* Finder activities are activities in which you introduce or otherwise bring together outside vendors with your members so that the two parties may negotiate and consummate transactions and include vendors of non-financial products, vendors that are other financial institutions, and vendors of financial products such as insurance and securities. Finder activities may include endorsing a product or service, negotiating group discounts on behalf of your members, offering third party products and services to members through the sale of advertising space on your Web site, account statements and receipts, and selling statistical or consumer financial information to outside vendors to facilitate the sale of their products to your members. You may perform administrative functions on behalf of vendors to facilitate transactions between your members and another institution.

* * * * *

[FR Doc. E8–25128 Filed 10–21–08; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 740 and 745

RIN 3133–AD55

Display of Official Sign; Temporary Increase in Standard Maximum Share Insurance Amount; Coverage for Custodial Loan Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its share insurance rules to reflect Congress's recent action to increase temporarily the standard maximum share insurance amount (SMSIA) from $100,000 to $250,000 and increase coverage for custodial loan accounts. NCUA also is providing insured credit unions with additional options for displaying NCUA's official sign.

DATES: This rule is effective October 22, 2008. Written comments must be received on or before December 22, 2008.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Share Insurance Coverage and Official Sign" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

A. Temporary Increase in Share Insurance Coverage

The Emergency Economic Stabilization Act of 2008 temporarily increases the standard maximum share insurance amount (SMSIA) from $100,000 to $250,000, effective October 3, 2008 and ending December 31, 2009. Pub. L. No. 110–343 (October 3, 2008). After that period, the SMSIA will, by law, return to $100,000. The interim final rule amends NCUA's share insurance regulations to reflect the temporary increase in the SMSIA.

B. Custodial Loan Accounts

Until this rulemaking, NCUA insured custodial loan accounts somewhat differently from how the Federal Deposit Insurance Corporation (FDIC) insured these kinds of accounts, which FDIC refers to as mortgage servicing accounts. This interim final rule changes the topic heading for the provision currently titled custodial loan accounts, § 745.3(a)(3), so it will read "mortgage servicing accounts." Also, the rule expands share insurance coverage for this type of account by insuring the principal and interest portion of a mortgagor's payment separately from the mortgagor's individual accounts. As in the current regulations, the taxes and insurance premiums portion of a mortgagor's payment will continue to be added together with the mortgagor's individual accounts and insured in the aggregate. This provision will be uniform with the coverage provided by FDIC.

In brief, NCUA has considered all portions of a payment, including principal, interest, taxes, and insurance premiums, in such an account as the individually owned funds of the mortgagor/borrower. NCUA would aggregate payments with the owner's other individual accounts and insure them on a pass-through basis up to the SMSIA as a single ownership account. 12 CFR 745.3(a)(3). By contrast, FDIC considered the principal and interest portion of a payment in a mortgage servicing account as owned by and insured on a pass-through basis for the interest of the mortgagee/investor or security holder. FDIC considered the taxes and insurance premiums portion of a payment as owned by and insured on a pass-through basis for the interest of the mortgagor. FDIC added deposits for taxes and insurance premiums with other agency or nominee accounts where the mortgagor was the principal and insured them up to the standard insurance amount for single ownership accounts. 12 CFR 330.7(d).

FDIC has recently simplified the manner in which it insures mortgage servicing accounts because securitization methods and vehicles for mortgages have become more layered and complex, making it more difficult and time-consuming for a servicer to identify and determine the share of any investor in a securitization and in the principal and interest funds on deposit at an insured depository institution. FDIC believes this simplification will also prevent unexpected losses to investors who have far in excess of the current $250,000 per-depositor insurance limit.

Specifically, as a result of its recent interim final rule, FDIC will provide insurance coverage on a per-mortgagor/borrower basis for both principal and interest payments and payments for taxes and insurance premiums. This is how NCUA currently insures mortgage servicing accounts. FDIC will insure a mortgagor's payment of principal and interest in a mortgage servicing account on a pass-through basis up to the current temporary $250,000 limit separate from any other accounts of that mortgagor. NCUA believes this treatment of principal and interest payments would provide greater and fairer coverage for credit union members and will take the same approach in its share insurance rules. FDIC also will insure a mortgagor's payment of taxes and insurance premiums in a mortgage servicing account on a pass-through basis but will add these funds to other individually owned funds held by that mortgagor at the same insured institution up to the current temporary $250,000 limit. This is how NCUA currently addresses this situation.

C. Official Sign

The temporary increase in the SMSIA from $100,000 to $250,000 until December 31, 2009 calls into question the usefulness of NCUA's official sign, as depicted in Part 740 of NCUA's rules, which includes a statement that member shares are insured to at least $100,000. Obviously, that understates the actual temporary coverage limit of $250,000. NCUA knows from recent experience in revising the official sign that requiring credit unions to replace the current sign with a revised sign would be an expensive and burdensome process. NCUA recognizes the need to balance this burden, which is especially heavy given the insurance increase is only temporary, with the need and desire to inform members they have increased insurance coverage to $250,000. In this regard, NCUA will revise its rules to provide insured credit unions with maximum flexibility. Specifically, insured credit unions will have the option to: (1) Continue to display the current official sign in Part 740, reflecting the $100,000 limit, without penalty; (2) display any other version of the official sign distributed or approved by NCUA and appearing on NCUA's official Web site through December 31, 2009 that reflects the temporary increase to $250,000; or (3) alter by hand or otherwise the current official sign to make it reflect the increase to $250,000 provided the altered sign is legible and otherwise complies with Part 740. An example of how an insured credit union could alter the sign by hand is to affix a sticker that reads "$250,000" over the portion of the current sign that reads "$100,000." Also, insured credit unions that do not change or alter the official sign can inform members about the temporary increase in account insurance through additional signage, for example, posting a sign in their lobbies or a notice on their Web sites that for the period October 3, 2008 through December 31, 2009, accounts are insured for $250,000 per account.

II. Effective Date of the Interim Rule

This interim rule is effective on October 22, 2008 In this regard, NCUA invokes the *good cause* exception to the requirements in the Administrative Procedure Act (APA), 5 U.S.C. 553, that provides, before a rulemaking can be finalized, it must first be issued for public comment and, once finalized, must have a delayed effective date of thirty days from the publication date. NCUA believes good cause exists for making the interim rule effective immediately. The interim rule complies with a statutory mandate raising the SMSIA, provides more share insurance coverage to credit union members, provides additional flexibility to credit unions in displaying the official sign, and helps to maintain parity between NCUA's share insurance program and FDIC's deposit insurance program.

For these reasons, NCUA has determined that the public notice and participation that ordinarily are required by the APA before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, NCUA desires to have the benefit of public comment before adopting a permanent final rule and, thus, invites interested parties to submit comments during a 60-day comment period. In adopting the final regulation, NCUA will revise the interim rule, if appropriate, in light of the comments received on the interim rule.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This interim final rule implements enhanced share insurance coverage and provides flexibility to credit unions. Accordingly, it will not have a significant economic impact on a substantial number of small credit

unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

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

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA does not believe this interim final rule is a "major rule" within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects

12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board, this 15th day of October 2008.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons discussed above, NCUA amends 12 CFR parts 740 and 745 as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

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

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

■ 2. Section 740.4(b)(1) is amended by adding a new sentence to the end to read as follows:

§ 740.4 Requirements for the official sign.

* * * * *

(b) * * *

(1) * * * To address the temporary increase through December 31, 2009 in the standard maximum share insurance amount as defined in § 745.1(e) of this chapter, insured credit unions may continue to display the official sign depicted in paragraph (b) of this section but should inform members of the increased coverage through additional signage indicating the temporary increase in coverage, display other versions of the official sign distributed or approved by NCUA and appearing on NCUA's official Web site, or alter by hand or otherwise the official sign depicted in paragraph (b) of this section for that purpose provided the altered sign is legible and otherwise complies with this part.

* * * * *

PART 745—SHARE INSURANCE AND APPENDIX

■ 3. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 4. Section 745.1(e) is revised to read as follows:

§ 745.1 Definitions.

* * * * *

(e) The term "standard maximum share insurance amount," referred to as the "SMSIA" hereafter, means $250,000 from October 3, 2008, until December 31, 2009. Effective January 1, 2010, the SMSIA means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)). All examples in this part use $100,000 as the SMSIA.

■ 5. Section 745.3(a)(3) is revised to read as follows:

§ 745.3 Single ownership accounts.

(a) * * *

(3) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative amount paid into the account by the mortgagors, up to a limit of the SMSIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a)(2) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as of October 22, 2008 for all existing and future mortgage servicing accounts.

* * * * *

[FR Doc. E8–25124 Filed 10–21–08; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 300, 301, 302, 303, 305, 307, 308, 310, 314 and 315

[Docket No.: 080213181–8811–01]

RIN 0610–AA64

Revisions to the EDA Regulations

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Interim final rule.

SUMMARY: The Economic Development Administration ("EDA") published final regulations in the **Federal Register** on September 27, 2006. In March 2007, the Office of the Inspector General ("OIG") published a report titled *Aggressive EDA Leadership and Oversight Needed to Correct Persistent Problems in the RLF Program*. In the time since the publication of this report, EDA has made significant improvements in the management and oversight of its revolving loan fund ("RLF") program, including the issuance of written guidance that provides EDA staff with reasonable steps to help better ensure grantee compliance with RLF requirements. EDA is publishing this interim final rule (this "IFR") to synchronize the RLF regulations with that guidance. Additionally, EDA is publishing this IFR to make changes to certain definitions in the Trade Adjustment Assistance for Firms Program regulations set out in 13 CFR part 315. This IFR also provides notice of other substantive and non-substantive revisions made to the EDA regulations.

DATES: The effective date of this IFR is October 22, 2008. Comments on this IFR must be received by EDA's Office of Chief Counsel no later than 5 p.m. E.S.T. on December 22, 2008. Although these regulations are effective as of date of publication in the **Federal Register**, EDA solicits and welcomes any comments on the regulations discussed herein.

ADDRESSES: You may submit comments, identified by Docket No. 080213181–8811–01, by any of the following methods:

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

• *Agency Web Site: http://www.eda.gov/Home/EDAHomePage.xml.* Follow the instructions for submitting comments at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.*

• *E-mail: edaregs@eda.doc.gov.* Please state "Comments on the IFR" and include Docket No. 080213181–8811–01 in the subject line of the message.

• *Fax:* (202) 482–5671, *Attention:* Office of Chief Counsel. Please indicate "Comments on the IFR" on the cover page.

• *Mail:* Economic Development Administration, Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

• *Hand Delivery/Courier:* Economic Development Administration, Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.eda.gov/Home/EDAHomePage.xml.*

FOR FURTHER INFORMATION CONTACT: Hina Shaikh, Esq., Deputy Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4687.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 2006, EDA published final regulations in the **Federal Register** (71 FR 56658) to implement amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) ("PWEDA"), by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373, 118 Stat. 1756). In addition to tracking the statutory amendments to PWEDA, the September 27, 2006 final rule reflected EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's former regulations.

As set out in detail below, EDA is publishing this IFR to make necessary revisions to its RLF regulations in order to ensure that they correspond with new policy determinations that EDA has made in response to the OIG's audit report titled *Aggressive EDA Leadership and Oversight Needed to Correct Persistent Problems in the RLF Program* (March 2007). The OIG found that EDA did not have an adequate tracking and oversight system, and was unable to ensure grantees' compliance with critical financial reporting requirements. EDA has addressed this issue by creating a web-based reporting system that eliminates all duplicative and calculable fields. This system is designed to allow grantees, if they so choose, to upload data directly from their accounting software into the web-based system, thus eliminating time-consuming data entry. Alternatively, grantees have the option of manually entering data into the web-based system. All grantees will be required to report on a semi-annual basis.

EDA also is publishing this IFR to make certain substantive changes to its regulations that implement the Trade Adjustment Assistance for Firms program (the "TAA Program"), and to provide notice of necessary substantive and non-substantive revisions made to its regulations.

Capitalized terms used but not otherwise defined in this IFR have the meanings ascribed to them in 13 CFR 300.3, 302.20, 303.2, 307.8 and 314.1, and all section citations used herein refer to sections EDA's regulations set out in 13 CFR chapter III.

Discussion of Changes to EDA's Regulations

Set out below, the revisions to various parts that comprise 13 CFR chapter III are explained in sequential order. Where substantive and non-substantive changes are made in one part, they are discussed together. The non-substantive edits include typos, grammatical errors and title changes, and are intended to make the regulations easier to understand. Additional non-substantive changes also update the regulations in light of developments since their publication on September 27, 2006.

Section 300.3—Definitions

For increased clarity in the definition of "*Eligible Recipient,*" this IFR replaces the word "under" with the phrase "pursuant to § 306.1(d)(3) of". This more adequately explains EDA's statutory authority to enter into contracts as opposed to grants with private individuals, partnerships, businesses, corporations, or appropriate institutions under the local and national technical assistance programs.

In the context of restrictions relating to conflicts of interest, EDA amends its regulations to recognize a domestic partner or significant other as a "spouse" in the definition of "*Immediate Family,*" to take into account that a couple may consist of persons living together who are not married.

Section 301.3—Economic Distress Levels

In Section 301.3(a)(1)(i), the word "percent" is changed to "percentage point." This revision does not change current practice and is made for increased clarity.

Section 301.4—Investment Rates

Corresponding to the change described above in Section 301.3(a)(1)(i), Table 1 in Section 301.4(b)(1)(ii) is revised to state that a Project located in a Region demonstrating a 24-month unemployment rate at least one (1) "*percentage point*" greater than the national average is eligible to receive a maximum allowable Investment Rate of fifty (50) percent. Accordingly, the "1%" in row (G) in Table 1 is replaced with the phrase "1 percentage point." This change does not substantively alter this regulation and is made for clarity only.

In Section 301.4(b)(2), in the second sentence, "allowable" is inserted between the words "maximum" and "Investment" to make clear that a Project subject to a Special Need may be eligible for an Investment Rate up to the maximum allowable Investment Rate of eighty (80) percent, unless the Project is eligible for a higher Investment Rate under Section 301.4(b)(5).

For more precise wording in Section 301.4(b)(4), the first sentence is introduced with a lead-in phrase beginning with "Except as otherwise provided in paragraph (b)(5) of this section," similar to paragraphs (b)(2) and (b)(3) of Section 301.4. The second sentence is revised to be more parallel in structure and content as section 207 of PWEDA (42 U.S.C. 3147).

Section 301.10—Formal Application Requirements

To ensure that prospective applicants are aware that PWEDA does not require nor does EDA provide an appeals process in the event that an application is denied, this IFR inserts the following sentence at the end of Section 301.10(a): "PWEDA does not require nor does EDA provide an appeals process for an applicant whose application for Investment Assistance is denied."

Section 302.14—Records and Audits

The changes made to Section 302.14 are non-substantive. To better identify the subject matter of this section, the heading is changed from "Records and audits" to "Records." In addition, subparagraphs (a)(1)–(4) are rearranged and reworded as follows:

"(1) The total cost of the Project;

(2) The amount and disposition by the Recipient of the Investment Assistance;

(3) The amount and nature of the portion of Project costs provided by other sources; and

(4) Such other information as EDA determines will facilitate an effective audit."

To track section 608(b) of PWEDA (42 U.S.C. 3218) and for increased clarity, the heading of Section 302.14(b) is changed from "*Audits*" to "*Access to records.*" Additionally, "and/or" is changed to "or" for clarity.

Section 302.16—Reports by Recipients

In the third sentence in Section 302.16(b), "this data and report" is changed to "the data and reports" to ensure clarity. In Section 302.16(c), "Projects" is replaced with "a Project," "provide" is changed to "provides," and "that Recipients" is changed to "the Recipient to."

Section 302.17—Conflicts of Interest

In the first sentence of Section 302.17(b)(1), the extraneous comma after the word "indirect" is removed.

Section 303.4—Award Requirements

In Section 303.4(c), for consistency with Department of Commerce guidance, the word "award" is replaced with "project."

Section 305.6—Allowable Methods of Procurement for Construction Services

In the second sentence of Section 305.6(a), the phrase "design/bid/build" is changed to "design/build" so that the sentence makes sense in relation to the first sentence of the provision. This was an inadvertent mistake overlooked in publishing the September 27, 2006 final rule. "Design/bid/build" and "design/build" are two distinct construction delivery methods.

Part 307—Economic Adjustment Assistance Investments

As the agency responsible for administering the RLF program under PWEDA, EDA must provide adequate oversight and demand accountability from its staff and RLF Recipients to help protect these program dollars from waste, fraud and abuse. EDA makes most of the changes discussed below to help better ensure that all RLF Recipients involved in the RLF program adhere to EDA's statutory and regulatory requirements.

Section 307.8—Definitions

First, in the definition of "*Closed Loan,*" the comma after the word "been" is removed.

Second, as of the effective date of this IFR, EDA will not allow RLF Recipients to use RLF Capital to guarantee loans. While this authority has been used extremely infrequently throughout the four-decade history of the RLF program, EDA has determined that loan guaranties are too risky and of limited utility, since, unlike federal guaranties that are backed by the full faith and credit of the United States, RLF loan guaranties are backed only by the assets in the RLF. Therefore, the definition of "*Guaranteed Loan*" in Section 307.8 is removed in its entirety.

Last, to ensure understanding of the two reporting periods relevant to the new semi-annual report that will be required of all current and prospective RLF Recipients, as discussed under Section 307.14 below, this IFR includes in this section a definition of "*Reporting Period,*" which means the period from April 1st to September 30th and the period from October 1st to March 31st. These are the reporting periods for completing the new semi-annual report (Form ED–209 or any successor form) and the current *RLF Income and Expense Statement* (Form ED–209I or any successor form), if applicable.

Section 307.9—Revolving Loan Fund Plan

Consistent with requiring all RLF Recipients to submit semi-annual reports to EDA in electronic format, as more fully described below under Section 307.14, this IFR also revises Section 307.9 to require Recipients to submit RLF Plans electronically to EDA for approval. Accordingly, the second sentence in Section 307.9 beginning with "The Plan shall * * *." is replaced with the following sentence: "The Plan shall be submitted in electronic format to EDA for approval, unless EDA approves a paper submission."

In the course of discussions with RLF program staff, EDA has learned that many RLF Recipients are operating with outdated Plans. Some of the Plans were written and submitted to EDA before the Region had a Comprehensive Economic Development Strategy (CEDS), and a few Regions in fact do not have a CEDS, as that term is described in Section 303.7. In order to ensure that Section 307.9 reflects this reality, the word "CEDS" in paragraph (a)(1) is replaced with the phrase "Region's CEDS or EDA-approved economic development plan, if applicable," and the word "strategy" in paragraph (b)(1) is replaced with "economic development plan, if applicable,".

Additionally, in order to give EDA discretion to require new and updated Plans that properly analyze the current local capital market in various Regions, this IFR revises paragraph (c) to require the RLF Recipient to update its Plan as necessary in accordance with changing economic conditions in the Region; however, at a minimum, the RLF Recipient must submit an updated Plan to EDA every five (5) years. Additionally, EDA changes its regulations to require notification of any change(s) to the RLF Recipient's Plan. Any material modification, such as a merger or change in the EDA-approved lending area under Section 307.18, a change in critical management staff, or a change to the strategic purpose of the RLF, must be submitted to EDA for approval prior to any revision of the Plan.

Section 307.12—Revolving Loan Fund Income

To be consistent with the new Form ED–209 that will be required of all RLF Recipients on a semi-annual basis (discussed in Section 307.14), the references in paragraphs (a)(1) and (2) to "twelve-month" reporting periods are changed to "six-month". The words "reporting period" in paragraphs (a)(1), (2) and (3) are initially capitalized per the introduction of "*Reporting Period*" as a defined term in Section 307.8.

In 2005, the Office of Management and Budget ("OMB") made Title 2 in the *Code of Federal Regulations* a single location where the public can find both OMB guidance for grants and cooperative agreements (Subtitle A) and the associated Federal Agency's regulations implementing this OMB guidance (Subtitle B), thereby codifying three (3) OMB Circulars on federal cost principles. For consistency and accuracy, Section 307.12(b)(1) is rewritten to include applicable references to title 2 of the *Code of Federal Regulations* for the following circulars: OMB Circular A–87 for State, local, and Indian tribal governments (2 CFR part 225); OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such Circular (2 CFR part 230); and OMB Circular A–21 for educational institutions (2 CFR part 220).

Additionally, the heading of Section 307.12(b) is changed from "*Compliance*

guidelines" to "*Compliance guidance*," to indicate that OMB issues guidance to Federal Agencies on government-wide policies and procedures for the award and administration of grants and cooperative agreements. In the first sentence, "OMB" is replaced with "federal" for consistency with the rest of the regulations and "guidelines" is replaced with "requirements" to make clear that OMB Circular A–133 sets out single audit or program-specific audit requirements, as appropriate, which RLF Recipients must satisfy. Additionally, "RLF" immediately in front of the word "audit" is deleted, as OMB Circular A–133 sets out single and program-specific audit requirements—not RLF audit requirements—for a variety of entities receiving federal financial assistance: States, local governments, and colleges, universities, hospitals and other non-profit organizations.

Section 307.13—Records and Retention

In its audit report titled *Aggressive EDA Leadership and Oversight Needed to Correct Persistent Problems in the RLF Program*, the OIG recommended that EDA "[d]evelop a strategy and plan of action that addresses the RLF program's problems and challenges, and identifies opportunities for improvement." EDA adopted this recommendation as part of a complete action plan, and committed to reviewing EDA's current policy of using two separate reporting forms: The semi-annual (Form ED–209S) and the annual (Form ED–209A). The agency determined that the use of two separate reporting forms had hindered data collection efforts, as the data fields on these forms are not always equivalent. The current semi-annual reporting form contains more useful information than the current annual reporting form (Form ED–209A), but EDA determined that the semi-annual form required additional data fields to allow EDA to exercise more vigorous oversight of grantee operations. Accordingly, in June 2008, the agency finalized a revised RLF semi-annual reporting form, Form ED–209, to replace the current semi-annual and annual reporting forms (Forms ED–209S and ED–209A), and submitted this streamlined, web-based form to OMB for approval under the Paperwork Reduction Act. EDA will require all RLF Recipients to semi-annually complete and submit the new Form ED–209.

Although requiring all RLF Recipients to submit the Form ED–209 on a semi-annual basis, rather than approving the substitution of an annual report for some RLF Recipients, will increase the frequency of reporting for some grantees, EDA estimates that the new Form ED–209 actually will reduce the average paperwork burden per RLF report on the RLF Recipient from 12 hours to 2.9 hours. This significant decrease results from the elimination of calculated and duplicative fields from the grantee's data entry screens and the creation of a web-based reporting system. This IFR, therefore, removes the reference to the annual report from Section 307.13 and other sections in part 307. In paragraph (b)(2), the words "or annual" are removed and "period" is changed to "Reporting Period". For clarity, the phrase "or for five (5) years from the date the costs were claimed, whichever is less" is removed and replaced with a clear statement that all records relating to the RLF's operations must be retained for three years from the submission date of the last semi-annual report (on the new Form ED–209 or any successor form).

Section 307.14—Revolving Loan Fund Semi-Annual and Annual Reports

In line with the determination that all RLF recipients will report on a semi-annual basis, the heading of Section 307.14 is changed from "*Revolving Loan Fund semi-annual and annual reports*" to "*Revolving Loan Fund semi-annual report and Income and Expense Statement*," to accurately reflect the current Form ED–209I, the *RLF Income and Expense Statement*, discussed in paragraph (c). Section 307.14(a) is rewritten in its entirety to incorporate the requirement for all RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, to submit to EDA a semi-annual report (Form ED–209 or any successor form) in electronic format, unless EDA approves a paper submission. In paragraph (b), the words "or annual" are removed. Paragraph (c)(1) is re-designated as paragraph (c). The first sentence of re-designated paragraph (c)(1) is rewritten to require the RLF Recipient that uses either fifty (50) percent or more (or more than $100,000) of RLF Income for administrative costs in a six-month (6) Reporting Period to submit to EDA a completed Income and Expense Statement (Form ED–209I or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission. The second sentence is removed in its entirety because the agency determined, as part of its action plan to respond to OIG's recommendations regarding the RLF program, that the revised three-year period in Section 307.13(b) adequately covers the necessary retention of records for administrative expenses.

Paragraph (c)(2) titled "*Performance Measures*" is deleted in its entirety because the agency has determined that the "Core Performance Measures" discussed in paragraph (c)(2) actually refer to performance reporting requirements under the Government Performance and Results Act of 1993 ("*GPRA*"), which RLF Recipients report every three years. These measures are covered under Section 302.16 of the regulations and, therefore, were incorrectly referenced in Section 307.14.

Section 307.15—Prudent Management of Revolving Loan Funds

EDA has and continues to require the RLF Recipient to submit a record of decision for an RLF loan, which generally is the RLF board of directors' meeting minutes that state the board's approval of the RLF loan. In reviewing this section, EDA discovered that the loan documentation listed in paragraph (b)(2) does not include the meeting minutes. Therefore, this IFR amends the loan documentation list to include submission of the board of directors' meeting minutes approving the RLF loan. The list is sequentially renumbered to account for this new insertion.

As stated above under Section 307.8, as of the effective date of this IFR, EDA will not allow RLF Recipients to use RLF Capital to guarantee loans. Therefore, in Section 307.15, current paragraph (b)(2)(vii), which references a guaranty agreement, is replaced with the concept set out in paragraph (c) of Section 307.17 (the RLF Recipient's obligation to demonstrate that credit is not otherwise available). This provision requires the RLF Recipient to submit to EDA a signed bank turn-down demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. This provision belongs in the loan documentation listed in Section 307.15(b)(2) rather than in Section 307.17 because it is evidence EDA would look for when reviewing an RLF Recipient's certification that proper documentation is in place for lending.

In light of current lower borrowing costs to companies and households, EDA analyzed the current minimum interest rate which an RLF Recipient may charge an eligible borrower with the goal of giving the RLF Recipient more flexibility to make loans while still maintaining its viability as a lender. To this end, this IFR introduces a dual interest rate floor in paragraph (c) of Section 307.15, whereby the interest rate an RLF Recipient may charge cannot be less than the lower of four (4)

percent or 75 percent of the prime interest rate listed in the *Wall Street Journal.*

To make improvements in the administration and oversight of the RLF program, EDA may institute a new requirement, whereby all RLF Recipients will have to undergo a mandatory certification program to enhance their ability to administer RLF Grants in a prudent manner. Accordingly, after paragraph (d), this IFR adds another paragraph to Section 307.15 to incorporate this requirement into the regulations. If so required by EDA, the RLF Recipient must satisfactorily complete the certification program, and may consider the cost of attending the certification courses as an administrative cost, provided the requirements regarding RLF Income set out in Section 307.12 are satisfied.

Section 307.16—Effective Utilization of Revolving Loan Funds

For consistency with other changes made to part 307, the words "reporting intervals" are replaced with "Reporting Periods" in the first sentence of paragraph (c)(2)(i). The phrase "separate from the EDA funds account" in that sentence was placed at OIG's specific request. During recent training conferences held by EDA in conjunction with the OIG, the OIG became aware, through discussions with RLF Recipients, of the unnecessarily burdensome red tape involved in placing excess funds in an account separate from the EDA funds account, and has approved EDA to eliminate this requirement. Accordingly, the phrase "separate from the EDA funds account" is removed. For increased clarity, in the second sentence of paragraph (c)(2)(i), the words "the Federal Share (as defined in § 314.5 of this chapter) of" are placed in front of the words "the RLF Grant".

As part of the agency's action plan to address OIG's recommendations regarding the RLF program, EDA has identified the need to address and monitor high loan default rates among its RLF Recipients. In that regard, this IFR adds a new paragraph after paragraph (c) in Section 307.16, to state that EDA will take steps necessary to document and assess an RLF Recipient's high loan default rate. Pursuant to this new regulation, EDA will monitor the RLF Recipient's loan default rate to ensure proper protection of the Federal Share of the RLF property, and may request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. If the RLF Recipient fails to provide the information requested and to take steps to protect the Federal Share, the RLF Recipient may be subject to enforcement action under Section 307.21 and the terms and conditions of the Grant.

Section 307.17—Uses of Capital

For correct formatting, the semi-colon in paragraph (b)(6)(ii) is replaced with a period. Paragraph (c) of this section sets out the RLF Recipient's obligation to demonstrate to EDA in the RLF loan documentation that credit is not otherwise available. Upon closer examination, the agency has determined that current paragraph (c) belongs under Section 307.15(b)(2), which lists the required minimum standard loan documentation.

To facilitate better monitoring of RLF Capital and to ensure that RLF Capital is used for making RLF loans that are consistent with the RLF Plan or such other purposes approved by EDA, this IFR adds a new paragraph (c) that requires an independent third party to conduct a compliance and loan quality review for the RLF Grant every (3) three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations, provided the requirements set out in Section 307.12 are satisfied.

In paragraph (d), the word "provisions" is changed to "conditions" for accuracy. In accordance with EDA's determination to disallow loan guaranties, paragraph (e) of Section 307.17 is removed in its entirety.

Section 307.18—Addition of Lending Areas; Merger of RLFs

For consistency throughout part 307 with respect to semi-annual reporting required uniformly of all RLF Recipients, Section 307.18(b)(1)(i) is rewritten to expressly incorporate references to the semi-annual report. Similarly, paragraph (b)(2)(i) is rewritten to reference the requirement that surviving RLF Recipients must be up-to-date with all semi-annual reports in accordance with Section 307.14.

Section 307.20—Partial Liquidation and Liquidation Upon Termination

The title to this section is rewritten as "Partial liquidation; liquidation upon termination" to make clear that that a partial liquidation is separate from a liquidation upon EDA approving a termination of the RLF Grant. Current paragraph (a) provides that EDA may require an RLF Recipient to transfer any RLF loans that are more than 120 days delinquent to an RLF Third Party for liquidation. In reviewing EDA's current RLF portfolio, the agency examined various scenarios in which it has had to take action to partially liquidate or "disallow" a portion of an RLF Grant, and therefore, recover the pro-rata Federal Share. Additionally, the OIG in its March 2007 audit report on the RLF program recommended that EDA develop policies and procedures that promote a uniform approach to sequestering excess cash. This IFR revises paragraph (a) to extend the "partial liquidation" action to problematic instances beyond the RLF Recipient having RLF loans that are more than one hundred and twenty (120) days delinquent, such as making an ineligible loan; failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or requesting that a portion of the RLF Grant be disallowed, and EDA agrees to allow the disallowance.

To eliminate redundancy, the parenthetical "(as defined in § 314.5 of this chapter)" is deleted from Section 307.20(d)(2), since that reference now appears in the revised Section 307.20(a).

Section 307.21—Termination of Revolving Loan Funds

In an effort to ensure strong recipient compliance with RLF reporting, efficient capital utilization, and OMB Circular A–133 single audit requirements, this IFR revises Section 307.21(a) to include additional grounds for which EDA may suspend or terminate and RLF Grant for cause. These additional grounds are failure to: (i) Submit an updated Plan to EDA in accordance with Section 307.9(c); (ii) submit timely progress, financial and audit reports in the format required; (iii) manage the RLF Grant in accordance with Prudent Lending Practices, as defined in Section 307.8; (iv) sequester excess funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury; (v) submit the documentation requested by EDA regarding a high loan default rate and collection efforts; (vi) comply with audit requirements; and (vii) comply with an EDA-approved corrective action plan to remedy RLF-related audit findings. EDA also includes in paragraph (a) a provision to ensure that EDA maintains effective control over and accountability for all Grant funds and assets when effecting a suspension or termination.

Section 308.3—Planning Performance Awards

EDA discovered that the first paragraph under Section 308.3 does not read consistently with the corresponding provision in section 216(b) (42 U.S.C. 3154b) of PWEDA, which provides that the Assistant

Secretary may make a planning performance award to an Eligible Recipient under section 216(a) (42 U.S.C. 3154b) of PWEDA in connection with a Grant for a Project if the Assistant Secretary "determines before closeout of the [P]roject that" specific accomplishments were attained by the Recipient. In contrast, Section 308.3(a) currently states that EDA must determine "no later than three (3) years following closeout of the Project that * * *" the Recipient has attained the specific list of accomplishments. To ensure consistency between the statute and the regulation, Section 308.3(a) is revised to replace the phrase "no later than three (3) years following" with the word "before".

Section 310.1—Special Impact Area

In Section 310.1(a), a semi-colon is placed immediately after the word "need" for grammatical consistency.

Part 314—Property

Section 314.5—Federal Share

The first sentence of Section 314.5 is revised to give the agency a more definitive standard by which to calculate the Federal Share. The new sentence makes clear that the Federal Share will be the current fair market value of the Property after deducting: (i) Reasonable repair expenses, if any, incurred to put the Property into marketable condition; and (ii) sales, commission and marketing costs. The format also is adjusted for greater clarity.

Section 314.6—Encumbrances

For increased clarity and correct word usage, the phrase "collateralized or" in the first sentence in Section 314.6(a) is deleted.

In paragraph (b)(3)(iv), EDA adds language to clarify the scope of EDA's inquiry in determining whether the Recipient is capable of carrying out its obligations under the award. EDA will take into account whether a Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body, whether the non-profit organization has demonstrated stability over time, and such other factors as EDA deems appropriate.

Section 314.7—Title

Paragraph (c) of Section 314.7 lists various exceptions to the general rule, stated in paragraph (a), that the Recipient must at all times hold unencumbered title to the Real Property required for a Project. EDA requires the Recipient to maintain some interest in the Property for the entire Estimated Useful Life to help ensure that the Recipient carries out the Project as contemplated at the date of award. This IFR revises the exception to the general rule stated in paragraph (c)(2)(ii) to include that EDA must be able to determine that the terms and conditions of the lease adequately demonstrate the economic development and public benefits of the leasehold transaction. EDA in this revision clarifies the scope of its review in determining the acceptability of the leasehold transaction as a substitute for title, and therefore, makes clear that the agency will evaluate the transaction from the standpoint of its impact on the economic development potential of the project and its potential public benefit, as opposed to "private benefit."

In applying the exception set out in paragraph (c)(4), EDA discovered it to be difficult and time consuming to require the State or local government to provide the currently stated assurances, given that EDA lacks privity with any non-Recipient parties that may be involved with or have title to Project-related Property. Absent privity, EDA cannot assert a claim against the public highway owner for breach of the terms of the Grant or other relief pursuant to the Grant. When a Project includes construction on a public highway the owner of which is not the Recipient, the Recipient, rather than the State or county owner of the highway, should provide the necessary assurances and authorizations to EDA. Accordingly, this IFR revises paragraph (c)(4) in its entirety to require the Recipient to confirm in writing to EDA that it is committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the Project consistent with the Investment Assistance; and if at any time during the Estimated Useful Life of the Project any or all of the improvements in the Project within the public highway are relocated for any reason pursuant to requirements of the owner of the public highway, the Recipient will be responsible for accomplishing such relocation, so that the Project continues as authorized by the Investment Assistance. The revised paragraph requires the Recipient to obtain all written authorizations (i.e., State or county permit(s)) necessary for the Project to be constructed within the public highway.

Part 315—Trade Adjustment Assistance for Firms

EDA administers the TAA Program under the Trade Act of 1974, as amended (19 U.S.C. 2341–2391) (the "Trade Act"). Under the TAA Program, EDA funds a national network of eleven (11) non-profit or university-affiliated organizations, each known as a Trade Adjustment Assistance Center ("TAAC"). Each TAAC is assigned a different geographic service region, and provides technical or adjustment assistance to firms or industries in that region which have been or are adversely affected by increased import competition. Before the TAAC may provide assistance, the firm must apply for certification regarding eligibility under the TAA Program by completing a petition for certification. As explained below, EDA makes substantive changes to TAA Program-related definitions in 13 CFR 315.2.

Section 315.2—Definitions

During the course of evaluating and processing petitions for certification, a few petitions have raised eligibility issues and questions as to whether two defined terms in Section 315.2, "*Decreased Absolutely*" and "*Significant Number or Proportion of Workers,*" may be unduly restrictive. In some cases, the requisite five (5) percent decline in sales or production and the five (5) percent decline in a Firm's workforce may be unduly restrictive for a petition that straddles a narrow border between significant and insignificant sales or employment loss. For example, a Firm may demonstrate a qualitative "significant" decline in sales because of import competition that has affected a major product line. Because of that decline, the employees associated with this product line also may suffer a "significant" employment loss. Nonetheless, under the current quantitative definitions, the Firm's employment on a "firm-wide" basis may not meet the required threshold of employment loss under Section 251(c) of the Trade Act (19 U.S.C. 2341) because the regulations impose a quantitative limitation on a standard that in statute is qualitative. This problem is in part a result of the statutory requirement that EDA measure unemployment on a "firm-wide" basis (for example, a Firm may have increased employment in different divisions or unrelated product lines that offsets a downsizing, or loss of employment, in the import-impacted product line(s)). EDA believes the definitions in the regulations should be broad enough to give the agency authority to certify petitions in appropriate cases when a Firm may have an absolute job loss but less than the five (5) percent currently required. Accordingly, EDA revises the definitions of the terms Decreased Absolutely and Significant Number or Proportion of Workers to allow EDA to certify in instances where EDA determines that the five (5) percent

threshold would not be consistent with the purposes of the Trade Act.

EDA believes the definition of Firm may be clarified by including language that provides the conditions set out in the definition of the term in the Trade Act. Accordingly, the agency clarifies that in accordance with section 261 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent unjustifiable benefits.

The word "including" is replaced with "includes" in the first sentence of the definition of Firm. In the second sentence, the third comma is deleted. The sentence beginning with "Such other Firms include:" is replaced with "Accordingly, such other Firms may include a(n):".

Section 315.4—Eligible Petitioners

For clarity and understanding about the types of organizations that may apply for assistance under the TAA Program, as opposed to eligible petitioners (Firms) under the TAA Program, which are discussed in Section 315.6, the title of Section 315.4 is changed from "Eligible petitioners" to "Eligible applicants" and the introductory text in Section 315.4 is deleted. Paragraph (a) is rewritten to make clear the entities that may apply to EDA for assistance to operate a TAAC, which are universities or affiliated organizations; States or local governments; or non-profit organizations.

Paragraph (b) relating to the eligibility of Firms is misplaced in this section, as Firms are program beneficiaries and not applicants for grant assistance under the TAA Program. Accordingly, paragraph (b) is deleted and paragraph (c) of Section 315.4 is re-designated as paragraph (b). EDA includes conditional language in the newly re-designated paragraph (b) that restricts the regulation for purposes of Section 315.17 only, and to the extent funds are appropriated to implement section 265 of the Trade Act. EDA has not received appropriations for twenty years to carry out section 265 of the Trade Act.

Section 315.5—TAAC Scope, Selection, Evaluation and Awards

For conciseness and clarity, Section 315.5(a)(3) is rewritten as follows:

"A TAAC generally provides Adjustment Assistance by providing assistance to a:

(i) Firm in preparing its petition for eligibility certification; and

(ii) Certified Firm in diagnosing its strengths and weaknesses, and developing and implementing an Adjustment Proposal."

Additionally, in each of the last sentences in Section 315.5(b)(1) and (2), "assure" is replaced with "ensure."

Section 315.6—Firm Eligibility for Adjustment Assistance

For increased clarity, the word "Certified" is inserted before "Firms" in Section 315.6(c)(1). In Section 315.6(c)(2), "Matching Share requirements are as follows:" is replaced with "The matching share requirements are as follows:" to distinguish the matching share specification for Adjustment Assistance provided to Firms from the Matching Share requisite under PWEDA. In the first sentence of Section 315.6(c)(2)(i), "the preparation of" is replaced with "preparing" for conciseness. Finally, in each of the three sentences in Section 315.6(c)(2)(i), the word "Certified" is inserted before "Firm."

Section 315.8—Processing Petitions for Certification

In Section 315.8(d), the reference to the "**Federal Register**" is italicized to clarify that it is a publication.

The reference to Section 315.10(d) in the third sentence in Section 315.8(g)(2) was erroneous in the 2005 interim final rule and was inadvertently not corrected in the subsequent September 27, 2006 final rule. This sentence is revised to remove the reference to Section 315.10(d) and is rewritten more clearly as: "Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial." This change is technical only and does not substantively change the regulation.

Section 315.9—Hearings

In the first sentence in Section 315.9, the reference to "any person, organization, or group" is replaced with "or any interested Person" because Section 315.2 contains a definition for "Person" that includes individuals, organizations and groups. Additionally, the comma after "proceedings" is removed, "Notice of Acceptance" is changed to "notice of acceptance," and the reference to "**Federal Register**" is italicized. In paragraph (a) of Section 315.9, the phrase "and other interested Persons" is replaced with "or any interested Person(s)." In Section 315.9(d), the reference to "**Federal Register**" is italicized.

Section 315.10—Loss of Certification Benefits

The first sentence is more accurately re-worded by replacing "A Firm may fail to obtain benefits of certification, regardless of whether its certification is terminated," with the phrase "EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm".

Section 315.11—Appeals, Final Determinations and Termination of Certification

In the first sentence in Section 315.11(c), the reference to "**Federal Register**" is italicized.

Section 315.12—Recordkeeping

For consistency throughout 13 CFR part 315, the words "for Firms" is inserted immediately after "Assistance" in Section 315.12.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this IFR is significant for purposes of Executive Order 12866.

Congressional Review Act

This IFR is not "major" under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in Executive Order 13132 to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." It has been determined that this IFR does not contain policies that have federalism implications.

Paperwork Reduction Act

This IFR contains collections-of-information subject to review and approval by OMB under the Paperwork Reduction Act ("PRA"). The OMB is required to clear all federally-sponsored data collections pursuant to the PRA. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

On or about June 9, 2008, EDA submitted to OMB an application (under OMB control number 0610–0095) for PRA clearance of the new Form ED–209 (semi-annual report). EDA anticipates receiving OMB's clearance for this new form on or about September 9, 2008. The *RLF Income and Expense Statement* (Form ED–209I) also is currently valid under OMB control number 0610–0095 (with an expiration date of April 30, 2009). The public reporting burden related to the new semi-annual report on Form ED–209 (which replaces current Forms ED–209A and ED–209S) and the *RLF Income and Expense Statement* is estimated to average 3.15 hours per individual response, or 6.3 hours annually, which includes the time necessary for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections-of-information. Please send comments on these or any other aspects of the collections-of-information by any means listed under **ADDRESSES** above. Alternatively, you may e-mail comments to *David_Rostker@omb.eop.gov*, or fax comments to (202) 395–7285.

List of Subjects

13 CFR Part 300

Financial assistance, Distressed region, Headquarters, Regional offices.

13 CFR Part 301

Grant administration, grant programs, eligibility requirements, applicant and application requirements, economic distress levels, investment rates.

13 CFR Part 302

Environmental review, federal policy and procedures, inter-governmental review, fees, pre-approval requirements, project administration, reporting and audit requirements, conflicts of interest, post-approval requirements, civil rights.

13 CFR Part 303

Planning, award and application requirements, comprehensive economic development strategy, state plans, short-term planning investments.

13 CFR Part 305

Public works, economic development, award and application requirements, requirements for approved projects.

13 CFR Part 307

Economic adjustment assistance, award and application requirements, revolving loan fund, pre-loan requirements, merger, income, record and reporting requirements, sales and securitizations, liquidation, termination.

13 CFR Part 308

Performance awards, planning performance awards.

13 CFR Part 310

Special impact area, excessive unemployment, special need.

13 CFR Part 314

Federal interest, authorized use, property, federal share, title, release, property interest.

13 CFR Part 315

Administrative practice and procedure, trade adjustment assistance, eligible petitioner, firm selection, certification requirements, recordkeeping and audit requirements, adjustment proposals.

Regulatory Text

■ For reasons stated in the preamble, this IFR amends 13 CFR chapter III as follows:

PART 300—GENERAL INFORMATION

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 2. Amend § 300.3 to revise paragraph (7) of the definition of *Eligible Recipient* and the definition of *Immediate Family* to read as follows:

§ 300.3 Definitions.

* * * * *

Eligible Recipient * * *

* * * * *

(7) Private individual or for-profit organization, but only for Training, Research and Technical Assistance Investments pursuant to § 306.1(d)(3) of part 306 of this chapter.

* * * * *

Immediate Family means a person's spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.

* * * * *

PART 301—ELIGIBILITY, INVESTMENT RATE AND PROPOSAL AND APPLICATION REQUIREMENTS

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

■ 2. Amend § 301.3 to revise paragraph (a)(1)(i) to read as follows:

§ 301.3 Economic distress levels.

* * * * *

(a) * * *

(1) * * *

(i) An unemployment rate that is, for the most recent twenty-four (24) month period for which data are available, at least one (1) percentage point greater than the national average unemployment rate;

* * * * *

■ 3. In § 301.4, revise Table 1 in paragraph (b)(1)(ii), and revise paragraphs (b)(2) and (b)(4) to read as follows:

§ 301.4 Investment rates.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or	80
(B) The per capita income is not more than 50% of the national average	80
(C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or	70
(D) The per capita income is not more than 60% of the national average	70
(E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or	60
(F) The per capita income is not more than 65% of the national average	60
(G) The twenty-four (24) month unemployment rate is at least 1 percentage point greater than the national average; or	50
(H) The per capita income is not more than 80% of the national average	50

(2) *Projects subject to a Special Need.* EDA shall determine the maximum allowable Investment Rate for Projects subject to a Special Need (as determined by EDA pursuant to § 301.3(a)(1)(iii)) based on the actual or threatened overall economic situation of the Region in which the Project is located. However, unless the Project is eligible for a higher Investment Rate pursuant to paragraph (b)(5) of this section, the maximum allowable Investment Rate for any Project subject to a Special Need shall be eighty (80) percent.

* * * * *

(4) *Projects under part 306.* Except as otherwise provided in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. As specified in section 207 of PWEDA, the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (100) percent where the Project:

(i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or

(ii) Will be of no or only incidental benefit to the Eligible Recipient.

* * * * *

■ 4. Amend § 301.10(a) to read as follows:

§ 301.10 Formal application requirements.

* * * * *

(a) *General.* For Projects selected from successful proposals, EDA will invite the proponents to submit a formal application for Investment Assistance. The appropriate regional office will provide application materials and guidance in completing them. The applicant will generally have thirty (30) days to submit the completed application materials to the applicable regional office. EDA staff will work with the applicant to resolve application deficiencies. PWEDA does not require nor does EDA provide an appeals process for an applicant whose application for Investment Assistance is denied.

* * * * *

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; Department of Commerce Delegation Order 10–4.

■ 2. Revise § 302.14 to read as follows:

§ 302.14 Records.

(a) *Records.* Recipients of Investment Assistance under PWEDA shall keep such records as EDA shall require, including records that fully disclose:

(1) The total cost of the Project;

(2) The amount and disposition by the Recipient of the Investment Assistance;

(3) The amount and nature of the portion of Project costs provided by other sources; and

(4) Such other information as EDA determines will facilitate an effective audit.

(b) *Access to records.* The Recipient shall permit the Assistant Secretary, the Inspector General of the Department, the Comptroller General of the United States or any of their respective agents or representatives access to its properties in order to examine all books, correspondence, and records, including without limitation computer programs and data processing software, to verify the Recipient's compliance with Investment Assistance requirements.

■ 3. Amend § 302.16 to revise paragraphs (b) and (c) to read as follows:

§ 302.16 Reports by Recipients.

* * * * *

(b) Each report must contain a data-specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use the data and reports to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system, such as the EDA Balanced Scorecard or other system.

(c) To enable EDA to determine the economic development effect of a Project that provides service benefits, EDA may require the Recipient to submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.

* * * * *

■ 4. Amend § 302.17 to revise paragraph (b)(1) to read as follows:

§ 302.17 Conflicts of interest.

* * * * *

(b) * * *

(1) An Interested Party shall not receive any direct or indirect financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient.

* * * * *

PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 3143; 42 U.S.C. 3162; 42 U.S.C. 3174; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 2. Amend § 303.4 to revise paragraph (c) to read as follows:

§ 303.4 Award requirements.

* * * * *

(c) EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in thirty-six (36) month renewable Investment project periods.

PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10–4.

■ 2. Amend § 305.6 to revise paragraph (a) to read as follows:

§ 305.6 Allowable methods of procurement for construction services.

(a) Recipients may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These methods include but are not limited to design/build, construction management at risk and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:

(1) Justification for the proposed method for procurement of construction services;

(2) The scope of work with cost estimates and schedules;

(3) A copy of the proposed construction contract;

(4) The name and qualifications of the selected design professional; and

(5) Procedures to be used to ensure full and open competition, including the selection criteria.

* * * * *

PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

■ 1. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10–4.

■ 2. Amend § 307.8 to remove the definition of *Guaranteed Loan*, revise the definition of *Closed Loan*, and add a definition for *Reporting Period* in alphabetical order, as set out below:

* * * * *

§ 307.8 Definitions.

Closed Loan means any loan for which all required documentation has been received, reviewed and executed by an RLF Recipient.

* * * * *

Reporting Period, for purposes of this subpart B only, means the period from April 1st to September 30th or the period from October 1st to March 31st.

* * * * *

■ 3. Amend the introductory text of § 307.9 and § 307.9(a)(1), (b)(1) and (c) to read as follows:

* * * * *

§ 307.9 Revolving Loan Fund Plan.

All RLF Recipients shall manage RLFs in accordance with an RLF plan (the "*RLF Plan*" or "*Plan*") as described in this section. The Plan shall be submitted in electronic format to EDA for approval, unless EDA approves a paper submission.

(a) *Format and content.*

(1) Part I of the Plan titled "Revolving Loan Fund Strategy" shall summarize the Region's CEDS or EDA-approved economic development plan, if applicable, and business development objectives, and shall describe the RLF's financing strategy, policy and portfolio standards.

* * * * *

(b) * * *

(1) The Plan must be consistent with the CEDS or EDA-approved economic development plan, if applicable, for the Region.

* * * * *

(c) *Revision and Modification of RLF Plans.*

(1) An RLF Recipient must update its Plan as necessary in accordance with changing economic conditions in the Region; however, at a minimum, an RLF Recipient must submit an updated Plan to EDA every five (5) years.

(2) An RLF Recipient must notify EDA of any change(s) to its Plan. Any material modification, such as a merger or change in the EDA-approved lending area under § 307.18, a change in critical management staff, or a change to the strategic purpose of the RLF, must be submitted to EDA for approval prior to any revision of the Plan. If EDA approves the modification, the RLF Recipient must submit an updated Plan to EDA in electronic format, unless EDA approves a paper submission.

■ 4. Revise paragraphs (a)(1), (2) and (3), (b) introductory text, and (b)(1) of § 307.12 to read as follows:

§ 307.12 Revolving Loan Fund Income.

(a) * * *

(1) Such RLF Income and the administrative costs are incurred in the same six-month (6) Reporting Period;

(2) RLF Income that is not used for administrative costs during the six-month (6) Reporting Period is made available for lending activities;

(3) RLF Income shall not be withdrawn from the RLF Capital base in a subsequent Reporting Period for any purpose other than lending without the prior written consent of EDA; and

(b) *Compliance guidance.* When charging costs against RLF Income, RLF Recipients must comply with applicable federal cost principles and audit requirements as found in:

(1) 2 CFR part 225 (OMB Circular A–87 for State, local, and Indian tribal governments), 2 CFR part 230 (OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such Circular), and 2 CFR part 220 (OMB Circular A–21 for educational institutions); and

* * * * *

■ 5. Amend § 307.13(b)(2) to read as follows:

§ 307.13 Records and retention.

* * * * *

(b) * * *

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual report that covers the Reporting Period in which such costs were claimed.

* * * * *

■ 6. Revise § 307.14 to read as follows:

§ 307.14 Revolving Loan Fund semi-annual report and Income and Expense Statement.

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit a semi-annual report (Form ED–209 or any successor form) in electronic format, unless EDA approves a paper submission.

(b) *Report contents.* RLF Recipients must certify as part of the semi-annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients also must describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.

(c) *RLF Income and Expense Statement.* An RLF Recipient using either fifty (50) percent or more (or more

than $100,000) of RLF Income for administrative costs in a six-month (6) Reporting Period must submit to EDA a completed Income and Expense Statement (Form ED–209I or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission.

■ 7. Amend § 307.15(b)(2) and (c) to read as follows, and add a new paragraph (e) as follows:

§ 307.15 Prudent management of Revolving Loan Funds.

* * * * *

(b) * * *

(1) * * *

(2) Prior to the disbursement of any EDA funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law. The standard loan documents must include, at a minimum, the following:

(i) Loan application;

(ii) Loan agreement;

(iii) Board of directors' meeting minutes approving the RLF loan;

(iv) Promissory note;

(v) Security agreement(s);

(vi) Deed of trust or mortgage (as applicable);

(vii) Agreement of prior lien holder (as applicable); and

(viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will accept alternate documentation only if such documentation is allowed in the RLF Recipient's EDA-approved RLF Plan.

(c) *Interest rates—*

(1) *General rule.* An RLF Recipient may make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal*, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the *Wall Street Journal.*

(2) *Exception.* Should the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

* * * * *

(e) *RLF certification course.* EDA may establish a mandatory RLF certification program to enhance RLF Recipients' ability to administer RLF Grants in a prudent manner. If so required by EDA, the RLF Recipient must satisfactorily complete this program, and may consider the cost of attending the certification courses as an administrative cost, provided the requirements set forth in § 307.12 are satisfied.

■ 8. Amend § 307.16 to revise paragraph (c)(2)(i) and add a new paragraph (d), to read as follows:

§ 307.16 Effective utilization of Revolving Loan Funds.

* * * * *

(c) * * *

(2) * * *

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive Reporting Periods, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in § 314.5 of this chapter) of the RLF Grant shall be remitted to the U.S. Treasury. The RLF Recipient must obtain EDA's written authorization to withdraw any sequestered funds.

* * * * *

(d) *Loan default rates.* (1) EDA shall monitor the RLF Recipient's loan default rate to ensure proper protection of the Federal Share (as defined in § 314.5 of this chapter) of the RLF property, and request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. Such information may include:

(i) A written analysis of the RLF Recipient's portfolio, which shall consider the Recipient's business plan, loan and collateral policies, loan servicing and collection policies and procedures, the rate of growth of the RLF Capital base, and detailed information on any loan in default; and

(ii) A corrective action plan subject to EDA's approval, which shall include specific actions the RLF Recipient must take to reduce the loan default rate; and

(iii) A quarterly status report indicating the RLF Recipient's progress on achieving the milestones outlined in the corrective action plan.

(2) Failure to provide the information requested and to take steps to protect the Federal Share may subject the RLF Recipient to enforcement action under § 307.21 and the terms and conditions of the Grant.

* * * * *

■ 9. Revise § 307.17 to read as follows:

§ 307.17 Uses of capital.

(a) *General.* RLF Capital shall be used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.

(b) *Restrictions on use of RLF Capital.* RLF Capital shall not be used to:

(1) Acquire an equity position in a private business;

(2) Subsidize interest payments on an existing RLF loan;

(3) Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;

(4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;

(5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investment unrelated to the RLF; or

(6) Refinance existing debt, unless:

(i) The RLF Recipient sufficiently demonstrates in the loan documentation a "*sound economic justification*" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within eighteen

(18) months following the date of refinancing.

(c) *Compliance and Loan Quality Review.* To ensure that the RLF Recipient makes eligible RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA shall require an independent third party to conduct a compliance and loan quality review for the RLF Grant every (3) three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations, provided the requirements set forth in § 307.12 are satisfied.

(d) *Use of In-Kind Contributions.* In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.

* * * * *

■ 10. Amend § 307.18 to revise paragraphs (b)(1)(i) and (b)(2)(i) to read as follows:

§ 307.18 Addition of lending areas; merger of RLFs.

* * * * *

(b) * * *

(1) * * *

(i) It is up-to-date with all semi-annual reports in accordance with § 307.14;

(2) * * *

(i) The surviving RLF Recipient is up-to-date with all semi-annual reports in accordance with § 307.14;

* * * * *

■ 11. Amend the heading of § 307.20 and paragraphs (a) and (d)(2) to read as follows:

§ 307.20 Partial liquidation; liquidation upon termination.

(a) *Partial liquidation or disallowance of a portion of an RLF Grant.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in § 314.5 of this chapter) include but are not limited to the RLF Recipient:

(1) Having RLF loans that are more than one hundred and twenty (120) days delinquent;

(2) Having excess cash sequestered for twelve (12) months or longer and EDA has not approved an extension request;

(3) Making an ineligible loan;

(4) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or

(5) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to allow the disallowance.

(d) * * *

(2) *Second,* for the payment of EDA's Federal Share; and

* * * * *

■ 12. Amend § 307.21(a) to read as follows:

§ 307.21 Termination of Revolving Loan Funds.

(a)(1) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the RLF Recipient's failure to:

(i) Operate the RLF in accordance with the Plan, the RLF Grant or this part;

(ii) Obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;

(iii) Submit an updated Plan to EDA in accordance with § 307.9(c);

(iv) Submit timely progress, financial and audit reports in the format required by the RLF Grant and § 307.14, including the semi-annual report and the Income and Expense Statement (if applicable);

(v) Manage the RLF Grant in accordance with Prudent Lending Practices, as defined in § 307.8;

(vi) Sequester excess funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;

(vii) Submit the documentation requested by EDA regarding a high loan default rate and collection efforts, or correct a high loan default rate, as determined by EDA;

(viii) Comply with the audit requirements set forth in OMB Circular A–133 and the Compliance Supplement, including timely submission of audit reports to the Federal Audit Clearinghouse and the correct designation of the RLF as a major program (as defined in OMB Circular A–133), as applicable;

(ix) Comply with an EDA-approved corrective action plan to remedy RLF-related audit findings; and

(x) Comply with the conflicts of interest provisions set forth in § 302.17.

(2) To maintain effective control over and accountability of RLF Grant funds and assets, EDA shall determine the manner and timing of any suspension or termination action. EDA may require the RLF Recipient to repay the Federal Share in a lump-sum payment or enter into a Sale, or EDA may agree to enter into a repayment agreement with the RLF Recipient for repayment of the Federal Share.

* * * * *

PART 308—PERFORMANCE INCENTIVES

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10–4.

■ 2. Revise paragraph (a) of § 308.3 to read as follows:

§ 308.3 Planning performance awards.

(a) A Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA for a Project located in an EDA-funded Economic Development District may, at the discretion of the Assistant Secretary, receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines before closeout of the Project that:

(1) The Recipient, through the Project, actively participated in the economic development activities of the District;

(2) The Project demonstrated exceptional fulfillment of one (1) or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and

(3) The Recipient demonstrated exceptional collaboration with federal, State and local economic development entities throughout the development of the Project.

* * * * *

PART 310—SPECIAL IMPACT AREAS

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 42 U.S.C. 3154; Department of Commerce Delegation Order 10–4.

■ 2. Revise § 310.1 to read as follows:

§ 310.1 Special Impact Area.

Upon the application of an Eligible Recipient, and with respect to that Eligible Recipient's Project only, the Assistant Secretary may designate the Region which the Project will serve as a Special Impact Area if the Eligible Recipient demonstrates that its proposed Project will:

(a) Directly fulfill a pressing need; and

(b) Be useful in alleviating or preventing conditions of excessive unemployment or underemployment, or

assist in providing useful employment opportunities for the unemployed or underemployed residents of the Region.

PART 314—PROPERTY

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 2. Revise § 314.5 to read as follows:

* * * * *

§ 314.5 Federal Share.

(a) For purposes of this part, "*Federal Share*" means that portion of the current fair market value of any Property attributable to EDA's participation in the Project. The Federal Share shall be the current fair market value of the Property after deducting:

(1) Reasonable repair expenses, if any, incurred to put the Property into marketable condition; and

(2) Sales, commission and marketing costs.

(b) The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA's participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are $100, consisting of $50 of Investment Assistance and $50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is $250, the Federal Share is $125 (i.e., fifty (50) percent of $250). If $10 is spent to put the Property into salable condition, the Federal Share is $120 (i.e., fifty (50) percent of ($250 − $10)).

■ 3. Amend paragraphs (a) and (b)(3)(iv) of § 314.6 to read as follows:

§ 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project.

(b) * * *

(3) * * *

(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations. In determining whether an expectation is reasonable for purposes of this paragraph, EDA shall take into account whether a Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body, whether the non-profit organization has demonstrated stability over time, and such other factors as EDA deems appropriate.

* * * * *

■ 4. Amend paragraphs (c)(2)(ii) and (c)(4) of § 314.7 to read as follows:

§ 314.7 Title.

(c) * * *

(2) * * *

(ii) EDA, in its sole discretion, determines that the terms and conditions of the lease adequately safeguard the Federal government's interest in the Real Property and demonstrate the economic development and public benefits of the leasehold transaction.

* * * * *

(4) When the Project includes construction on a public highway the owner of which is not the Recipient, EDA may allow the Project to be constructed in whole or in part in the right-of-way of such public highway, provided that:

(i) All EDA-funded construction is completed in accordance with EDA requirements;

(ii) The Recipient confirms in writing to EDA, satisfactory to EDA, that:

(A) The Recipient is committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the Project consistent with the Investment Assistance; and

(B) If at any time during the Estimated Useful Life of the Project any or all of the improvements in the Project within the public highway are relocated for any reason pursuant to requirements of the owner of the public highway, the Recipient shall be responsible for accomplishing such relocation, including as necessary expending the Recipient's own funds, so that the Project continues as authorized by the Investment Assistance; and

(iii) The Recipient obtains all written authorizations (i.e., State or county permit(s)) necessary for the Project to be constructed within the public highway, copies of which shall be submitted to EDA. Such authorizations shall contain no time limits that EDA determines substantially restrict the use of the public highway for the Project during the Estimated Useful Life of the Project.

* * * * *

PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

■ 1. The authority citation for part 315 continues to read as follows:

Authority: 42 U.S.C. 3211; 19 U.S.C. 2341 *et seq.*; Department of Commerce Organization Order 10–4.

■ 2. Amend § 315.2 to revise the definitions of "*Decreased Absolutely*" and "*Significant Number or Proportion of Workers*," and the introductory text in the definition of "*Firm*" to read as follows:

§ 315.2 Definitions.

* * * * *

Decreased Absolutely means a Firm's sales or production has declined by a minimum of five (5) percent relative to its sales or production during the applicable prior time period,

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the Firm, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act.

* * * * *

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and includes fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. Pursuant to section 261 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent unjustifiable benefits. For purposes of receiving benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms may be considered a single Firm when they produce like or Directly Competitive articles or are exerting essential economic control over one or more production facilities. Accordingly, such other Firms may include a(n):

* * * * *

Significant Number or Proportion of Workers means five (5) percent of a Firm's work force or fifty (50) workers, whichever is less, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

* * * * *

■ 3. Revise § 315.4 to read as follows:

§ 315.4 Eligible applicants.

(a) The following entities may apply for assistance to operate a TAAC:

(1) Universities or affiliated organizations;

(2) States or local governments; or

(3) Non-profit organizations.

(b) For purposes of § 315.17, and to the extent funds are appropriated to implement section 265 of the Trade Act, organizations assisting or representing industries in which a substantial number of Firms or workers have been certified as eligible to apply for Adjustment Assistance under sections 223 or 251 of the Trade Act, including:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

* * * * *

■ 4. Amend § 315.5 to revise paragraphs (a)(3) and (b)(1) and (2) to read as follows:

§ 315.5 TAAC scope, selection, evaluation and awards.

(a) * * *

(3) A TAAC generally provides Adjustment Assistance by providing assistance to a:

(i) Firm in preparing its petition for eligibility certification; and

(ii) Certified Firm in diagnosing its strengths and weaknesses, and developing and implementing an Adjustment Proposal.

(b) *TAAC selection.* (1) EDA invites currently funded TAACs to submit either new or amended applications; provided they have performed in a satisfactory manner and complied with previous and/or current conditions in their Cooperative Agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a Cooperative Agreement does not ensure funding by EDA.

(2) EDA may invite new TAAC proposals through an FFO. If such a proposal is acceptable, EDA will invite an application on a form approved by OMB. An application will require a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not ensure funding by EDA.

* * * * *

■ 5. Amend § 315.6 to revise paragraphs (c)(1), (c) introductory text, and (c)(2)(i) to read as follows:

§ 315.6 Firm eligibility for Adjustment Assistance.

* * * * *

(c) * * *

(1) Certified Firms generally receive Adjustment Assistance over a two-year (2) period.

(2) The matching share requirements are as follows:

(i) Each Certified Firm must pay at least twenty-five (25) percent of the cost of preparing its Adjustment Proposal. Each Certified Firm requesting $30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least twenty-five (25) percent of the cost of that Adjustment Assistance. Each Certified Firm requesting more than $30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least fifty (50) percent of the cost of that Adjustment Assistance.

* * * * *

■ 6. Amend § 315.8 to revise paragraphs (d) and (g)(2) to read as follows:

§ 315.8 Processing petitions for certification.

* * * * *

(d) EDA will publish a notice of acceptance of a petition in the **Federal Register**.

* * * * *

(g) * * *

(2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one (1) year from the date of denial, provided, EDA may waive the one-year (1) limitation for good cause.

* * * * *

■ 7. Amend § 315.9 to revise the introductory paragraph and paragraphs (a) and (d) to read as follows:

§ 315.9 Hearings.

EDA will hold a public hearing on an accepted petition if the petitioner or any interested Person found by EDA to have a Substantial Interest in the proceedings submits a request for a hearing no later than ten (10) days after the date of publication of the notice of acceptance in the **Federal Register**, under the following procedures:

(a) The petitioner or any interested Person(s) shall have an opportunity to be present, to produce evidence and to be heard;

* * * * *

(d) EDA shall publish a notice of a public hearing in the **Federal Register**, containing the subject matter, name of petitioner, and date, time and place of the hearing; and

* * * * *

■ 8. Amend § 315.10 to revise the introductory text as follows:

§ 315.10 Loss of certification benefits.

EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm for any of the following reasons:

* * * * *

■ 9. Amend § 315.11 to revise paragraph (c) to read as follows:

§ 315.11 Appeals, final determinations and termination of certification.

* * * * *

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register**. The termination will take effect on the date specified in the published notice.

* * * * *

■ 10. Revise § 315.12 to read as follows:

§ 315.12 Recordkeeping.

Each TAAC shall keep records that fully disclose the amount and disposition of Trade Adjustment Assistance for Firms program funds so as to facilitate an effective audit.

Dated: October 15, 2008.

Benjamin Erulkar,

Deputy Assistant Secretary of Commerce for Economic Development and Chief Operating Officer.

[FR Doc. E8–25004 Filed 10–21–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 36 and 91

Civil Supersonic Airplane Noise Type Certification Standards and Operating Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Statement of policy.

SUMMARY: This action updates the Federal Aviation Administration's (FAA) policy on noise limits for future civil supersonic aircraft to reflect current U.S. noise regulations. This action is intended to provide guidance on noise limits to manufacturers that are considering designs for supersonic aircraft.

FOR FURTHER INFORMATION CONTACT: Ms. Laurette Fisher, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3561; facsimile (202) 267–5594; e-mail *Laurette.fisher@faa.gov*.

Background

The FAA last issued a noise policy statement for civil supersonic aircraft in 1994 (59 FR 39679, August 4, 1994). At that time, the noise standard in effect for new type certificate applications was Stage 3.

On July 5, 2005, the FAA adopted a new noise standard for subsonic jet airplanes and subsonic transport category large airplanes. That standard, Stage 4, applies to any person filing an application for a new airplane type design on and after January 1, 2006.

Since March 1973, supersonic flight over land by civil aircraft has been prohibited by regulation in the United States. The Concorde was the only civil supersonic airplane that offered service to the United States, and it is no longer in service.

Interest in supersonic aircraft technology has not disappeared. Current research is dedicated toward reducing the impact of sonic booms before they reach the ground, in an effort to make overland flight acceptable. Recent research has produced promising results for low boom intensity, and has renewed interest in developing supersonic civil aircraft that could be considered environmentally acceptable for supersonic flight over land.

Supersonic aircraft technologists, designers, and prospective manufacturers have approached the FAA and International Civil Aviation Organization (ICAO) for guidance on the feasibility of changing the current operational limitations. The U.S. regulation prohibits civil supersonic aircraft flight over land. Before the FAA can address a change in operational restrictions, it needs thorough research to serve as a basis for any regulatory decisions. Public involvement will be essential in defining an acceptable sonic boom requirement, and public participation would be part of any potential rulemaking process.

While technological advances in supersonic aircraft technology continue, many factors still will need to be addressed. At present, the FAA's guidance for supersonic aircraft is the same as for subsonic, that the same noise certification limits apply for supersonic aircraft when flown in subsonic flight configurations.

Policy Statement

The Federal Aviation Administration (FAA) is committed to aviation's long-standing efforts to achieve increasingly effective noise abatement at its source. We anticipate that any future Notice of Proposed Rulemaking issued by the FAA affecting the noise operating rules would propose that any future supersonic airplane produce no greater noise impact on a community than a subsonic airplane. Subsonic noise limits are prescribed in 14 CFR part 36. The latest noise limit in Part 36 is Stage 4, which applies to the development of future supersonic airplanes operating at subsonic speeds. Noise standards for supersonic operation will be developed as the unique operational flight characteristics of supersonic designs become known and the noise impacts of supersonic flight are shown to be acceptable.

Issued in Washington, DC, on October 16, 2008.

Carl Burleson,

Director of Environment and Energy.

[FR Doc. E8–25052 Filed 10–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0298; Directorate Identifier 2007–NM–316–AD; Amendment 39–15696; AD 2008–22–01]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped With Auxiliary Fuel Tanks Installed in Accordance With Certain Supplemental Type Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for various transport category airplanes. This AD requires deactivation of PATS Aircraft, LLC, auxiliary fuel tanks. This AD results from fuel system reviews conducted by the manufacturer, which identified unsafe conditions for which the manufacturer has not provided corrective actions. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective November 26, 2008.

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mazdak Hobbi, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to various transport category airplanes. That NPRM was published in the **Federal Register** on March 14, 2008 (73 FR 13803). That NPRM proposed to require deactivation of PATS Aircraft, LLC, auxiliary fuel tanks.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the 22 commenters.

Withdraw NPRM

Air National Australia, Chartwell Aviation Services, Continent Aircraft Trust #720, and Boeing Executive Flight Operations (EFO) question the need for the rule. Air National Australia states that the installation of the PATS Aircraft, LLC (PATS), auxiliary fuel system (AFS) in its aircraft was completed in February 2007 and was verified to be in compliance with

Special Federal Aviation Regulation No. 88 (SFAR 88). Air National Australia states that clearly the certification given to the supplemental type certificate (STC) in late January 2007 by the FAA would indicate that, at the time, the installation was compliant with the requirements of SFAR 88. Further, the guidance material in FAA Advisory Circular (AC) 25.981–1B, dated April 18, 2001, has not changed significantly since 2001. Therefore, Air National Australia concludes that the level of safety has not altered since the installation was seen to be compliant.

Chartwell states that the service history of the PATS AFS does not support the drastic action proposed in the NPRM. Continent Aircraft Trust #720 states that there have been no Boeing Business Jet (BBJ)-related AFS anomalies that would justify deactivation of the tanks in such a short time. Boeing EFO has been informed by PATS that the technical changes to the existing fuel system are safety enhancements and not an imminent safety concern. The fact that there have been no reports of in-service findings on the Boeing airplanes to support immediate safety concerns leads Boeing EFO to this conclusion. However, Boeing EFO is not opposed to installing the safety enhancements to improve system reliability and to conform the design to an improved engineering standard.

We infer that the commenters want us to withdraw the NPRM. We disagree. This AD results from fuel system reviews conducted by the manufacturer, which identified unsafe conditions that need corrective actions to prevent fuel tank explosions. Although to date there has not been an explosion in PATS fuel tanks, the types of ignition sources identified by the manufacturer have resulted in catastrophic explosions in other fuel tanks. Preventing such an explosion was the objective of SFAR 88 and is not just a "safety enhancement." However, we agree with Air National Australia that the installation for its fleet (STC ST 00936NY–D, Configuration 3) is compliant with SFAR 88. We have also revised Table 1 of this AD to specify that STC ST 00936NY–D, Configuration 3 is not affected by this AD. If an operator shows that corrective actions have been accomplished and its system complies with SFAR 88, deactivation of the auxiliary fuel tanks is not required. We find it necessary to issue the AD to address the identified unsafe condition.

Extend Compliance Date

The following commenters all request that we extend the compliance time for deactivating the auxiliary fuel tanks: Peter J. Chapman, Amiri Flight, PATS, Prime Aviation, Limited Brands, Tracinda Corporation, Chartwell, Newsflight, Dobro Ltd., Saudi Oger Ltd., Sunrider Corporation, PrivatAir SA, Continent Aircraft Trust #720, NetJets Large Aircraft Company (LAC), Boeing, and Air National Australia. The commenters state that the compliance date in the NPRM of December 16, 2008, is disproportional to the risk. The commenters also point out, among other items that make the compliance date unworkable, that there is insufficient capacity within available overhaul facilities and an insufficient number of kits to accomplish the actions before the specified date.

We agree with the commenters' requests to extend the compliance date for deactivating the auxiliary fuel tanks and have revised paragraph (g) of the AD to extend the compliance date to December 16, 2009. This date will give operators adequate time to plan and schedule the modification in order to comply with this AD. Our intent was to coordinate the compliance time of the NPRM with the December 16, 2008, operations rule compliance date (see "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001)). However, as the commenters noted, the lack of availability of kits and maintenance facilities makes that date impractical. We have decided to extend the compliance date by an additional 12 months to December 16, 2009. This change does not affect any other maintenance/inspection programs addressed by the fuel tank safety rule, and the compliance date for those items remains December 16, 2008. The December 16, 2009 date for this AD was chosen to balance the safety risk with the capability of operators to comply in a reasonable timeframe.

Auxiliary Fuel Tanks Are Necessary for Operation

Air National Australia, All Nippon Airways, the U.S. Air Force, Sunrider, Chartwell, Continent Aircraft Trust #720, NetJets LAC, and Boeing EFO emphasize that the PATS AFS is necessary to their operation. The commenters state that deactivation of the AFS will result in decreased utility, diminished market value, and increased fuel consumption due to less efficient routing. The need to make more fuel stops to fly the same mission profile could increase risk. In sum, deactivation would have a dramatic effect on the range of the aircraft and defeat the purpose of operating this type of aircraft in the fleet.

As we stated in the NPRM, for operators who want to retain the long-range capability provided by these fuel tanks, we will consider approving alternative methods of compliance consisting of design changes and maintenance instructions found to comply with SFAR 88. We understand PATS might be developing such service information for at least some of the affected STCs, but it has not yet been submitted for our review and approval. We have not changed the AD in this regard.

Revise the Applicability To Remove Certain STCs

PATS, Limited Brands, Boeing, All Nippon Airways, and Amiri request that certain STCs be removed from the applicability listed in Table 1 of the NPRM. The commenters all suggest certain corrections to the list. Limited Brands states that, as written, the NPRM includes FAA-approved PATS SFAR 88-compliant STCs. Boeing points out that the STC holder has determined that the specific STCs listed in its submission were developed and approved to section 25.981, amendment 25–102, of the Federal Aviation Regulations (14 CFR 25.981, amendment 102). All Nippon Airways understands that STC ST01716NY–D is in compliance with SFAR 88 and is mistakenly listed in the NPRM. This STC is the updated version of STC ST00936NY–D, and complies with SFAR 88 and 14 CFR 25.981, amendment 102.

We agree with the commenters' request that certain STCs need to be removed from the applicability. We have determined that the following STCs listed in Table 1 of the NPRM are currently in compliance with SFAR 88 requirements:

- ST01716NY–D
- ST01650NY
- ST01713NY–D
- ST01552NY
- ST00365NY–D, Configuration 5
- SA725NE–D, Configuration 7

We have revised Table 1 of the AD to remove these STCs. Operators should note that prior configurations of ST00365NY–D and SA725NE–D are still included in the applicability unless the operator has installed ST00365NY–D, Configuration 5, or SA725NE–D, Configuration 7, as applicable.

Revise the Applicability Based on PATS Service Bulletin Implementation

PATS Aircraft, Limited Brands, Boeing, All Nippon Airways, Boeing EFO, Amiri, and Chartwell request that we remove certain STCs from the

applicability listed in Table 1 of the NPRM. The commenters point out that the implementation of new PATS service bulletins would bring certain STCs into compliance with SFAR 88.

We disagree with the request to remove certain STCs based on accomplishment of certain PATS service bulletins. Although service bulletins developed by PATS might modify an airplane for SFAR 88 compliance, the New York Aircraft Certification Office (ACO), FAA, has not yet received the final version of the relevant service bulletins for approval. However, under the provisions of paragraph (h) of the AD, we will consider requests for approval of an alternative method of compliance based on these service bulletins if sufficient data are submitted to substantiate that the design change would provide an acceptable level of safety. We have not changed this AD in this regard.

Change the Description of the Auxiliary Fuel Tanks

PATS, Chartwell, and Air National Australia point out the description of the PATS auxiliary fuel tank is incorrect in the section of the NPRM titled "Supplemental Type Certificates (STCs) for PATS Aircraft, LLC, Auxiliary Fuel Tanks." The commenters point out that PATS has never designed or certified a box and bladder tank.

We infer that the commenters would like us to revise the description. We agree that the description in the NPRM requires clarification. Since that section of the preamble of the NPRM does not reappear in the final rule, no change to the final rule is necessary. However, we offer the following revision to the paragraph, suggested by PATS' comment, as clarification:

PATS' typical auxiliary fuel system (AFS) consists of several interconnected auxiliary fuel cells located in the aircraft's cargo holds. The cells are constructed of aluminum alloy with double walls and mounted on longitudinal rails attached to the aircraft's frame. The inner walls serve as the fuel storage cell, and the outer walls serve as the fuel and fume-proof shroud around the cell. The two walls are separated by an open-weave honeycomb structure bonded to the walls. The cells resemble aircraft cargo containers. The individual cells are usually arranged in two groups within the forward and aft lower cargo holds. These forward and aft fuel cell groups operate independently as two separate tanks.

Use PATS Service Bulletins for Deactivation Procedures

PATS requests that we add certain service information to the AD. PATS states that operators who do not place an order for SFAR 88 service bulletins or who elect not to bring their AFS into compliance should deactivate their system using the procedures in the service bulletins that PATS is developing.

We disagree. The service bulletins for deactivation have not been presented for review and approval by the Manager, New York ACO, FAA. Any operator who chooses to deactivate the tank must do the deactivation in accordance with paragraph (g) of this AD. That deactivation procedure could include, for example, performing procedures specified in the installation manual or returning the airplane to the configuration it was in prior to the PATS STC modification. If PATS submits service bulletins that meet the requirements of paragraph (g) of this AD, we would approve them as alternative methods of compliance (AMOCs) in accordance with the provisions of paragraph (h) of this AD. We have not changed the AD in this regard.

Remove Reporting Requirement

Limited Brands and Tracinda question the need for the report specified in paragraph (f) of the NPRM. Limited Brands states that it seems this information has already been complied with and/or should have been used in determining the effects of the NPRM and the condition of safety, and should have been used in the risk analysis evaluation. Tracinda questions the purpose of the report and states that the information should already be known for justification of the NPRM.

We infer that the commenters are requesting that we remove the reporting requirement from this AD. We disagree. The submittal of reports by operators will assist the FAA in determining whether additional actions are needed to address the identified unsafe conditions and to determine whether the scope of corrective actions that might be proposed by PATS or others is adequate. The required information can be obtained fairly easily and submitted without further cost to the operator. We have not changed the AD regarding this issue.

Re-Evaluate Costs of Compliance

Limited Brands requests that we revise the Costs of Compliance section of the NPRM. The commenter states that the cost estimates appear extremely low, and that the cost to each operator both in money and in loss of usage should be considered. The costs should also address other items like the cost to revise the manuals and support data, and access to areas of the airplane for deactivation.

We disagree with the commenter's request to include the additional items in the cost estimate. The cost information in an AD generally includes only the direct costs of the specific actions required by this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. We have not changed the AD regarding this issue.

Change AC Reference

Boeing and Chartwell point out an incorrect title in Appendix A, paragraph (4), of the NPRM, for FAA AC 25–8. We have revised the AD to correct the title.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for the 59 U.S.-registered airplanes to comply with this AD. Based on these figures, the estimated costs for U.S. operators could be as high as $382,320 to prepare and report the deactivation procedures, and $212,400 to deactivate tanks.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Individual cost
Report	1	$80	None	$80, per STC.
Preparation of tank deactivation procedure	80	80	None	$6,400, per STC.
Physical tank deactivation	30	80	$1,200	$3,600, per airplane.

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

This AD will not have federalism implications under Executive Order 13132. This AD will 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 that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–22–01 Various Transport Category Airplanes: Amendment 39–15696. Docket No. FAA–2008–0298; Directorate Identifier 2007–NM–316–AD.

Effective Date

(a) This airworthiness directive (AD) is effective November 26, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes, certificated in any category and equipped with auxiliary fuel tanks installed in accordance with specified supplemental type certificates (STCs), as identified in Table 1 of this AD.

TABLE 1—AFFECTED AIRPLANES

Airplanes	Auxiliary tank STC(s)
Boeing Model 727 series airplanes	SA62NE, SA392NE, SA530NE.
Boeing Model 727–100 series airplanes	SA62NE, SA387NE, SA392NE, SA530NE, ST00466NY.
Boeing Model 727–200 series airplanes	SA84NE, SA387NE, SA450NE, SA496NE.
Boeing Model 737–200 series airplanes	SA83NE, SA725NE (unless installed with SA725NE–D, Configuration 7), SA1078NE, SA1265EA.
Boeing Model 737–200C series airplanes	SA725NE (unless installed with SA725NE–D, Configuration 7).
Boeing Model 737–300 series airplanes	SA500NE, SA542NE, SA553NE, SA714NE, SA725NE (unless installed with SA725NE–D, Configuration 7).
Boeing Model 737–400 series airplanes	SA553NE, SA725NE (unless installed with SA725NE–D, Configuration 7).
Boeing Model 737–500 series airplanes	SA725NE (unless installed with SA725NE–D, Configuration 7), ST00040NY, ST01337NY.
Boeing Model 737–700 series airplanes (increased gross weight)	ST00936NY–D (unless installed with Configuration 3), ST01650NY–D.
Boeing Model 737–800 series airplanes	ST01384NY, ST01384NY–D.
Boeing Model 757–200 series airplanes (without overwing doors)	SA979NE.
Boeing Model 767–200 series airplanes	ST00840NY.
Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.	ST00365NY, ST00365NY–D (unless installed with Configuration 5).
McDonnell Douglas Model DC–8–62 airplanes	SA936NE.
McDonnell Douglas Model DC–9–33F airplanes	ST00605NY.
McDonnell Douglas Model DC–9–81 (MD–81) airplanes	ST00409NY.
McDonnell Douglas Model DC–9–82 (MD–82) airplanes	ST00409NY.
McDonnell Douglas Model DC–9–83 (MD–83) airplanes	ST00218AT, ST00409NY.
McDonnell Douglas Model DC–9–87 (MD–87) airplanes	ST00523NY.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer, which identified potential unsafe conditions for which the manufacturer has not provided corrective actions. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Report

(f) Within 45 days after the effective date of this AD, submit a report to the Manager, New York Aircraft Certification Office (ACO), FAA. The report must include the information listed in paragraphs (f)(1) and (f)(2) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and assigned OMB Control Number 2120–0056.

(1) The airplane registration and auxiliary tank STC number installed.

(2) The usage frequency in terms of total number of flights per year and total number of flights per year for which the auxiliary tank is used.

Prevent Usage of Auxiliary Fuel Tanks

(g) Before December 16, 2009, deactivate the auxiliary fuel tanks, in accordance with a deactivation procedure approved by the Manager, New York ACO. Any auxiliary tank component that remains on the airplane must be secured and must have no effect on the continued operational safety and airworthiness of the airplane. Deactivation must not result in the need for additional instructions for continued airworthiness.

Note 1: Appendix A of this AD provides criteria that should be included in the deactivation procedure. The proposed deactivation procedures should be submitted to the Manager, New York ACO, as soon as possible to ensure timely review and approval.

Note 2: For technical information, contact Mazdak Hobbi, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7330; fax (516) 794–5531.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, New York ACO, FAA, ATTN: Mazdak Hobbi, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7330; fax (516) 794–5531; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Material Incorporated by Reference

(i) None.

Appendix A—Deactivation Criteria

The auxiliary fuel tank deactivation procedure required by paragraph (g) of this AD should address the following actions.

(1) Permanently drain auxiliary fuel tanks, and clear them of fuel vapors to eliminate the possibility of out-gassing of fuel vapors from the emptied auxiliary tank.

(2) Disconnect all electrical connections from the fuel quantity indication system (FQIS), fuel pumps if applicable, float switches, and all other electrical connections required for auxiliary tank operation, and stow them at the auxiliary tank interface.

(3) Disconnect all pneumatic connections if applicable, cap them at the pneumatic source, and secure them.

(4) Disconnect all fuel feed and fuel vent plumbing interfaces with airplane original equipment manufacturer (OEM) tanks, cap them at the airplane tank side, and secure them in accordance with a method approved by the FAA; one approved method is specified in AC 25–8 Auxiliary Fuel System Installations. In order to eliminate the possibility of structural deformation during cabin decompression, leave open and secure the disconnected auxiliary fuel tank vent lines.

(5) Pull and collar all circuit breakers used to operate the auxiliary tank.

(6) Revise the weight and balance document, if required, and obtain FAA approval.

(7) Amend the applicable sections of the applicable airplane flight manual (AFM) to indicate that the auxiliary fuel tank is deactivated. Remove auxiliary fuel tank operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM. Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary tank is deactivated. The AFM revisions specified in this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(8) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary tank maintenance procedures.

(9) After the auxiliary fuel tank is deactivated, accomplish procedures such as leak checks and pressure checks deemed necessary before returning the airplane to service. These procedures must include verification that the airplane FQIS and fuel distribution systems have not been adversely affected.

(10) Revise the instructions for continued airworthiness, as required, after deactivation.

(11) Include with the operator's proposed procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation and return the airplane to service.

Issued in Renton, Washington, on October 9, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25055 Filed 10–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1084; Airspace Docket No. 08–ASO–17]

Establishment of Class E Airspace; Dallas, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Dallas, GA. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Paulding County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at Paulding County Airport. The operating status of the airport will change from Visual flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Paulding County Airport, Dallas, GA.

DATES: Effective 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before December 8, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–1084; Airspace Docket No. 08–ASO–17, at the beginning of your comments. You

may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.*, or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2008–1084; Airspace Docket No. 08–ASO–17." The postcard will be date stamped and returned to the commenter.

History

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Dallas, GA. This action provides adequate Class E airspace for IFR operations at Paulding County Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Dallas, GA, to provide controlled airspace required to support the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Paulding County Airport.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Dallas, GA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E Dallas, GA [New]

Paulding County Airport, GA
(Lat. 33°54'43" N., long. 84°56'26" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5 mile radius of the Paulding County Airport.

* * * * *

Issued in College Park, Georgia, on October 8, 2008.

Barry A. Knight,

Acting Manager, Operations Support, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–25054 Filed 10–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2008–0809; Airspace Docket No. 08–ASO–13]

Establishment of Class E Airspace; Morehead, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Morehead, KY. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Morehead-Rowan County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at Morehead-Rowan County Airport. The operating status of the airport will change from Visual flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Morehead-Rowan County Airport, Morehead, KY.

DATES: Effective 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before December 8, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0809; Airspace Docket No. 08–ASO–13, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov,* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the website. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2008–0809; Airspace Docket No. 08–ASO–13." The postcard will be date stamped and returned to the commenter.

History

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Morehead, KY. This action provides adequate Class E airspace for IFR operations at Morehead-Rowan County Airport. Designations for Class E

airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Morehead, KY, to provide controlled airspace required to support the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Morehead-Rowan County Airport.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Morehead, KY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO KY E Morehead, KY [New]

Morehead-Rowan County Airport, KY
(Lat. 38°12'54" N., long. 83°35'15" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5-mile radius of the Morehead-Rowan County Airport.

* * * * *

Issued in College Park, Georgia, on October 8, 2008.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–25073 Filed 10–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0417; Airspace Docket No. 08–AEA–20]

Modification of Class E Airspace; Roanoke, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E Airspace at Roanoke, Virginia to allow for a lower vectoring altitude known as the Minimum Vectoring Altitude (MVA) for vectoring of both Visual Flight Rule (VFR) and Instrument Flight Rule (IFR) aircraft within 20 miles of Roanoke, VA. This action will enhance the safety and airspace management around the Roanoke Regional/Woodrum Field Airport area.

DATES: *Effective Date:* 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

History

On May 13, 2008, the FAA published in the **Federal Register** a proposal to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Roanoke, VA (73 FR 27481). Analysis of operations at Roanoke, Virginia determined a need for additional Class E5 airspace extending upward from 700 feet above the surface of the Earth to enhance the management, safety, and efficiency of air traffic services in the area. This action is in response to higher Minimum Vectoring Altitudes (MVAs) that were established due to a change in FAA Order 8260.64, *Criteria and Guidance for Radar Operations.*

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace at Roanoke, VA, allowing for the vectoring altitude to be lowered and to encompass a 20 mile radius of the Roanoke Regional/ Woodrum Field Airport to accord with the revision of FAA Order 8260.64, *Criteria and Guidance for Radar Operations* for the establishment of MVAs. This Class E airspace modification allows the FAA to facilitate a better operation for intercepting the glide slopes and enhance the visual approach operation at Roanoke Regional/Woodrum Field Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace at Roanoke, VA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 will continue to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA VA E5 Roanoke, VA [Revised]

Roanoke Regional/Woodrum Field Airport
(Lat. 37°19′32″ N., long. 79°58′32″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 15-mile radius of Roanoke Regional/ Woodrum Field Airport beginning at the 036° bearing from the airport, thence clockwise until the 128° bearing, thence, within a 20-mile radius from the 128° bearing clockwise until the 273° bearing, thence direct to the point of beginning.

* * * * *

Issued in College Park, Georgia, on October 8, 2008.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–25057 Filed 10–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

15 CFR Part 303

[Docket No. 080716841–81292–02]

RIN 0625–AA80

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Programs 2008

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Departments of Commerce and the Interior (the Departments) amend their regulations governing watch duty–exemption allocations and watch and jewelry duty–refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The rule amends the regulations by updating the formula that is used to calculate the combined amount of individual and family health and life insurance per year that is creditable towards the duty refund benefit.

DATES: This rule is effective November 21, 2008.

ADDRESSES: Address written comments to Faye Robinson, Director, Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526, same address as above.

SUPPLEMENTARY INFORMATION: The Departments issue this rule to amend their regulations governing watch duty–exemption allocations and watch and jewelry duty–refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The background information and purpose of this rule is found in the preamble to the proposed rule (73 FR 49371, August 21, 2008) and is not repeated here.

Amendments

The Departments amend §303.2(a)(13)(ii), §303.2(a)(13)(ii)(A),

§303.2(a)(14)(ii), §303.2(a)(14)(ii)(A), §303.16(a)(9)(ii), §303.16(a)(9)(ii)(A), §303.16(a)(10)(ii), and §303.2(a)(10)(ii)(A) by increasing the percentage used to calculate the combined amount of individual and family health and life insurance per year that is creditable towards the duty refund benefit for watch and jewelry producers. Under the rule, the combined creditable amount of individual health and life insurance per year may not exceed 130 percent of the "weighted average" yearly individual federal employee health insurance, and the combined creditable amount of family health and life insurance per year may not exceed 150 percent of the "weighted average" yearly family federal employee health insurance.

The Departments received no comments in response to the proposed rule and request for comments. As a result, the Departments are adopting the proposed regulations without change.

Administrative Law Requirements

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, at the proposed rule stage, that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received on the certification or on the economic effects of the rule more generally.

Paperwork Reduction Act. This rulemaking does not contain revised collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB control number.

E.O. 12866. It has been determined that this rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and record keeping requirements, Virgin Islands, Watches and jewelry.

■ For reasons set forth above, the Departments amend 15 CFR Part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAMS

■ 1. The authority citation for 15 CFR Part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat.167; Pub. L. 108–429, 118 Stat. 2582.

§ 303.2 [Amended]

■ 2. Section 303.2 is amended as follows:

■ A. Remove "100" from the first sentence in paragraph (a)(13)(ii) introductory text and add "130" in its place.

■ B. Remove "120" from the first sentence in paragraph (a)(13)(ii)(A) and add "150" in its place.

■ C. Remove "100" from the first sentence in paragraph (a)(14)(ii) introductory text and add "130" in its place.

■ D. Remove "120" from the first sentence in paragraph (a)(14)(ii)(A) and add "150" in its place.

§ 303.16 [Amended]

■ 3. Section 303.16 is amended as follows:

■ A. Remove "100" from the first sentence in paragraph (a)(9)(ii) introductory text and add "130" in its place.

■ B. Remove "120" from the first sentence in paragraph (a)(9)(ii)(A) and add "150" in its place.

■ C. Remove "100" from the first sentence in paragraph (a)(10)(ii) introductory text and add "130" in its place.

■ D. Remove "120" from the first sentence in paragraph (a)(10)(ii)(A) and add "150" in its place.

Dated: October 16, 2008.

David Spooner,

Assistant Secretary for Import Administration, Department of Commerce.

Dated: October 16, 2008.

Joseph McDermott,

Acting Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. E8–25167 Filed 10–21–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM08–8–000; Order No. 718]

Ex Parte Contacts and Separation of Functions

Issued October 16, 2008.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations to clarify its rules governing ex parte contacts and separation of functions as they apply to proceedings arising out of investigations initiated under Part 1b of the Commission's regulations. The revisions specify when Commission litigation staff and persons outside the Commission may contact decisional employees once the Commission has established proceedings on matters that had been investigated under Part 1b. The Commission also is revising its regulations governing intervention to clarify that intervention is not permitted as a matter of right in proceedings arising from Part 1b investigations.

DATES: *Effective Date:* This rule will become effective November 21, 2008.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953, *wilbur.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. On May 15, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) [1] proposing to revise its regulations governing *ex parte* contacts and interventions in the context of investigations under Part 1b of its regulations.[2] Specifically, the NOPR proposed to revise the Commission's regulations governing *ex parte* contacts and separation of functions to clarify the circumstances in which Commission litigation staff and outside persons may contact Commissioners and decisional staff while an investigation is pending. The NOPR further proposed to clarify the Commission's regulations governing intervention to provide that intervention is not available as of right in a proceeding arising from an investigation under Part 1b.

[1] *Ex Parte Contacts and Separation of Functions,* 73 FR 29451 (May 21, 2008), FERC Stats. & Regs. ¶ 32,634 (2008).

[2] 18 CFR part 1b.

I. Background

2. In the NOPR, the Commission noted that, while its regulation governing interventions provided that there is no intervention in a Part 1b investigation, the regulation did not address the subject of intervention in a proceeding arising from a Part 1b investigation.[3] The NOPR explained that the Commission's precedents have recognized that, because a proceeding arising from an investigation is focused on the alleged conduct of a specific entity, intervention ordinarily is inappropriate and may delay or sidetrack the proceeding.[4] The NOPR therefore proposed to revise the regulation to provide that intervention is not available as of right in a proceeding arising from a Part 1b investigation. The Commission noted that, under this revision, it would retain the ability to permit intervention in cases where it might be appropriate, as the Commission had in fact done on past occasions.

3. With respect to off-the-record communications, the NOPR explained that the current Commission rules created a potential inconsistency between the ability of Commission litigation staff and persons outside the Commission to contact Commissioners and decisional staff in situations where, as the result of a Part 1b investigation, the Commission initiates proceedings other than trial-type proceedings. The NOPR further noted some uncertainty within the regulated community about the application of the *ex parte* rules in the context of Part 1b investigations. The NOPR proposed to revise the Commission's *ex parte*[5] and separation of functions[6] regulations to provide that neither outside persons nor litigation staff may engage in off-the-record communications with Commissioners and decisional staff once the Commission has initiated a proceeding in connection with a Part 1b investigation, regardless of the type of proceeding.

4. The NOPR also made reference to the Revised Policy Statement on Enforcement,[7] which was issued at the same time as the NOPR. In the Revised Policy Statement on Enforcement, the Commission announced that, as a matter of policy, Commissioners and their personal staffs will no longer accept oral communications about pending investigations from the subjects of those investigations. Such communications will have to be in writing. This measure is a policy and not a part of the Commission's regulations.

5. In total, the Commission received 14 comments regarding the NOPR. Multiple State Utilities Commissions joined the comments of the National Association of Regulatory Utility Commissioners (NARUC).[8] In addition, the Industry Associations' (IA) comments represented the views of several entities.[9] In general, the commenters expressed appreciation of the Commission's attempt to refine its enforcement practices, but expressed concern with both the proposal prohibiting intervention as a matter of right in enforcement proceedings, as well as the proposal regarding *ex parte* contacts with decisional staff prior to the issuance of an order to show cause.[10]

II. Discussion

A. Intervention

6. The bulk of the comments expressed concern about the NOPR's proposal to revise the Commission's intervention rules to provide that there is no intervention as a matter of right in proceedings arising from Part 1b investigations. For the most part, the commenters were concerned with specific situations that may arise from time to time in which they believe intervention would be warranted. A few comments reflected broader concerns about possible restrictions on intervention.

1. Broader Issues

7. With respect to broader concerns, the National Rural Electric Cooperative Association and American Public Power Association (NRECA/APPA), and Ergon Energy Partners, LP (Ergon), assert that the Commission should not adopt the proposed rule abolishing intervention as a matter of right in enforcement proceedings. NRECA/APPA state that the proposed rule is "likely unlawful to the extent it purports to eliminate statutory intervention rights" and is unnecessary in light of the standards contained in Rule 214.[11] They assert that it would be more consistent with the Administrative Procedure Act (APA) if the Commission followed the standards contained in the existing rule.[12] They further suggest that, as an alternative to the automatic grant of a timely, unopposed intervention, the Commission could adopt procedures employed by other agencies that provide for public notice and comment periods on consent decrees.[13] Ergon, while agreeing that intervention in an investigation may be inappropriate, suggests that the Commission modify the rule to allow third parties the opportunity for meaningful participation in proceedings that directly affect their interests, and to allow intervention once the Commission finds culpable conduct.[14]

8. We do not agree that the proposed revisions will contravene any statutory right to intervene. The APA requires agencies to give interested parties an opportunity for "the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when *time, the nature of the proceeding, and the public interest permit.*"[15] The concerns underlying the NOPR's proposal are directly related to these considerations. In an adjudicative proceeding before the Commission, third parties typically provide facts to assist us in developing a case. However, the purpose of investigations and enforcement proceedings is to examine instances of potential wrongdoing and take remedial action where needed. Only in unusual circumstances, as discussed below, would third parties have additional information that is necessary for the Commission's investigation. As we have stated previously:

> As a general proposition, when a Part 1b investigation becomes an enforcement action, we find that it would be inappropriate to allow entities to intervene as parties to the proceeding. We find that allowing parties to

[3] Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214.

[4] *See Energy Transfer Partners*, L.P., 121 FERC ¶ 61,282, at P 19 & n.28 (2007) (*ETP*).

[5] Rule 2201 of the Commission's Rules of Practice and Procedure, 18 CFR 385.2201 (2008).

[6] Rule 2202 of the Commission's Rules of Practice and Procedure, 18 CFR 385.2202 (2008).

[7] *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008).

[8] The Public Utilities Commissions of California, Indiana, Nevada, Ohio, and South Dakota, as well as the Public Service Commissions of New York, Maryland, and West Virginia, and the Illinois Commerce Commission, supported the comments of NARUC.

[9] The Industry Association consists of the American Gas Association, the Edison Electric Institute, the Electric Power Supply Association, the Independent Petroleum Association of America, the Interstate Natural Gas Association of America, the Natural Gas Supply Association, and the Process Gas Consumers Group.

[10] Several commenters filed interventions or requested to intervene out of time, or requested to file late comments. These included the Indiana Utility Regulatory Commission, the Public Service Commission of West Virginia, the Illinois Commerce Commission, the Maryland Public Service Commission, the Public Utilities Commission of the State of California, the Public Service Commission of the State of New York, and the Public Utilities Commission of Ohio. The Commission will treat all such submissions as comments on the NOPR and has considered them regardless of when they were filed.

[11] NRECA/APPA Comments at 2, 5.

[12] *Id.* at 6–9 (citing 5 U.S.C. 554(c)(1)).

[13] *Id.* at 6, 11. NRECA/APPA cite Federal Trade Commission and Department of Justice Regulations. *Id.* at 11.

[14] Ergon Comments at 2.

[15] 5 U.S.C. 554(c)(1) (emphasis added).

intervene during an enforcement action potentially would be contrary to the public interest and would interfere with the Commission considering issues in a timely and judicious manner. This is because in such an enforcement proceeding, the Commission is considering closely the particular actions/inactions, rights, obligations and, potentially violations and penalties of the subject party—here, ETP. Such a proceeding is different from a rate filing, rulemaking, or other proceeding where the rights of third parties are clearly affected. Allowing third parties to intervene in enforcement proceedings in pursuit of their own objectives could delay or sidetrack a proceeding extending or even creating additional uncertainty for the subject party.[16]

Furthermore, the presence of intervenors could damage the ability of the Commission to conduct investigations, impair our ability to enter into settlements, and be contrary to the public interest. If our ability to enter into settlements is impaired, the result could be litigation of matters that could otherwise be settled, draining Commission enforcement resources. Since litigation could be prolonged, the benefits of settlements could be delayed, perhaps for years. Another result from the strain on the Commission's investigative resources could be fewer investigations, with fewer remedies being imposed and fewer signals being sent to the industry regarding which sorts of behaviors might expose an entity to an enforcement action, along with greater costs and prolonged uncertainty imposed on the subjects of investigation.

9. We consider our views in line with judicial precedent on the subject of an agency's considerable discretion in making enforcement decisions.[17] This discretion extends, among other things, to the decision whether to initiate an enforcement proceeding[18] as well as the conduct of the proceeding and any settlement efforts.[19] Inclusion of third parties as a matter of right would necessarily cede a portion of the Commission's discretion to those parties. Furthermore, the proposal made by NRECA/APPA that the Commission rely on the standards currently contained in Rule 214 would limit or eliminate the Commission's ability to take into account parameters such as time and the nature of the proceeding, even though those parameters are specifically set out in the APA. The current rule focuses on the nature of the prospective intervenor's interest, not on the unique considerations that pertain to an enforcement proceeding.[20] We therefore find that NRECA/APPA's proposal is not appropriate to the enforcement context.

10. In our view, the NOPR's proposal addresses Ergon's concerns that third parties be able to participate in proceedings that directly implicate their interests, where those interests can be addressed in a manner that does not unduly hamper the Commission's enforcement efforts. As noted in the NOPR, the Commission has recognized that, on occasion, special circumstances might justify intervention in an enforcement proceeding. One such situation was an intervention in an enforcement proceeding where a state public service commission sought to clarify the impact of a settlement on state interests.[21] The Commission also has noted that intervention might be appropriate to allow parties to participate in the allocation of disgorged profits.[22] The proposed revisions to Rule 214 do not categorically bar interventions in proceedings arising from Part 1b investigations. Situations in which intervention would be appropriate are, however, necessarily limited in keeping with the nature of the enforcement function and the significant discretion accorded the Commission in that area.

2. Specific Situations

11. NARUC and the state regulatory bodies argue that state entities should be able to intervene given their unique position as regulators charged with serving the public interest.[23] The state regulators argue that they have a direct interest in enforcement proceedings due to the impact on their ratepayers[24] and that their collaboration will enhance enforcement efforts by avoiding duplicative efforts and inconsistent outcomes.[25] They further maintain that the NOPR's proposal is inconsistent with section 308 of the Federal Power Act (FPA),[26] which authorizes the Commission to admit interested state and local entities as parties to its proceedings.[27] According to NARUC, the FPA contains "no qualifiers regarding the type of FERC proceedings" to which a state may be granted party status.[28] NARUC proposes to allow states to intervene as a matter of right, and institute a process requiring "specific notification of parties that could have an interest in these determinations, including affected State commissions."[29] NARUC also states that the Commission should clarify that the resolution of a Part 1b proceeding will not affect the rights of states to pursue their own remedies for the wrongdoing that was the subject of the FERC investigation.[30] The Public Service Commission of Maryland additionally asserts that state commissions must be able to intervene as of right to request rehearing in enforcement proceedings.[31] Finally, the Indiana Utility Regulatory Commission proposes that market monitors be allowed to intervene and be informed of the status of ongoing investigations.[32]

12. One other specific circumstance drawing concern was North American Electric Reliability Corp. (NERC) Reliability Standards investigations, particularly so-called "root cause" investigations to determine which entity is at fault for alleged violations of NERC reliability standards.[33] Public Service Electric and Gas Company (PSEG), while agreeing with the Commission generally about intervention in Part 1b investigations, states that, "because in the RTO/ISO construct responsibility for complying with NERC Reliability Standards does not in every case align with responsibilities between PJM and its members," NERC Reliability Standards investigations are substantially different from other Part 1b investigations and participants deserve more latitude in joining other parties. PSEG asserts that, in the interest

[16] *ETP*, 121 FERC ¶ 61,282, at P 19.

[17] *See Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985) (agency decisions regarding conduct of enforcement actions are presumptively unreviewable by the courts).

[18] *Baltimore Gas & Electric Co.* v. *FERC*, 252 F.3d 456, 459 (DC Cir. 2001) (*BG&E*) ("agency's decision not to exercise its enforcement authority, or to exercise it in a particular way, is committed to its absolute discretion").

[19] *Id.* at 458 (decision to settle is committed to FERC's nonreviewable discretion).

[20] Rule 214(b) of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(b).

[21] *Williams Gas Pipelines Central, Inc.*, 94 FERC ¶ 61,285 (2001).

[22] *ETP*, 121 FERC ¶ 61,282 at P 19 & n.28.

[23] NARUC Comments at 5.

[24] *Id.* at 5–6.

[25] *Id.* at 6.

[26] 16 U.S.C. 825g(a).

[27] NARUC Comments at 3; *see* New York Pub. Serv. Comm'n Comments at 4 (Commission should preserve carefully crafted balance by continuing to recognize state interests); Pub. Serv. Comm'n of Maryland Comments at 3 (it would be counterproductive not to include state regulatory authority in enforcement proceedings).

[28] NARUC Comments at 3.

[29] *Id.* at 8.

[30] *Id.*

[31] Pub. Serv. Comm'n of Maryland Comments at 4.

[32] Indiana Utility Regulatory Commission Comments at 3–4.

[33] There may be many situations where several entities could be investigated for violations for facts arising out of the same event and in such a case we would expect each entity would be afforded the full rights allowed to a subject of an enforcement action. Moreover, the conduct of any entity that might mitigate the severity of the violation or penalty as to the subject of an investigation can always be evaluated in an enforcement action regardless of whether such other entity is an intervenor.

of due process, it may be necessary in enforcement proceedings arising from reliability standards investigations to "widen the scope of permitted interventions," [34] and that an entity accused of a NERC violation must be allowed to argue that another entity is responsible for the violation, and join them as a party to the proceeding prior to the penalty phase in order to ensure that there is an accurate finding of the "root cause" entity.[35]

13. As we note above, nothing in the proposed revisions to Rule 214 precludes intervention in enforcement proceedings. While clarifying that there is no right to intervene in proceedings arising from Part 1b investigations, the Commission nevertheless retains the discretion to take into account specific circumstances that might favor intervention, although such circumstances would be uncommon and the participation by intervenors may be limited to specific matters.

14. We disagree with PSEG that there is any fundamental difference concerning interventions in investigations carried out by the Regional Entities and the Electric Reliability Organization (ERO) with respect to possible violations of Reliability Standards approved by the Commission and in Part 1b investigations conducted by the Commission staff into the same kinds of violations. The Commission found in Order No. 672 that, in general, there should be no right to intervene in investigations carried out by Regional Entities or the ERO, for the same reasons that interventions are not permitted in our staff's Part 1b investigations.[36] We note that in its investigation, a Regional Entity or the ERO has authority to inquire into all facts relevant to whether a violation of a Reliability Standard occurred, and to identify all entities, whether listed on the ERO's compliance registry or not, whose actions related to the possible violation of a Reliability Standard.[37]

15. We also stated in Order No. 672 that if a Regional Entity or the ERO concluded that interventions would be appropriate in a particular proceeding it would conduct arising from an investigation into possible violations of Reliability Standards, it must receive advance authorization to do so from the Commission.[38] The Commission, therefore, will be in a position to evaluate on a case-by-case basis whether allowing interventions in a particular Regional Entity or ERO proceeding would be appropriate.[39] We anticipate that the Commission could consider the issues PSEG mentions when making this determination in particular cases.

16. We do not agree with the expansive view of state participation in enforcement proceedings taken by NARUC and some of the state regulatory bodies. The proposed revisions are in no way inconsistent with the FPA. Section 308 of the FPA states as follows:

> In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.[40]

Although this provision recognizes the role of state authorities, it does not draw a fundamental distinction between them and other interested persons. Furthermore, the FPA leaves the Commission with discretion to prescribe appropriate rules and to admit parties when it is "in the public interest." By using 'may' instead of 'shall,' it is clear that section 308 establishes no right of intervention. The section merely authorizes the Commission to admit state commissions into FERC proceedings. Nothing in the provision prevents the Commission from recognizing the differing public interests that may be at stake in different types of proceedings. The provision likewise places no limitations on the considerations that the Commission may take into account in determining the public interest.

17. In our view, as a general matter the availability of intervention in enforcement proceedings would be inconsistent with the discretion in pursuing enforcement measures that Congress has afforded the Commission. The DC Circuit, for instance, has determined that the Natural Gas Act (NGA) [41] places no limitations on the Commission's exercise of its enforcement powers. The court has stated, "At every turn the NGA confirms that FERC's decision how, or whether, to enforce that statute is entirely discretionary." [42] Congress evinced no intention to "cabin FERC's enforcement discretion," because if it had, it would have used "obligatory terms such as 'must,' 'shall,' and 'will,' not the wholly precatory language employed in the act." [43]

18. We also see no reason why the revisions to Rule 214 would have any impact upon the ability of states to pursue remedies for wrongdoing that was the subject of a Part 1b investigation. The revisions address only the availability of intervention in proceedings arising from Part 1b investigations. As the above discussion shows, the Commission's enforcement powers lie within its own discretion and the revisions therefore do not deprive any person or entity of any remedies that it previously possessed.

19. Although we fully recognize the significant role played in oversight and enforcement by state regulatory commissions, the Commission has the sole authority to enforce its own jurisdictional statutes. As the courts have recognized, enforcement authority is generally considered discretionary with the agencies to which it is granted. In our view, the effective exercise of that discretion requires that enforcement proceedings remain focused on the primary issue, which is the alleged misconduct of the respondent. The revisions to Rule 214 nevertheless will leave the Commission with the ability in appropriate cases to permit the participation of third parties, but that participation will be tailored to appropriate situations based on factors that are unique to the particular enforcement context.

20. For similar reasons, we are not persuaded by the various suggestions

[34] PSEG Comments at 3.

[35] *Id.* at 5.

[36] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. ¶ 31,204 at P 510, *order on reh'g,* Order No. 672–A, 71 FR 19814 (April 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

[37] *See Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators,* 122 FERC ¶ 61,247, at P 19 (2008) (NERC and Regional Entities will conduct thorough investigations that will examine the "root cause" of violations, and would extend such investigations to entities not listed on NERC's compliance registry if necessary).

[38] Order No. 672 at P 511.

[39] *See, e.g., North American Electric Reliability Council; North American Electric Reliability Corporation,* 119 FERC ¶ 61,060, at P 150, *order on reh'g,* 120 FERC ¶ 61,260 (2007) (recognizing exceptions to the general rule that no interventions should be permitted in Regional Entity and NERC enforcement proceedings, but stating that exceptions to this rule exist, which the Commission would evaluate in advance upon request on a case-by-case basis).

[40] 16 U.S.C. 825g(a). Section 15(a) of the Natural Gas Act, 15 U.S.C. 717n(a), includes a nearly identical provision.

[41] 15 U.S.C. 717, *et seq.* There is no meaningful difference between the relevant provisions of the NGA and those of the FPA. *Compare* 15 U.S.C. 717s(a) *with* 16 U.S.C. 825m, *and* 15 U.S.C. 717m *with* 16 U.S.C. 825f. Analogous provisions of the NGA and FPA are to be read *in pari materia. See, e.g., Arkansas-Louisiana Gas Co.* v. *Hall,* 453 U.S. 571, 577 n.7 (1981).

[42] *BG&E,* 252 F.3d at 460.

[43] *Id.* at 461.

that we solicit participation in investigations and enforcement proceedings. Given that we expect intervention to be permitted only in unusual situations, measures designed to invite such participation will in most cases result in delay and distraction from the central issues. Consequently, we find it appropriate to adopt the revisions to Rule 214 contained in the NOPR.

B. Off-the-Record Communications

21. The Commission received comments on the NOPR's proposed revisions to its *ex parte* and separation of functions rules from IA representing the views of several entities. The IA states that it supports the Commission's goal of equal treatment of investigative staff and subjects of an investigation subsequent to a show cause order, and argues that the Commission should extend the proposal to include the early stages of the investigation.[44] In its view, allowing Commission investigative staff unrestricted access to decisional employees, while allowing the subject of an investigation only written communication, puts the subject of an investigation at a disadvantage in making its case to the Commission. The IA specifically requests that the Commission "allow oral communications with Commissioners and other decision-making employees by both [i]nvestigative [s]taff and the [s]ubject."[45]

22. The IA also makes specific procedural suggestions. It maintains that the subject of an investigation should be allowed to respond to the investigator's report and should be provided with "the full set of material facts and legal conclusions appearing in the investigator's report, at the same time the report or draft is submitted to any decisional employee."[46] It further requests clarification of Order No. 711.[47] That Order states that a "notice of intent to seek a show cause order 'shall provide sufficient information and facts' to enable the Subject to prepare a response."[48] The IA requests that "sufficient information and facts" be clarified to mean "all of the material facts and legal conclusions being relied on in the investigator's report."[49] It further requests that a subject be allowed to respond to an investigator's report if it is revised after a response is filed.[50]

23. The IA's comments are outside the scope of this rulemaking. Although the NOPR made reference to the Revised Policy on Enforcement, which was issued on the same date, it was the latter that announced the policy whereby neither Commissioners nor their personal staffs will receive oral communications, in person or by telephone, about pending investigations from the subjects of those investigations. That policy does not appear in any regulation proposed here. The NOPR proposed only to revise the rules on separation of functions and off-the-record communications to clarify that both outside persons and Commission investigative staff will be able to communicate with decisional staff during the same time periods, specifically while an investigation is pending until the point at which the Commission initiates an enforcement proceeding. The NOPR did not in any way address the procedures for staff to submit, and the subject of an investigation to respond to, a request for a show cause order. Those procedures therefore cannot be addressed properly here. The Commission therefore will adopt the proposed revisions to its rules governing off-the-record communications and separation of functions.

III. Information Collection Statement

24. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[51] This Final Rule does not contain any information collection requirements and compliance with the OMB regulations is thus not required.

IV. Environmental Analysis

25. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[52] Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial or internal administrative actions.[53] This rulemaking is exempt under that provision.

V. Regulatory Flexibility Act

26. The Regulatory Flexibility Act of 1980 (RFA)[54] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns solely procedural matters. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is not required.

VI. Document Availability

27. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

28. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

29. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

30. These regulations are effective November 21, 2008. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

[44] IA Comments at 2.

[45] *Id.* at 8–9.

[46] *Id.* at 3.

[47] *Submissions to the Commission upon Staff Intention to Seek an Order to Show Cause,* Order No. 711, 73 FR 29431 (May 21, 2008), FERC Stats. & Regs. ¶ 31,270 (2008).

[48] *Id.* at 9.

[49] *Id.*

[50] *Id.* at 10.

[51] 5 CFR 1320.12.

[52] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[53] 18 CFR 380.4(1) and (5).

[54] 5 U.S.C. 601–12.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 2. Amend § 385.214 by adding new paragraph (a)(4) to read as follows:

§ 385.214 Intervention (Rule 214).

(a) * * *

(4) No person, including entities listed in paragraphs (a)(1) and (a)(2) of this section, may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1b of this chapter.

* * * * *

■ 3. Amend § 385.2201 by revising paragraph (c)(1) to read as follows:

§ 385.2201 Rules governing off-the-record communications (Rule 2201).

* * * * *

(c) * * *

(1) Contested on-the-record proceeding means

(i) Except as provided in paragraph (c)(1)(ii) of this section, any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue, any proceeding initiated pursuant to rule 206 by the filing of a complaint with the Commission, any proceeding initiated by the Commission on its own motion or in response to a filing, or any proceeding arising from an investigation under part 1b of this chapter beginning from the time the Commission initiates a proceeding governed by part 385 of this chapter.

(ii) The term does not include notice-and-comment rulemakings under 5 U.S.C. 553, investigations under part 1b of this chapter, proceedings not having a party or parties, or any proceeding in which no party disputes any material issue.

* * * * *

■ 4. Amend § 385.2202 by revising it to read as follows:

§ 385.2202 Separation of functions (Rule 2202).

In any proceeding in which a Commission adjudication is made after hearing, or in any proceeding arising from an investigation under part 1b of this chapter beginning from the time the Commission initiates a proceeding governed by part 385 of this chapter, no officer, employee, or agent assigned to work upon the proceeding or to assist in the trial thereof, in that or any factually related proceeding, shall participate or advise as to the findings, conclusion or decision, except as a witness or counsel in public proceedings.

[FR Doc. E8–25103 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2008–8 and CP2008–26]

Administrative Practice and Procedure; Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding a new product identified as Priority Mail Contract 1 Negotiated Service Agreement to the Mail Classification Schedule Competitive Product List, pursuant to a Postal Service request. The request incorporates notice of the Postal Service's execution of a related contract. The Commission is also re-publishing the lists of market dominant and competitive products. The Commission's actions are consistent with changes in a recent law governing postal operations.

DATES: Effective October 22, 2008.

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

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 1 to the competitive product list. The Postal Service asserts that Priority Mail Contract 1 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2008–8.[1]

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract is assigned Docket No. CP2008–26. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, which also includes an analysis of the Priority Mail Contract 1;[2] (2) a redacted version of the contract; which, among other things, provides that the contract will expire 2 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[3] (3) requested changes in the MCS product list;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Attachment D at 1. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). Attachment E.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 1, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions and financial projections should remain under seal. Request at 2.

In Order No. 111, the Commission gave notice of the two dockets,

[1] Request of the United States Postal Service to Add Priority Mail Contract to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, September 23, 2008 (Request).

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

appointed a public representative, and provided the public with an opportunity to comment.

II. Comments

Comments were filed by the Public Representative.[7] No filings were submitted by other interested parties. The Public Representative's comments focus on several aspects of the negotiated Priority Mail Contract 1: Adequate cost coverage for the product, identification of the source and basis for projected volume figures; and use of reliable adjustment factors. Public Representative Comments at 3–4. In addition, the Public Representative comments on the public interest in ensuring that the proposed competitive negotiated service agreements have been considered by the Governors and that such agreements provide increased options for consumers. *Id.* at 4–5.

Based on a review of materials filed under seal, the Public Representative concludes that the contract comports with 39 U.S.C. 3633(a). *Id.* at 4. The Public Representative comments on the projected contract volumes recommending that in future filings the Postal Service should provide in general terms the nature and source of the volume projections for evaluation and review by the Commission. *Id.* at 5–6. Finally, the Public Representative comments that the contract's economic adjustment factors appear to be reasonable and provide adequate revenue protection for the Postal Service. *Id.* at 6.

III. Commission Analysis

The Commission has reviewed the contract and the financial analysis provided under seal that accompanies the agreement as well as the comments by the Public Representative.

The Postal Service's filing is distinguishable from previously filed negotiated service agreements. It seeks to establish a new domestic Priority Mail product, but not as a shell classification. Rather, the contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Commission's review of the supporting data uncovered certain inconsistencies which, on further inspection, do not substantially alter the financial results, but which nonetheless merit comment. Some of the underlying cost figures were developed from the Postal Service's FY2007 Annual Report to the Commission instead of from the Commission's FY2007 Annual Compliance Determination. The latter, representing the latest available information, is to be used in future filings.[8] With respect to volume mix, the Postal Service relies on two different sources of information, namely, an existing special study and data reported by Origin Destination Information System (ODIS). While the use of these two sources of data does not cause the financial results to vary significantly (compared to using only one source), any future similar contracts should employ a single source to derive volume distributions, or alternatively, provide adequate justification for using more than one source.

Based on the data submitted, the Commission finds that the Priority Mail Contract 1 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Priority Mail Contract 1 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall notify the Commission of the effective date of the instant contract. In addition, the Postal Service shall promptly notify the Commission when the contract terminates no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 1 as a new product. The revision to the competitive product list is shown below the signature of this Order and is effective upon issuance of this Order.

It Is Ordered:

1. Priority Mail Contract 1 (MC2008–8 and CP2008–26) is added to the competitive product list as a new product under Negotiated Service Agreement, Domestic.

2. The Postal Service shall notify the Commission of the effective date and the termination date of the contract as discussed in this Order.

3. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

By the Commission.

Issued October 15, 2008.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
  HSBC North America Holdings Inc. Negotiated Service Agreement
  Bookspan Negotiated Service Agreement
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
Market Dominant Product Descriptions
First-Class Mail [Reserved for Class Description]
  Single-Piece Letters/Postcards [Reserved for Product Description]

[7] Public Representative Comments in Response to Order No. 111, October 8, 2008 (Public Representative Comments).

[8] Modifications, if any, to such data to reflect changed circumstances would need to be fully supported.

[FR Doc. E8–25130 Filed 10–21–08; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0389; FRL–8711–3]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Approval of Rule Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on March 28, 2008. The WDNR has submitted for approval revisions to incorporate Federal regulations into the Wisconsin Administrative Code, to clarify construction permit requirements under general permits, to revise portable source relocation requirements, and to amend rule language to streamline the minor revision permit process to allow construction permits to be issued concurrently with operation permits. EPA is approving these revisions because they are consistent with Federal regulations governing State permit programs.

DATES: This direct final rule will be effective December 22, 2008, unless EPA receives adverse comments by November 21, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0389, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: blakley.pamela@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0389. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 a.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Susan Castellanos, Environmental Engineer, at (312) 353–2654 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Susan Castellanos, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, *castellanos.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Revisions Did WDNR Submit?

On March 28, 2008, WDNR submitted a SIP revision request to EPA for approval. These revisions incorporate Federal regulations into the Wisconsin Administrative Code, clarify construction permit requirements under general permits, revise portable source relocation requirements, and amend rule language to streamline the minor revision permit process to allow construction permits to be issued concurrently with operation permits.

The submittal requests that EPA approve the following revisions to WDNR's SIP:

(1) To renumber and create NR 400.02(162)(a)49. Wisconsin rule NR 400.02 contains air pollution definitions, and the change will update the definitions to exclude a compound from the list of volatile organic compounds to reflect a rule change made by EPA.

(2) To amend NR 406.04(2m)(b), 406.15(3)(a), and to create 406.04(2m)(b)(note). NR 406 contains construction permit requirements, and the change to NR 406.04 will clarify when a construction permit is needed for sources covered under general operation permits. The change to NR 406.15 amends the numerical emission threshold limitations to language limiting the relocation limitations to less than major source thresholds.

(3) To repeal NR 407.02(6)(b)4 to 7, to amend 407.02(4)(b)27, and 407.10(4)(a)2, and to create 407.02(3e), and 407.10(4)(a)2(note). NR 407 contains operation permit requirements, and the change to NR 407.02 will revise the Federal standards regarding fugitive emissions and permitting standards. The portions of NR 407.02 which are repealed deal with source categories which are no longer required to obtain a Part 70 Title V permit due to rule changes made by EPA. The change to NR 407.10 also clarifies when a construction permit is needed for sources covered under general operation permits.

(4) To amend NR 410.03(4). NR 410 contains air permit, emission, and

inspection fees, and the revisions to NR 410.03 will allow WDNR to bill the applicant for the construction permit fee when the permit is issued, streamlining the process for minor revisions to those permits.

WDNR held a public hearing on June 12, 2007, for these changes. WDNR proposed the rule revisions to the Wisconsin Natural Resources Board for adoption on September 24, 2007, and the Board approved the final rule revisions, which became effective on May 1, 2008.

II. What Action is EPA Taking on this Submittal?

EPA is approving revisions to Wisconsin's SIP rules NR 400, NR 406, NR 407, and NR 410 submitted by the State on March 28, 2008.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective December 22, 2008 without further notice unless we receive relevant adverse written comments by November 21, 2008. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective December 22, 2008.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: August 21, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(118) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(118) On March 28, 2008, Wisconsin submitted for EPA approval into the Wisconsin SIP a revision to repeal NR 407.02(6)(b)4 to 7; to renumber NR 400.02(162)(a)49; to amend NR 406.04(2m)(b), 406.15(3)(a), 407.02(4)(b)27, 407.10(4)(a)2, and 410.03(4); to create NR 400.02(162)(a)49, 406.04(2m)(b)(note), 407.02(3e), and 407.10(4)(a)2(note), Wis. Admin. Code, effective May 1, 2008. These revisions revise Wisconsin's rules to incorporate Federal regulations into the Wisconsin Administrative Code, to clarify construction permit requirements under general permits, revise portable source relocation requirements, and to amend rule language to streamline the minor revision permit process to allow construction permits to be issued

concurrently with operation permits. EPA has determined that this revision is approvable under the Act.

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 400.02 Definitions. NR 400.02(162)(a)49 and NR 400.02(162)(a)50, as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(B) NR 406.04 Direct sources exempt from construction permit requirements. NR 406.04(2m)(b) and NR 406.04(2m)(b)(note), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(C) NR 406.15 Relocation of portable sources. NR 406.15(3)(a), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(D) NR 407.02 Definitions. NR 407.02(3e), and NR 407.02(4)(b)27, as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(E) NR 407.10 General operation permits. NR 407.10(4)(a)2 and NR 407.10(4)(a)2(note), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(F) NR 410.03 Application fee. NR 410.03(4), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

* * * * *

[FR Doc. E8–25039 Filed 10–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0379; FRL–8732–3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is converting its limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania consisting of regulations that require all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT) to a full approval as they apply throughout the Commonwealth. In prior final rules, EPA has fully approved Pennsylvania's VOC and NO_X RACT regulations for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton area, and for the Pittsburgh-Beaver Valley area. The intended effect of this action is to convert EPA's limited approval of Pennsylvania's VOC and NO_X RACT regulations to full approval as they apply throughout the remainder of the Commonwealth. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: *Effective Date:* This final rule is effective on November 21, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2006–0379. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104, or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 4, 1994, the Pennsylvania Department of Environmental Protection (DEP) submitted a revision to the Pennsylvania SIP, consisting of 25 PA Code Chapters 129.91 through 129.95, to require major sources of NO_X and major sources of VOC emissions not covered by a CTG (non-CTG sources) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_X RACT requirements under Chapter 129.93. On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of 25 PA Code Chapters 129.91 through 129.95, and removed the conditional aspect of the approval on May 3, 2001 (66 FR 22123). On October 16, 2001 (66 FR 52533), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of 25 PA Code Chapters 129.91 through 129.95 as it applied in the Pittsburgh-Beaver Valley ozone nonattainment area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties), because EPA had approved all of the case-by-case RACT determinations submitted by DEP for affected major sources of NO_X and/or VOC sources located in the area. In so doing, EPA converted its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as it applied to that area. That rulemaking became effective on November 15, 2001. On October 30, 2001, (66 FR 54698), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of 25 PA Code Chapters 129.91 through 129.95 as it applied in the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (Bucks, Chester, Delaware, Montgomery, and Philadelphia counties) because EPA had approved all of the case-by-case RACT determinations submitted by DEP for affected major sources of NO_X and/or VOC sources located in the area. In so doing, EPA converted its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as it applied to that area. That rulemaking became effective on November 29, 2001.

On August 26, 2008 (73 FR 50267), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed to convert EPA's limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as they apply throughout the remainder of the Commonwealth. EPA is converting its limited approval of Pennsylvania's VOC and NO_X RACT regulations to full approval because EPA has approved all of the case-by-case RACT determinations that had been submitted by Pennsylvania such that there are no longer any such submissions pending before EPA. No public comments were received on the NPR.

II. Future Submissions of Case-by-Case RACT Determinations

The DEP has submitted and EPA has approved as SIP revisions case-by-case RACT determinations for nearly 600

non-CTG and NO_X sources in Pennsylvania pursuant to Pennsylvania regulations Chapters 129.91–129.95. (See 40 CFR 52.2020(d) for the list of sources.) As stated previously, there are no source-specific RACT determination submissions from DEP currently pending before EPA. In the future, should DEP find it necessary to issue any additional or revised source-specific RACT determinations in plan approvals and/or permits pursuant to the fully approved Pennsylvania regulations Chapters 129.91–95 of the Pennsylvania SIP, those RACT determinations must still be submitted to EPA for approval as source-specific SIP revisions. In order for EPA to consider such submissions for approval, the DEP must ensure that:

A. The Sources Are Not Subject to Any Ctgs or Alternative Control Techniques (Acts) Issued By EPA for Which Pennsylvania Has Adopted or Is Due to Adopt State-Wide Regulations for Approval as SIP Revisions

Such sources should be subject to any applicable CTG or ACT regulation. In addition to the CTG documents issued between November 15, 1990 and the date of 1-hour ozone attainment, and the CTG documents issued prior to November 15, 1990; EPA issued CTG and ACT documents in 2006 and 2007. EPA is also due to issue additional control technique documents by September 2008. Pennsylvania is required to adopt statewide RACT regulations pursuant to these control technique documents and is mandated a schedule for doing so. A source in the Commonwealth that has been considered a non-CTG source may no longer be so defined if their source category is covered by the 2006, 2007, or 2008 CTGs or ACTs. At the time DEP adopts statewide RACT regulations pursuant to the 2006, 2007, and 2008 CTGs and ACTs, it must address the applicability of those RACT regulations to sources previously considered non-CTG sources under regulations 129.91–129.95.

B. The RACT Plan Approvals and/or RACT Permits Do Not Relax Any Previously SIP Approved Source-Specific RACT Approved for the Source(s)

Any request by such sources to modify (relax) their emission rates, equipments standards, work practice standards, or conditions on the type or amount of materials/fuels combusted or processed; or to seek relief from their daily, monthly and/or annual emission caps would not be approvable as RACT in 2008 or beyond. When such sources seek relief with the operating conditions imposed in their SIP approved RACT plan approvals or RACT permits because they have modified to add additional emission units, or need to increase operation in light of market-based demand for their products; RACT needs to be re-assessed, re-determined and potentially made more stringent not less stringent.

C. The RACT Determinations Are Not To Be Simply Based Upon an Arbitrary Dollar per Ton Figure in a State Guidance Document That Is Neither SIP-Approved Nor Approvable by EPA

The very nature of a non-CTG and/or source-specific alternative RACT makes any "one size fits all" dollar per ton figure inappropriate when determining and imposing RACT.

D. The RACT Plan Approvals or RACT Permits Have No Expiration Date

No regulation, plan approval or permit submitted for approval as a SIP revision to be incorporated by reference and made part of a SIP may have an expiration or sunset provision. By federal statute, a state is responsible to implement and enforce all provisions of its approved SIP at all times.

E. Any RACT Plan Approvals' or RACT Permits' Redactions Are Done in Such a Way as To Be Able To Read the Redacted Text

When a plan approval or permit is issued by DEP to a source, it may impose additional requirements or conditions completely unrelated to the RACT requirements for NO_X and/or VOCs. In those instances, DEP may submit the plan approval or permit as a SIP revision with those unrelated portions of the plan approval or permit redacted. Those redactions must be done in such a way as to be able to read the redacted text. This is necessary to ensure that the redacted language is not contrary to the portions being submitted for approval as RACT, does not render the RACT portions less stringent, does not remove or make less stringent any conditions related to enforcement of RACT, or make the RACT requirements subject to change without a SIP revision.

F. When Requesting That RACT Plan Approvals or RACT Permits Be Approved as SIP Revisions, the DEP's Formal SIP Revision Submissions Include Signed/Dated Technical Support Documents or Memoranda Prepared by DEP in Support of Its RACT Determinations and the SIP Revision Requests

Sources in Pennsylvania subject to 25 PA Code Chapters 129.91 through 129.95 are not to send their RACT plan proposals directly to EPA. Under the CAA, SIP revision submissions in their entirety must be submitted by the State requesting that the SIP be revised. EPA will consider only the materials formally submitted by DEP in its SIP revision request and any comments submitted during the public comment period provided by EPA on its proposed rule when determining its final action to approve or disapprove a source-specific SIP revision submitted by DEP pursuant to 25 PA Code Chapters 129.91 through 129.95.

G. The SIP Revision Submissions Do Not Include Any Materials That Are Considered "Confidential Business Information" in Nature or Entitled to Any Proprietary Treatment

Moreover, the DEP plan approvals and permits cannot include conditions that cite to the source's RACT Plan proposal where that proposal includes materials which the company has requested be treated as confidential and proprietary. No materials that are considered "confidential business information" in nature or entitled to any proprietary treatment are to be included in a SIP revision submittal because the materials that constitute SIP revisions are required to be made available to the public by both the State and EPA.

III. Final Action

EPA is converting its limited approval of 25 PA Code Chapters 129.91 through 129.95 to a full approval as they apply throughout the Commonwealth of Pennsylvania.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action converting 25 PA Code Chapters 129.91 through 129.95 to full approval as they apply throughout the remainder of the Commonwealth may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: October 9, 2008.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

§ 52.2023 [Amended]

■ 2. In § 52.2023, paragraph (k) is removed and reserved.

■ 3. Section 52.2027 is amended by adding paragraph (c) to read as follows:

§ 52.2027 Approval Status of Pennsylvania's Generic NO_X and VOC RACT Rules.

* * * * *

(c) Effective November 21, 2008, EPA removes the limited nature of its approval of 25 PA Code of Regulations, Chapter 129.91 through 129.95 as those regulations apply to the following areas: Adams, Bedford, Berks, Blair, Bradford, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Dauphin, Elk, Erie, Forest, Franklin, Fulton, Greene, Huntington, Indiana, Jefferson, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne, Wyoming, and York Counties.

[FR Doc. E8–25162 Filed 10–21–08; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0522; FRL–8731–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Major New Source Review for Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision action establishes the limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia on February 12, 2007. The intended effect of this action is to grant limited approval of the September 1, 2006 regulatory amendments to Virginia's existing new source review permit program for owners of sources located or locating in new source review nonattainment areas. This action is also providing full approval of a related SIP revision submitted by the Commonwealth on December 16, 2003, pertaining to amendments made to Virginia's existing nonattainment new source review permit program at that time. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: *Effective Date:* This final rule is effective on November 21, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0522. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650

Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814–3376, or by e-mail at *mccauley.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 2008 (73 FR 36477), EPA published a notice of proposed rulemaking (NPR) proposing limited approval of amendments to Virginia's existing new source review permit program for owners of sources located or locating in nonattainment new source review (NNSR) areas, as submitted to EPA as revisions to the Virginia SIP on February 12, 2007 and approval of certain other amendments to Virginia regulations submitted to EPA on December 16, 2003.

The February 12, 2007 SIP revision submission consisted of amendments to Legislative Rules 9 VAC 5 Chapter 50, Article 4—Stationary Sources and 9 VAC 5 Chapter 80, Article 9—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution which Cause or Contribute to Nonattainment. These rules were adopted by the Commonwealth of Virginia State Air Pollution Control Board on June 21, 2006 and became effective September 1, 2006. The December 16, 2003 SIP revision submission consisted of additional amendments to Legislative Rule 9 VAC Chapter 80, Article 9—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution which Cause or Contribute to Nonattainment.

In this action, EPA is granting limited approval of the February 12, 2007 amendments to Chapter 50, Article 4 and Chapter 80, Article 9, as well as full approval of the December 16, 2003 amendments to Chapter 80, Article 9. Virginia also submitted changes to 9 VAC Chapter 80, Article 6—Permits for New and Modified Stationary Sources as part of the February 12, 2007 SIP revision. However, as stated in the NPR, EPA is not taking any action on Chapter 80, Article 6 at this time.

II. Summary of SIP Revision

Why is Virginia changing its NSR program?

In its December 2002 regulatory action, EPA changed many aspects of the regulations governing the PSD and nonattainment NSR programs, collectively referred to as "NSR". Virginia accepted the conceptual framework of EPA's NSR reform revisions but tailored the program to their State-specific objectives. Virginia's regulations differ in some respects from EPA's regulations. However, these differences are not significant. EPA has concluded that Virginia's regulations conform to the minimum program elements in 40 CFR 51.165 despite some variations in their rules from the federal program. Notable variations were described in the proposal action and will not be restated here.

III. Limited Approval

Why is EPA granting only "limited approval" of Virginia's NSR regulations, effective September 1, 2006 for Nonattainment NSR areas?

Virginia's regulation 9 VAC 5–80–2010 added a new definition for "baseline actual emissions" to reflect changes to the NSR program found in the 2002 Federal NSR Reform rule. Virginia's definition for "baseline actual emissions" varies from the Federal definition at 40 CFR 51.166(b)(47) in two ways. First, for both electric generating units (EGUs) and non-EGUs, Virginia's rule allows the use of different baselines for different pollutants if the owner can demonstrate to the satisfaction of the State Air Pollution Control Board (Board) that a different baseline period for a different pollutant(s) is more appropriate due to extenuating circumstances. This is acceptable to EPA.

However, for non-EGUs, the 24-month baseline period must occur within the five-year period preceding the date the owner begins actual construction or the permit application is deemed complete, whichever is earlier, unless the Board allows a different time period that it deems is more representative of normal source operations. Allowing a more representative period by the Board is acceptable, however, the Commonwealth's regulations could be interpreted to allow this period to be established beyond the 10-year time period allowed in the Federal NSR Reform rule.

As described in our June 27 proposed rule the Virginia regulations meet the general Federal criteria for expanding the lookback period beyond the old requirement of the most recent 24-month period, and in this respect are consistent with Federal requirements.

EPA is granting limited approval because the language of the regulation does not limit the look-back period to the Federally mandated 10 years. Virginia has represented to EPA that the regulation was not intended to allow sources to extend the look-back period beyond 10 years. EPA would look unfavorably upon any use of discretion by Virginia that would allow for baselines that exceed a 10-year lookback period. EPA expects Virginia to correct the definition at 9 VAC 5–80–2010 by limiting the discretionary lookback period to 10 years. When Virginia makes this amendment, they may submit the revised regulation for consideration for full approval of the Nonattainment NSR program.

Despite the fact that the Virginia nonattainment new source review regulations may literally be construed to allow for a source to look beyond the 10 years prescribed by the Federal regulations, the Virginia regulations nevertheless will strengthen the Virginia SIP.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law,"

including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its NSR program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

Other specific requirements of this SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

V. Final Action

EPA has determined that those regulatory amendments to the nonattainment NSR program at Chapter 50, Article 4 and Chapter 80, Article 9 that were submitted on February 12, 2007 are being granted limited approval as noted in Section III above. EPA has also determined that the regulatory amendments to the nonattainment NSR permit program at Chapter 80, Article 9, as submitted on December 16, 2003 are fully approvable. EPA has determined that these regulatory revisions meet the minimum requirements of 40 CFR 51.165 and the Clean Air Act.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *December 22, 2008.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting limited approval of the Virginia nonattainment new source review program for sources locating or located in nonattainment areas may not be challenged later in

proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 9, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by:

■ a. Revising the existing entry for 5–50–270.

■ b. Revising the existing entries for 5–80–2000 through 5–80–2090, 5–80–2100 through 5–80–2140, and 5–80–2150 through 5–80–2190.

■ c. Adding new entries for 5–80–2091, 5–80–2144, 5–80–2200, 5–80–2210, 5–80–2220, 5–80–2230 and 5–80–2240.

■ d. Removing the existing entries for 5–80–2100 and 5–80–2160.

The additions and revisions read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5 Chapter 80)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * * * * *				
Chapter 50 Article 4 Standards of Performance for Stationary Sources (Rule 5–4)				
* * * * * * *				
5–50–270	Standards for Major Stationary Sources (Nonattainment Areas).	9/1/06	10/22/08 [*Insert page number where the document begins*].	Changes "Qualifying pollutant" to "Regulated NSR pollutant". Limited Approval.
* * * * * * *				
Chapter 80 Article 9 Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas				
5–80–2000	Applicability	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2010	Definitions	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2020	General	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2030	Applications	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2040	Application information required	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2050	Standards and conditions for granting permits	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2060	Action on permit applications	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2070	Public participation	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2080	Compliance determination and verification by performance testing.	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2090	Application review and analysis	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2091	Source Obligation	9/1/06	10/22/08 [*Insert page number where the document begins*].	New. Limited Approval.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5 Chapter 80)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–80–2110	Interstate Pollution Abatement	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2120	Offsets	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2130	De minimus increases and stationary source modification alternatives for ozone nonattainment areas classified as serious or severe in 9 VAC 5–20–204.	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2140	Exception	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2144	Actuals plantwide applicability limits (PALs)	9/1/06	10/22/08 [*Insert page number where the document begins*].	New. Limited Approval.
5–80–2150	Compliance with local zoning requirements	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2170	Transfer of permits	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2180	Permit invalidation, revocation and enforcement	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2190	Existence of permit no defense	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	Limited Approval of 9/1/06 amendments.
5–80–2200	Changes to permits	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	New. Limited Approval of 9/1/06 amendments.
5–80–2210	Administrative permit amendments	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	New. Limited Approval of 9/1/06 amendments.
5–80–2220	Minor permit amendments	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	New. Limited Approval of 9/1/06 amendments.
5–80–2230	Significant amendment procedures	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	New. Limited Approval of 9/1/06 amendments.
5–80–2240	Reopening for cause	5/1/02 9/1/06	10/22/08 [*Insert page number where the document begins*].	New. Limited Approval of 9/1/06 amendments.

* * * * *

[FR Doc. E8–25019 Filed 10–21–08; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0521; FRL–8731–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Virginia Major New Source Review, Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision action establishes the limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia on October 10, 2006. The intended effect of this action is to grant limited approval of the September 1, 2006 regulatory amendments to Virginia's existing new source review permit program for owners of sources located or locating in prevention of significant deterioration (PSD) areas. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: *Effective Date:* This final rule is effective on November 21, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0521. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during

normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814–3376, or by e-mail at *mccauley.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 2008 (73 FR 36481), EPA published a notice of proposed rulemaking (NPR) proposing limited approval of amendments to Virginia's existing new source review permit program for owners of sources located or locating in prevention of significant deterioration (PSD) areas. The formal SIP revision request was submitted by Virginia on October 10, 2006.

The request consisted of changes to Legislative Rules 9 VAC 5 Chapter 50, Article 4—Stationary Sources and 9 VAC 5 Chapter 80, Article 8—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration. These rules were adopted by the Commonwealth of Virginia State Air Pollution Control Board on June 21, 2006 and became effective September 1, 2006. The Commonwealth adopted the regulations in order to meet the relevant plan requirements of 40 CFR 51.166. Other specific requirements of this SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

In this action, EPA is granting limited approval of the changes found in Chapter 50, Article 4 and Chapter 80, Article 8. Virginia also submitted changes to 9 VAC Chapter 80 Article 6—Permits for New and Modified Stationary Sources as part of the SIP revision. However, as stated in the NPR, EPA is not taking any action on Article 6 at this time.

II. Summary of SIP Revision

What is being addressed in this document?

Virginia currently has an EPA-approved NSR program for new and modified sources. In this action, EPA is granting limited approval of the Virginia pre-construction permitting program as submitted on October 10, 2006 for sources located or locating in PSD areas.

Why is Virginia changing its New Source Review program?

In EPA's December 2002 regulatory new source review reform action, EPA changed many aspects of the regulations governing the PSD and nonattainment NSR programs collectively referred to as "NSR". Virginia accepted the conceptual framework of EPA's NSR reform revisions but tailored the program to their State-specific objectives. Virginia's regulations differ in some respects from EPA's regulations. However, these differences are not significant. EPA has concluded that Virginia's regulations conform to the minimum program elements in 40 CFR 51.166 despite some variations in their rules from the federal program. All notable variations were described in the proposal action and will not be restated here.

III. Limited Approval

Why is EPA granting only "limited approval" of Virginia's NSR Reform regulations for PSD areas?

Virginia Regulation 9 VAC 5–80–1615 added a new definition to reflect changes to the NSR program in the 2002 Federal NSR Reform rule. Virginia's definition for "baseline actual emissions" varies from the Federal definition at 40 CFR 51.166(b)(47) in two ways. First, for both electric generating units (EGUs) and non-EGUs, Virginia's rule allows the use of different baselines for different pollutants if the owner can demonstrate to the satisfaction of the State Air Pollution Control Board (Board) that a different baseline period for a different pollutant(s) is more appropriate due to extenuating circumstances. This is acceptable to EPA.

However, for non-EGUs, the 24-month baseline period must occur within the five-year period preceding the date the owner begins actual construction or the permit application is deemed complete, whichever is earlier, unless the Board allows a different time period that it deems is more representative of normal source operations. Allowing a more representative time period is acceptable, however, the Commonwealth's regulations could be interpreted to allow this period to be established beyond the 10-year period allowed in the federal NSR Reform rule. As described in our June 27 proposed rule, Virginia regulations meet the general federal criteria for expanding the lookback period beyond the old requirement of the most recent 24-month period, and in this respect are consistent with federal requirements.

EPA is granting limited approval because the language of the regulation does not limit the lookback period to the federally mandated 10 years. Virginia has represented to EPA that the regulation was not intended to allow sources to extend the lookback period beyond 10 years. EPA would look unfavorably upon any use of discretion by Virginia that would allow for baselines that exceed a 10-year lookback period. EPA expects Virginia to correct the definition at 9 VAC 5–80–1615 by limiting the discretionary lookback period to 10 years. When Virginia makes this amendment, they may submit the revised regulations for consideration for full approval of the PSD program.

Despite the fact that the Virginia PSD regulations may literally be construed to allow for a source to look beyond the 10 years prescribed by the Federal regulations, the Virginia regulations nevertheless will strengthen the Virginia SIP.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the

Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Final Action

EPA is granting limited approval of the Virginia Major New Source Review regulations for facilities located or locating in PSD areas as a revision to the Virginia SIP. EPA has determined that the regulatory amendments to Virginia's PSD permit program at Chapter 50, Article 4 and Chapter 80, Article 8, as submitted on October 10, 2006 meet the minimum requirements of 40 CFR 51.166 and the Clean Air Act.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting limited approval of the Virginia NSR program for sources locating or located in PSD areas may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 9, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In §52.2420, the table in paragraph (c) is amended by

■ a. Revising the entries for 5–50–250 and 5–50–280.

■ b. Removing the entries for 5–80–1700 through 5–80–1970 inclusive.

■ c. Adding entries for 5–80–1605 through 5–80–1995 inclusive.

The additions and revisions read as follows:

§52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5 Chapter 80)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 50 Article 4 Standards of Performance for Stationary Sources (Rule 5–4)				
*	*	*	*	*
5–50–250	Definitions	9/1/06	10/22/08 [Insert page number where the document begins].	Revised definition of New Source Review Program. Limited Approval.
*	*	*	*	*
5–50–280	Standards for Major Stationary Sources (Prevention of Significant Deterioration Areas).	9/1/06	10/22/08 [Insert page number where the document begins].	Changes "Pollutant subject to regulation under the federal Clean Air Act" to "Regulated NSR pollutant". Limited Approval.
*	*	*	*	*
Chapter 80 Article 8, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas				
5–80–1605	Applicability	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1700. Limited Approval.
5–80–1615	Definitions	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1710. Limited Approval.
5–80–1625	General	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1720. Limited Approval.
5–80–1635	Ambient Air Increments	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1730. Limited Approval.
5–80–1645	Ambient Air Ceilings	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1740. Limited Approval.
5–80–1655	Applications	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1750. Limited Approval.
5–80–1665	Compliance with local zoning requirements	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1760. Limited Approval.
5–80–1675	Compliance determination and verification by performance testing.	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1770. Limited Approval.
5–80–1685	Stack Heights	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1780. Limited Approval.
5–80–1695	Exemptions	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5 Chapter 80)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–80–1705	Control technology review	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1800. Limited Approval.
5–80–1715	Source impact analysis	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1810. Limited Approval.
5–80–1725	Air quality models	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1820. Limited Approval.
5–80–1735	Air quality analysis	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1830. Limited Approval.
5–80–1745	Source Information	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1840. Limited Approval.
5–80–1755	Additional impact analysis	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1850. Limited Approval.
5–80–1765	Sources affecting federal class I areas—additional requirements.	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1860. Limited Approval.
5–80–1775	Public participation	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1870. Limited Approval.
5–80–1785	Source obligation	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1880. Limited Approval.
5–80–1795	Environmental impact statements	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1890. Limited Approval.
5–80–1805	Disputed permits	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1900. Limited Approval.
5–80–1815	Interstate pollution abatement	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1910. Limited Approval.
5–80–1825	Innovative control technology	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1920 Limited Approval.
5–80–1835	Reserved	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1845	Reserved	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1855	Reserved	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1865	Actuals plantwide applicability (PAL)	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1925	Changes to permits	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1935	Administrative permit amendments	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1945	Minor permit amendments	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1955	Significant amendment procedures	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1965	Reopening for cause	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
5–80–1975	Transfer of permits	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1940. Limited Approval.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5 Chapter 80)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–80–1985	Permit invalidation, revocation, and enforcement	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1950. Limited Approval.
5–80–1995	Existence of permit no defense	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
*	*	*	*	*

[FR Doc. E8–25014 Filed 10–21–08; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2008–0452; FRL–8728–3]

Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding concerning whether or not each state has submitted a complete State Implementation Plan (SIP) that provides the basic program elements specified in section 110(a)(2) of the Clean Air Act (CAA or Act) necessary to implement the 1997 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). By this action, EPA is identifying those states that: Have failed to make a complete submission for all requirements; have failed to make a complete submission for specific requirements; or have made a complete submission. The findings of failure to submit or determinations of incompleteness for all or a portion of a state's SIP establish a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submit, and EPA approves, the required SIPs. The findings that all, or portions of a state's SIP submission, are complete establish a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with the CAA.

DATES: The effective date of this rule is November 21, 2008.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27709; telephone (919) 541–3356; fax number (919) 541–0824; e-mail address: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this action final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement by the statutory date. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

For questions related to a specific state please contact the appropriate regional office below.

Regional offices	States
Region I—Dave Conroy, Acting Branch Chief, Air Programs Branch, EPA New England, I Congress Street, Suite 1100, Boston, MA 02203–2211.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Region II—Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 21st Floor, New York, NY 10007–1866.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Region III—Cristina Fernandez, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Region IV—Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nun Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Region V—Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Region VI—Thomas Diggs, Associate Director Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Region VII—Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2907.	Iowa, Kansas, Missouri, and Nebraska.
Region VIII—Cynthia Cody, Unit Leader, Air Quality Planning Unit, EPA Region VIII Air Program, 1595 Wynkoop St. (8P–AR), Denver, CO 80202–1129.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
Region IX—Lisa Hanf, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	American Samoa, Arizona, California, Commonwealth of Northern Mariana Islands, Guam, Hawaii, and Nevada.

Regional offices	States
Region X—Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region X, Office of Air , Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Idaho, Oregon, and Washington.

Table of Contents

I. Background

On July 18, 1997, EPA promulgated a revised NAAQS for $PM_{2.5}$. In that action, the annual $PM_{2.5}$ standard was set at 15 $\mu g/m^3$, based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations from single or multiple community-oriented monitors. The 24-hour $PM_{2.5}$ standard was set at 65 $\mu g/m^3$, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area (*see* 62 FR 38652).

CAA section 110(a) requires states to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS necessarily affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

As of 2004, states had not submitted complete SIPs to satisfy all of the section 110(a)(2) requirements for the 1997 $PM_{2.5}$ NAAQS (as well as for the 8-hour ozone NAAQS). On March 4, 2004, Earth Justice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to these requirements. Subsequently, EPA entered into a Consent Decree with Earth Justice which required EPA, among other things, to sign a notice for publication in the **Federal Register** no later than October 5, 2008, announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state has made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS.

Section 110(a)(2) lists specific elements that states must meet in the general infrastructure SIP submissions. The requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. In an October 2, 2007 memorandum entitled, "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," EPA identified the specific requirements that are the subject of this action and provided additional guidance on meeting the requirements.

Of special interest is section 110(a)(2)(G) of the CAA which requires SIPs to provide authority for emergency episode plans comparable to that in section 303, as well as provide adequate contingency plans to implement such authority. On that authority, EPA previously established Significant Harm Levels (SHL) for five criteria pollutants—sulfur dioxide, inhalable particulate matter (PM_{10}), nitrogen dioxide, carbon monoxide, and ozone. The SHL represents ambient concentrations of said pollutant that EPA determined, based on health effects data at that time, present an imminent and substantial endangerment to public health or welfare, or to the environment.[1] Since EPA has yet to develop a SHL for $PM_{2.5}$, states have been placed at a disadvantage in meeting this requirement under the CAA. Although EPA's delay in developing a SHL for $PM_{2.5}$ may have made it more difficult for states to meet the section 110(a)(2)(G) obligation, nonetheless, states are still required by statute to satisfy the obligation to have adequate authority to protect the public in the event of a dangerous $PM_{2.5}$ air pollution episode and adequate contingency plans to implement that authority. In this notice, we make findings that some states have failed to make a submission addressing either statutory authority for emergency powers or adequate contingency plans, or both.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Therefore, this action does not cover these specific SIP elements. This action also does not pertain to the requirements in section 110(a)(2)(D)(i), because EPA has previously addressed that requirement.[2]

[1] The SHLs and associated requirements for developing Emergency Episode Plans are codified at 40 CFR Part 51 Subpart H. Appendix L of Part 51, provides an example regulation intended as a guide for states that must develop emergency episode plans (51 FR 40668, November 7, 1986). Subpart H requires states to develop emergency episode plans (where appropriate) that, at a minimum, provide a set of actions that are necessary to prevent ambient pollutant concentrations from reaching levels that could cause significant harm and endangerment to the health of persons in the affected areas.

[2] EPA published a finding that all states had failed to submit SIPs addressing interstate transport for the 8-hour ozone and $PM_{2.5}$ NAAQS, as required by section 110(a)(2)(D)(i). *See* 70 FR 21,147 (April 25, 2005).

II. This Action

This notice reflects EPA's determinations with respect to the section 110(a)(2) requirements for the 1997 $PM_{2.5}$ NAAQS only, based upon the submissions made by the states to fulfill the requirements, or certifying that they have already met the requirements, or both. For those states that have not yet made a submittal, EPA is making a finding of failure to submit, and for those states that made a submittal that was not complete with respect to each element of section 110(a)(2), EPA is making an incompleteness finding.

For those states that did not make any submittal, EPA is making a finding of failure to submit with respect to all of the section 110(a)(2) SIP elements. For those states that did not make a submittal that addressed all of the section 110(a)(2) elements, EPA is making these findings only with respect to those specific section 110(a)(2) SIP elements which a state has not certified that it has met, or not made a SIP submission to meet, as of the signature date of this notice. These findings establish a 24-month deadline for the promulgation by EPA of a FIP, in accordance with section 110(c)(1). These findings of failure to submit do not impose sanctions, or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements of a Title I part D plan for nonattainment areas as required under section 110(a)(2)(I), and because this action is not a SIP call pursuant to section 110(k)(5).

For states receiving an incompleteness finding for certain elements in section 110(a)(2), EPA is also finding that the remaining elements of section 110(a)(2) are complete. For states which EPA has not made any findings of failure to submit for the section 110(a)(2) SIP elements, EPA is by this action making a finding of completeness for all elements. These full and partial completeness findings establish a 12-month deadline for EPA to take action upon such SIPs in accordance with section 110(k).[3]

This action will be effective on November 21, 2008.

A. Finding of Failure To Submit for States or Territories That Failed To Make a Submittal

The following states or territories failed to make a submittal to satisfy the requirements of section 110(a)(2) as of the date of signature of this notice. The effective date of this action starts a 24-month FIP clock for EPA to approve a SIP for the affected states or territories that addresses section 110(a)(2) requirements, or for EPA to finalize a FIP. The states and territories that are affected by this finding of failure to submit are the following:

Region I: Vermont
Region VI: Oklahoma
Region VIII: North Dakota
Region IX: Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands
Region X: Alaska, Washington

B. Finding of Failure To Submit Specific Elements of Section 110(a)(2)

The following states made submissions that address some, but not all, of the section 110(a)(2) requirements as of the signature date of this notice. EPA is by this action identifying the specific elements for which states have not made a complete submission. The effective date of this action starts a 24-month FIP clock for EPA to approve a SIP for the affected states or territories that addresses these specific section 110(a)(2) elements, or for EPA to finalize a FIP that does so:

Region I

Massachusetts: The State of Massachusetts has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Region II

New Jersey: The State of New Jersey has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the State of New Jersey has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

New York: The State of New York has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the State of New York has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Puerto Rico: The Territory of Puerto Rico has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the Territory of Puerto Rico has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Virgin Islands: The Territory of the Virgin Islands has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the Territory of the Virgin Islands has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Region III

Washington, DC: The District of Columbia has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Region V

Illinois: The State of Illinois has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Michigan: The State of Michigan has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans.

Minnesota: The State of Minnesota has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the State of Minnesota has failed to submit a SIP addressing section

[3] For those submissions that were made more than 6 months ago, EPA's deadline to take action to approve those submissions is 18 months from the date of submittal.

110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Wisconsin: The State of Wisconsin has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans.

Region IX

Arizona: The State of Arizona has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations. Also, the State of Arizona has submitted a certification letter which fails to address the section 110(a)(2)(E)(i) and section 110(a)(2)(E)(ii) concerning the necessary assurances of adequate resources and authority under state law and state compliance with requirements respecting state boards. The State of Arizona has submitted a certification letter which fails to address the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans.

California: The State of California has submitted a certification letter which fails to address the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. The State of California has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program that applies to some Air Districts within the State. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations. All other areas of the state, exclusive of these Air Districts have an approved PSD program in place.

C. States That Submitted Complete Submissions To Satisfy the Section 110(a)(2) Requirements

The following states have been determined by EPA to have made complete SIP submissions that address all of the section 110(a)(2) requirements as of the signature date of this notice:

Region I: Connecticut, Maine, New Hampshire, Rhode Island
Region III: Delaware, Maryland, Pennsylvania, Virginia, West Virginia
Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Region V: Indiana, Ohio
Region VI: Arkansas, Louisiana, New Mexico, Texas
Region VII: Iowa, Kansas, Missouri, Nebraska
Region VIII: Colorado, Montana, South Dakota, Utah, Wyoming
Region IX: Nevada
Region X: Idaho, Oregon

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1230.3(b). This rule relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 1997 $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide. The present action does not establish any new information collection requirement apart from that already required by law.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any action subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the action will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purpose of assessing the impacts of this final action on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the U.S. Small Business Administration size standards (*See* 13 CFR 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which independently owned and operated is not dominate in its field.

After considering the economic impacts of this final action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final action will not impose any requirements on small entities. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 1997 $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538 for state, local, and tribal governments and the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 1997 $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in

the Executive Order to include regulations that have "substantial direct effects on the states, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This action will not modify the relationship of the states and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented an air quality management program related to the 1997 $PM_{2.5}$ NAAQS. Furthermore, this action does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is making findings concerning whether or not each state has submitted a complete SIP that provides the basic program elements specified in CAA section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS. The findings of failure to submit for all or a portion of a state's SIP establish a 24-month deadline for EPA to promulgate FIPs to address the outstanding SIP elements unless, prior to that time, the affected states submit, and EPA approves, the required SIPs.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This notice is making a finding concerning whether each state has submitted or failed to submit a complete SIP that provides the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the action in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective November 21, 2008.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the days from the date final action is published in the **Federal Register**. Filing a petition for review by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be final, and shall not postpone the effectiveness of such action.

Thus, any petitions for review of this action related to findings of failure to submit related to the requirements of section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 1997 $PM_{2.5}$ NAAQS must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: October 3, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator.

[FR Doc. E8–25020 Filed 10–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8731–5]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule; consistency update.

SUMMARY: EPA is finalizing the updates of the Outer Continental Shelf ("OCS") Air Regulations proposed in the **Federal Register** on August 13 and 20, 2008. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act Amendments of 1990 ("the Act"). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COA. The intended effect of approving the requirements contained in "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (August, 2008) and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (July, 2008) is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: *Effective Date:* This rule is effective on November 21, 2008.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of November 21, 2008.

ADDRESSES: EPA has established docket number OAR–2004–0091 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Air Division, U.S. EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," or "our" refer to U.S. EPA.

Organization of this document: The following outline is provided to aid in locating information in this preamble.

Table of Contents

I. Background

On August 13, 2008 (73 FR 47114) and August 20, 2008 (73 FR 49136), EPA proposed to approve requirements into the OCS Air Regulations pertaining to Santa Barbara County APCD and Ventura County APCD. These requirements are being promulgated in response to the submittal of rules from these California air pollution control agencies. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comment

EPA's proposed actions provided a 30-day public comment period. During this period, we received no comments on the proposed actions.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed actions. EPA is approving the proposed actions under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request ("ICR") No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations lists the regulatory citations for the information requirements contained in 40 CFR part 55.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: September 24, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

■ Title 40 of the Code of Federal Regulations, part 55, is amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(F) and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, August 2008.

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(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, July 2008.

* * * * *

■ 3. Appendix A to CFR Part 55 is amended by revising paragraphs (b)(6) and (8) under the heading "California" to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 06/19/08)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Repealed 01/01/2001)
Rule 107 Emergencies (Adopted 04/19/01)
Rule 201 Permits Required (Adopted 06/19/08)
Rule 202 Exemptions to Rule 201 (Adopted 06/19/08)
Rule 203 Transfer (Adopted 04/17/97)
Rule 204 Applications (Adopted 04/17/97)
Rule 205 Standards for Granting Permits (Adopted 04/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 03/17/05)
Rule 212 Emission Statements (Adopted 10/20/92)

Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 06/1/07)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/02/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 04/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 09/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 07/19/01)
Rule 326 Storage of Reactive Organic Compound Liquids (Adopted 01/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Metal Parts and Products (Adopted 01/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 06/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 06/19/08)
Rule 342 Control of Oxides of Nitrogen (NO_X) From Boilers, Steam Generators and Process Heaters (Adopted 04/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 09/16/99)
Rule 353 Adhesives and Sealants (Adopted 08/19/99)
Rule 359 Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 361 Small Boilers, Steam Generators, and Process Heaters (Adopted 01/17/08)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 06/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 04/17/97)
Rule 802 Nonattainment Review (Adopted 04/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 04/17/97)
Rule 804 Emission Offsets (Adopted 04/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 04/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 06/19/03)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

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(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 04/13/04)
Rule 5 Effective Date (Adopted 04/13/04)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 06/14/77)
Rule 10 Permits Required (Adopted 04/13/04)
Rule 11 Definition for Regulation II (Adopted 03/14/06)
Rule 12 Applications for Permits (Adopted 06/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 06/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 06/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 06/13/95)
Rule 19 Posting of Permits (Adopted 05/23/72)
Rule 20 Transfer of Permit (Adopted 05/23/72)
Rule 23 Exemptions from Permits (Adopted 04/08/08)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review—General (Adopted 03/14/06)
Rule 26.1 New Source Review—Definitions (Adopted 11/14/06)
Rule 26.2 New Source Review—Requirements (Adopted 05/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 03/14/06)
Rule 26.6 New Source Review—Calculations (Adopted 03/14/06)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 01/13/98)
Rule 26.11 New Source Review—ERC Evaluation At Time of Use (Adopted 05/14/02)
Rule 26.12 Federal Major Modifications (Adopted 06/27/06)
Rule 28 Revocation of Permits (Adopted 07/18/72)
Rule 29 Conditions on Permits (Adopted 03/14/06)
Rule 30 Permit Renewal (Adopted 04/13/04)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 02/20/79)
Rule 33 Part 70 Permits—General (Adopted 09/12/06)
Rule 33.1 Part 70 Permits—Definitions (Adopted 09/12/06)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 04/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 09/12/06)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 04/10/01)
Rule 33.5 Part 70 Permits—Time Frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 04/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 04/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 03/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/06/98)
Rule 42 Permit Fees (Adopted 04/08/08)
Rule 44 Exemption Evaluation Fee (Adopted 04/08/08)
Rule 45 Plan Fees (Adopted 06/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 08/04/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99)
Rule 50 Opacity (Adopted 04/13/04)
Rule 52 Particulate Matter—Concentration (Grain Loading) (Adopted 04/13/04)
Rule 53 Particulate Matter—Process Weight (Adopted 04/13/04)
Rule 54 Sulfur Compounds (Adopted 06/14/94)
Rule 56 Open Burning (Adopted 11/11/03)
Rule 57 Incinerators (Adopted 01/11/05)
Rule 57.1 Particulate Matter Emissions from Fuel Burning Equipment (Adopted 01/11/05)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 09/01/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 04/13/99)

Rule 67 Vacuum Producing Devices (Adopted 07/05/83)
Rule 68 Carbon Monoxide (Adopted 04/13/04)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 06/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 09/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 09/13/05)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 09/13/05)
Rule 74 Specific Source Standards (Adopted 07/06/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 07/05/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/08/05)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_X (Adopted 04/09/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 09/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 04/08/08)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/08/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 06/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 01/08/91)
Rule 74.20 Adhesives and Sealants (Adopted 01/11/05)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Adopted 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 05/10/94)
Rule 74.30 Wood Products Coatings (Adopted 06/27/06)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 101 Sampling and Testing Facilities (Adopted 05/23/72)
Rule 102 Source Tests (Adopted 04/13/04)
Rule 103 Continuous Monitoring Systems (Adopted 02/09/99)
Rule 154 Stage 1 Episode Actions (Adopted 09/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 09/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 09/17/91)
Rule 158 Source Abatement Plans (Adopted 09/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 09/17/91)
Rule 220 General Conformity (Adopted 05/09/95)
Rule 230 Notice to Comply (Adopted 11/09/99)

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15245]

RIN 2105–AD55

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Response to comments.

SUMMARY: The Department is issuing this notice to respond to comments on the amendment to 49 CFR 40.67(b) issued as part of a final rule on June 25, 2008. The Department is not changing this amendment, which will go into effect, as scheduled, on November 1, 2008. Beginning on that date, direct observation collections will be required for all return-to-duty and follow-up tests. When additional testing methodologies appropriate for use in return-to-duty and follow-up testing (e.g., oral fluid and sweat specimens) are approved by the Department of Health and Human Services and adopted by the Department, the Department intends to make these methods available to employers and employees as an alternative to direct observation urine testing in these situations.

DATES: The effective date of 49 CFR 40.67(b), as amended by the Department on June 25, 2008, and delayed on August 26, 2008, is November 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Director, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–3784 (voice), (202) 366–3897 (fax), or *jim.swart@dot.gov*; or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, same address, (202) 366–9310 (voice), (202) 366–9313 (fax), or *bob.ashby@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2005, the Department of Transportation issued a notice of proposed rulemaking (NPRM) to amend 49 CFR Part 40, the Department's drug and alcohol testing procedures rule (70 FR 62276). The primary purpose of the NPRM was to propose making specimen validity testing (SVT) mandatory. Mandatory SVT is an important step in combating the safety problem of cheating on drug tests. Based on this NPRM, the Department issued a final rule on June 25, 2008 (73 FR 35961). The final rule included two provisions (49 CFR 40.67(b) and (i)) concerning the use of direct observation (DO) collections, another significant tool the Department uses to combat cheating.

Petitioners, including the Association of American Railroads (AAR), joined by the American Short Line and Regional Railroad Association; the Transportation Trades Department (TTD) of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO); the International Brotherhood of Teamsters; and the Air Transport Association (ATA), joined by the Regional Airline Association (RAA), asked the Department to delay the effective date of these two provisions, seek further comment on them, and reconsider them. In response to these petitions, the Department issued a notice delaying the effective date of 49 CFR 40.67(b) until November 1, 2008 (73 FR 50222; August 26, 2008). We opened a comment period on that provision, which closed on September 25, 2008. The Department did not delay the effective date of 49 CFR 40.67(i), which went into effect, as scheduled, on August 25, 2008.

The history of DO collections under Part 40 goes back to the beginnings of the Department's drug testing program. The principle that animates this history is that DO, because it is intrusive, is not appropriate to use in the great mass of testing situations (e.g., all pre-employment and random tests), but only in those situations in which there is a heightened incentive to cheat or circumstances demonstrating the likelihood of cheating. In this way, the Department has maintained the proper balance between the legitimate privacy

expectations of employees and the safety and program integrity interests of the Department. As a result, DO collections constitute only a tiny percentage of the drug collections conducted each year under DOT drug testing rules. DO collections have always required the use of a same-gender observer and for the observer to watch the flow of urine from the individual's body into the collection container.

In the December 1, 1989, preamble to Part 40 (54 FR 49854), we said that the limitations on using observed collections in only four circumstances would be maintained despite the fact that some comments requested that the Department allow greater discretion for observed collections. The Department decided that "existing safeguards in Part 40 are adequate to prevent tampering and that direct observation, because of its increased intrusiveness, should be strictly limited." The Department considered that limiting the circumstances that would result in a DO collection is "one factor in the balance between privacy and safety necessity considered by the courts."

The preamble went on to say that some commenters specifically opposed direct observation "as part of follow-up (i.e., post-positive) testing, while other commenters favored this practice." We said that the Department "believes that direct observation may be a useful tool in follow-up testing." There was concern expressed about drug use relapses, especially for cocaine. We went on to say, "An individual who has returned to work after rehabilitation but has suffered such a relapse may have a greater incentive to attempt to beat a follow-up test, because the employer may not provide a second opportunity for rehabilitation." Regarding directly observed follow-up testing, the preamble concludes, "If the employer or EAP [employee assistance program] counselor believes that this may be the case, the opportunity for direct observation should exist."

Currently, section 40.67(a) requires that employers direct immediate collections under direct observation in three circumstances: (1) When the laboratory reported an invalid specimen (e.g., one that has an interfering substance preventing a normal result but the laboratory cannot identify a specific adulterant) and the Medical Review Officer (MRO) reported that there was not an adequate medical explanation for the result; (2) when the MRO reports to the employer that the original positive, adulterated, or substituted test result had to be cancelled because there was not a split specimen available for testing; and (3) when the MRO reports a negative-dilute specimen with a creatinine concentration greater than or equal to 2 mg/dL or less than or equal to 5 mg/dL. We added the third provision in 2003 in an interim final rule (68 FR 31624) and revised it in an interim final rule (69 FR 64865). All these situations involve results indicating a heightened risk of cheating or that an attempt to cheat had taken place.

Direct observation is also mandated at collection sites if the collector finds materials brought to the collection site to tamper with a specimen (section 40.61(f)(5)(i)), determines that a specimen is out of temperature range (section 40.65(b)(5)) or detects other evidence indicating an attempt to tamper with a specimen (section 40.65 (c)(1)). These are also situations involving evidence indicating an attempt to cheat. In addition, employers are currently allowed, but not required, to order a directly observed test under section 40.67(b) for return-to-duty and follow-up tests.

We acknowledge that DO collections are, and always have been, controversial. The Department is well aware that they intrude on personal privacy to a greater extent than non-observed collection methods, and consequently we have limited the use of DO to situations where we believe using this approach is necessary to protect the integrity of the testing process and strengthen the safety objectives of the program. In the December 19, 2000 preamble to a major update to part 40 (65 FR 79462), about observed collections we said, "Directly observed specimens are controversial because of their greater impact on employee privacy. They can be useful because they reduce the opportunity for tampering. On privacy grounds, some commenters, including unions and some service agents, would prefer not to conduct directly observed collections at all." (65 FR at 79489) These commenters opposed adding any situations in which direct observation was authorized or required.

The 2000 preamble went on to say, "Other commenters said that the benefit of greater protection against specimen tampering warranted direct observation in situations that suggested a heightened risk of tampering." (65 FR at 79489) The Department agreed with these commenters. In circumstances that pose a higher risk or greater risk for tampering, "the interests of the integrity of the testing process, with its safety implications, outweigh the additional privacy impact of the direct observation process." (65 FR at 79489–79490)

More recently, there has been a sharply increased emphasis, at the level of national policy, on the problem of cheating and how to deal with it. The Department has been aware for several years of the increasing proliferation of products designed and sold to help workers who use drugs defeat drug tests. As a result we have worked on specimen validity testing rulemaking.

Also, based upon our concerns and those expressed to us by collection site personnel and medical review officers about use of these products, we issued in July 2007 an interpretation outlining additional examples of an employee's failure to cooperate with the testing process that would cause a refusal to test. In that interpretation we said that one refusal to test would be: "The employee is found to have a device—such as a prosthetic appliance—the purpose of which is to interfere with providing an actual urine specimen." We also gave instructions to collectors about how to handle this situation.

Not only was the Department working on the specimen validity testing rulemaking between 2005 and 2008, but also the United States Congress was conducting its own inquiries on the issues. During a May 17, 2005 hearing before the Investigations Committee on Energy and Commerce, the Department of Health and Human Services (HHS) provided the following testimony regarding prosthetic devices delivering synthetic or drug-free human urine:

> The most cumbersome, yet highly effective, way to beat a urine drug test is to use a physical belt-like device hidden under the clothing which contains a reservoir to unobtrusively hold real human urine from another person that is free from drugs, and deliver that bogus specimen into the collection container through a straw-like tube, or through a prosthetic device that looks like real human anatomy, color-matched. This last described device is heavily marketed for workplace drug testing and criminal justice urine collection situations that require directly observed urine specimens to be provided. Synthetic urine can be used in place of real human drug free urine. [Testimony before the Subcommittee on Oversight and Investigations Committee on Energy and Commerce United States House of Representatives Products Used to Thwart Detection in Drug Testing Programs, Statement of Robert L. Stephenson II, M.P.H., Director, Division of Workplace Programs Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services at pages 4–5].

Also at the 2005 hearing, the United States Government Accountability Office (GAO) testified that:

> In summary, we found that products to defraud drug tests are easily obtained. They

are brazenly marketed on Web sites by vendors who boast of periodically reformulating their products so that they will not be detected in the drug test process. In addition to an array of products designed to dilute, cleanse, or substitute urine specimens submitted to testers by drug users, approximately 400 different products are available to adulterate urine samples. The sheer number of these products, and the ease with which they are marketed and distributed through the Internet, present formidable obstacles to the integrity of the drug testing process. [Testimony Statement of Robert J. Cramer, Managing Director, Office of Special Investigations, the United States Government Accountability Office (GAO), before the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, GAO–05–653T, May 1, 2005].

On November 1, 2007, following media coverage regarding compromised collection integrity and security issues, the Congressional Subcommittee on Transportation and Infrastructure held a hearing on the problem of cheating on DOT-required tests. At the hearing, the GAO testified about the threat to the integrity of the testing program posed by the devices being used to substitute urine in DO collections. In its final report issued in May 2008, the GAO noted that the ease of subverting the testing process was a factor contributing to failures to detect drug use. Specifically, GAO noted that transportation employees "are successfully adulterating or substituting their urine specimens with products that are widely available and marketed as * * * [ways to beat a test.]" [GAO Report No. GAO–08–600, Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep them off the Road, May 2008 at pages 2–3.] The GAO further found that "Several hundred products designed to dilute, cleanse, or substitute urine specimens can be easily obtained." [GAO Report No. GAO–08–600 at page 20.]

In light of the by-now well-recognized availability of substances and devices for substituting or adulterating specimens, the Department's premise for the changes it made to section 40.67 was that taking additional steps to combat cheating on drug tests was appropriate. Such steps are needed to avoid placing the traveling public in danger of workers who try to cheat on their drug tests. Given the greater availability of means to cheat on tests, compared to the late 1980s, the Department took the position in the June 25 final rule that it is appropriate to strike the balance between the Department's interests in safety and program integrity and employees' interest in privacy at a different point than it did two decades ago.

In the Omnibus Transportation Employee Testing Act of 1991, Congress recognized that, while privacy is a very important value in the drug testing process, it is not an absolute value. The Act directs the Department to "promote, *to the maximum extent practicable,* individual privacy in the collection of specimens" (49 U.S.C. 20140(c)(1), emphasis added). In issuing the June 25 final rule, the Department, took the position that it is no longer "practicable" to operate a drug testing program without adding countermeasures to well-publicized cheating techniques and devices.

With respect specifically to the new section 40.67(b), the Department, in the June 25 final rule, said that DO collections would be required for all follow-up and return-to-duty tests. The new requirement, aimed at counteracting cheating in these tests, was included as section 40.67(b). It read, "As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test." Under Part 40 as it existed before this amendment, employers had the discretion to require direct observation in follow-up and return-to-duty tests, but were not mandated to do so. It is significant that employers rarely exercised this important option.

Notably, the November 1, 2007 GAO report indicated that even when collectors followed the appropriate procedures for integrity and security of specimens, the GAO inspectors were able to bring adulterants into the collection sites and successfully adulterate their specimens. These adulterants went undetected during laboratory testing. The GAO report said:

> Even in cases where the collector followed DOT protocol and asked our investigator to empty his pockets, our investigators simply hid these products in their pockets and elsewhere in their clothing.* * * Investigators determined that there is information on the Internet about concealing drug-masking products. For example, one Web site noted that "although most testing sites will require you to remove items from your pockets, it is still possible to sneak in another specimen."

In the Department's view, this new requirement mandating DO for return-to-duty and follow-up testing was a logical outgrowth of the development of the Department's increasing efforts to deal with the problem of cheating in drug tests. Even though we did not foresee in 1989 the degree to which products designed to beat the drug test would later become available, the Department was concerned about specimen tampering and about the heightened motivation of those employees returning to safety sensitive positions after positive tests or refusals to tamper with their specimens. That concern has increased in recent years as information about the widespread availability of cheating products has become available.

As a consequence, the Department believed, in adding this provision, that it was important for us to be consistent with the other DO collection provisions, which make DO collections mandatory in circumstances involving heightened motivation for or evidence suggesting attempts to cheat (see sections 40.61(f)(5)(i); 40.65(b)(5) and (c)(1); 40.67(a)). In all these cases, use of DO is mandatory. If safety necessitates a DO in one of these circumstances, then, the Department believed, safety likewise necessitates DO collections as part of follow-up and return-to-duty tests. The Department was mindful that everyone who has to take a return-to-duty or follow-up test had already violated the rule (e.g., by testing positive or refusing to test), showing that he or she has knowingly chosen to act in a way that presents an increased risk to transportation safety. Such employees will be acutely aware that they must test negative on all return-to-duty and follow-up tests in order to regain or retain their ability to perform safety-sensitive functions. These circumstances, the Department believed, present just the sort of heightened incentive for cheating on a test that DO collections are intended to combat.

It was but a modest, incremental step from the current regulation's *authorization* of DO in follow-up and return-to-duty situations to the June 25 final rule's *requirement* for DO in these situations. Consequently, the Department believed that taking this step was timely and appropriate. Nevertheless, the NPRM had not specifically requested comments on this subject, and the Department consequently opened a comment period on this provision and delayed its effective date until November 1, 2008.

In considering all issues regarding drug testing, the Department keeps squarely in mind the vital safety purposes of its program. Recent multi-fatality transportation accidents in which drug use by safety-sensitive personnel was involved underline the importance of deterring use of illegal drugs by transportation workers. When workers who use drugs believe they can get away with their misconduct by cheating, the deterrent effect of the

Department's rules is undermined. This is detrimental to public safety, and the Department cannot tolerate it.

Comments and DOT Responses

The docket includes 86 comments. The breakdown of comments by source is the following:

Substance Abuse Professionals: 20
Unions or other employee organizations: 17
Collection sites or collection site organizations: 16
Individual employees: 10
Other individuals: 9
Employers or employer organizations: 9
Third-party Administrators: 3
Laboratories: 1
Medical Review Officers: 1

Some union and employer commenters are represented twice in this breakdown (e.g., because the docket includes a petition requesting an opportunity for further comment and an additional comment from the same organization once the docket was opened). Many of the individual comments from employees and others were submitted anonymously.

Comments on Direct Observation Procedure (Section 40.67(I))

The August 26, 2008, notice opening a comment period sought comments only on the provision of section 40.67(b) that would make DO mandatory, rather than optional, in follow-up and return-to-duty testing. The notice specifically said that comments were not sought on the provisions of section 40.67(i). This section, which went into effect August 25, 2006, requires observers in directly observed collections to direct employees to raise and lower clothing and turn around, so that the observer can note any prosthetic or other device that the employee may possess in an attempt to cheat on the test.

Nevertheless, a number of parties did comment on 40.67(i). One union and a comment from two employer organizations said that the Department should have postponed the effective date for this provision and opened a comment period, since in their view the notice of proposed rulemaking leading to the June 25 rule did not provide sufficient notice concerning the provision. Twenty commenters, mostly unions and individual employees, but also including a few collection sites, objected to the idea of the revised observation procedure, saying that it was too great an intrusion on employees' privacy. Many of these commenters also said that there was insufficient evidence that people in transportation industries were actually using prosthetic and other devices, and that therefore the Department's countermeasure was unnecessary. Two commenters expressed the concern that the rule could create confusion among collectors between cheating devices and medically-necessary prostheses, or devices used as a form of sexual expression, with the result that users of legitimate devices could unfairly be determined to have refused to test. Two Substance Abuse Professionals (SAPs) who commented on the provision and a Third Party Administrator (TPA) supported its inclusion, as a useful measure to counter attempts to cheat.

DOT Response

Because matters concerning section 40.67(i) are outside the scope of the August 26 notice, these comments are not relevant to the decision the Department is making in this document: whether the provisions of section 40.67(b) should be retained, removed, or modified.

We would note, however, that the basic procedure of body-to-bottle direct observation of certain tests involving a heightened risk of cheating, or evidence of a possible attempt to cheat, has been part of the Department's testing procedure since the program's beginnings in the 1980s. As attempts to cheat even on direct observation tests have become more sophisticated over the years—the Department's 1988–89 testing procedure rules did not need to take prosthetic and other cheating devices into account, in particular—it is important for the Department's procedures to change to accommodate new circumstances. People who believe they can use cheating devices to get away with using illegal drugs while continuing to perform safety-sensitive functions are a threat to public safety.

Some commenters argued that the Department has not provided data on how often prosthetic and other cheating devices are being used, so the Department need not take measures to prevent their use. The anecdotal evidence provided by several commenters to the docket, along with experience the Department has gained through the compliance activities of the DOT Agencies, provides sufficient justification to us that such devices are not only readily available, but are actually being used. The successful use of prosthetic and other cheating devices is, by nature, a matter of stealth. If someone uses such a device, and gets away with it, the drug test result will be a negative test result. Consequently, the cheater's action will never turn up in drug testing statistics. It is illogical to argue that the Department cannot take action to prevent cheating because successful cheating is absent from the program's statistics.

The Department disagrees with commenters who said that there was insufficient notice of this anti-prosthetic provision in the NPRM. The Department explicitly sought comment in its October 2005 NPRM (70 FR 62281) on whether collectors should check to make sure that employees providing a specimen under DO are not using a prosthetic or other device to cheat on the test (e.g., by having an employee lower his pants and underwear so that the collector or observer could determine whether the employee was using such a device). This notice fully meets the requirement of the Administrative Procedure Act (APA) for a meaningful participation from the public by fairly apprising interested persons of the issues in the rulemaking. While DOT and agencies commonly do publish proposed rule text, there is no statutory requirement in the APA to do so, and doing so is not a mandatory prerequisite to issuing a final rule. A "description of the subjects and issues involved" (5 U.S.C. 553(b)(3)) is sufficient. That the notice did provide interested persons a meaningful opportunity to comment on this issue is evidenced by the comments that the Department in fact received.

In the preamble to the Department's final rule based on this NPRM (73 FR 35968), the Department responded to comments on this proposal. This response set forth the Department's rationale for adopting the new provision, found in section 40.67(i), requiring employees to raise and lower their clothing to show the collector or observer that the employee does not possess a prosthetic or other device designed to beat the test.

The Department has fully explained in regulation text, guidelines, and supportive materials that the devices subject to the new procedures would be those expressly designed to interfere with the collection process (*e.g.*, designed to carry "clean" urine or urine substitutes into the collection site). Likewise, our guidelines have always had provisions for those employees whose medical conditions require them to provide urine via indwelling catheters or external urine bags.

Comments Favoring Mandatory Direct Observation Testing on Return-to-Duty and Follow-Up Tests

The Department received 29 comments favoring the concept of DO collections in general and/or the mandatory application of DO to follow-up and return-to-duty testing. The

majority of these comments were from SAPs, though a few collection sites, a testing industry association, an MRO, an employer, and a few individuals took this view as well. The common theme among these commenters was that conducting direct observations on return-to-duty and follow-up tests is important to safety.

SAP commenters generally said, based on their personal experience of working with individuals who had failed or refused drug tests, that people with addiction or other substance abuse problems had a great deal of difficulty in changing their behavior. They often exhibit denial of their problems and have a powerful drive to cheat in order to continue using the substances to which they are attached while continuing to work. One of the SAPs commented that for an individual who had failed or refused a drug test, being subject to DO and a return-to-duty or follow-up test is a consequence of substance abuse problems and/or a violation of Federal law, and as such was justified. Some commenters pointed to the fact that many treatment programs use direct observations for their own testing during rehabilitation, so many who have undergone treatment would expect direct observations.

A number of SAPs indicated that when they recommended DO, employers responded by saying they would not have employees observed. Some employers were alleged to have stopped using SAPs who made these recommendations. In essence, SAPs said that employers were undermining the entire purpose of having the DO option. For this reason, one SAP recommended that any violation related to an employee's attempt to beat the test by adulteration, substitution, or other refusal should be met with long-term, if not permanent, removal from safety sensitive duties.

The collection site organization that commented noted that DO collections make up a very small number of all DOT tests and can be an effective deterrent against cheating on return-to-duty and follow-up tests. One SAP commented that making DO mandatory in the return-to-duty and follow-up contexts would counteract what he viewed as hesitancy on the part of many employers under the present discretionary rule. This timidity, in his view, has led to a significant amount of cheating on these tests. Finally, some employer associations, while objecting to making DO mandatory for all follow-up and return-to-duty tests, supported requiring DO when the follow-up and return-to-duty tests resulted from a refusal to test, as distinct from a positive test.

DOT Response

The Department believes that the expertise of SAPs—the individuals in the drug testing system who most often have first-hand, day-to-day observation of the individuals who violate DOT drug testing rules and the behaviors and motivations of these individuals—carries a great deal of weight in this discussion. They are the "Gatekeepers" of the return-to-duty process. SAPs have the education, qualifications, and experience that vest them with a significant role in evaluation, treatment, return-to-duty recommendations, and follow-up testing plans of the individuals who have violated Part 40 through their refusals and/or positive test results. Their nearly unanimous view that DO collections, particularly in the context of return-to-duty and follow-up testing, is a necessary and appropriate response to the predictable behaviors of many violators strongly supports the Department's view that there is a heightened risk of cheating by individuals who are seeking to reclaim or retain the ability to perform safety-sensitive work after a violation.

We also agree with SAPs who pointed out that individuals in recovery often need support to help them in their efforts to remain abstinent from drugs. They point out that people with substance abuse problems or who suffer from addiction are prone to having problems dealing with their drug use and in changing their drug use behavior, even after rehabilitation. In short, these employees are prone to relapse into drug use. We agree with SAPs who believe that DO collections would help these employees in their struggle to stop drug use.

We also agree with SAPs comments indicating that drug treatment and education programs require DO collections during their program efforts. Therefore, most employees coming back into the workplace after testing positive or refusing a DOT test would be accustomed to having their collections observed.

Employees who fail or refuse a drug test, and who are offered the opportunity by their employer to return to work, are frequently covered by a "last chance agreement," a "two strikes and out" policy that means that a second violation will result in the individual being fired. In the aviation industry, the statutory "permanent bar" means that employees who fail a second test will never work in a particular occupation again. Where an individual cannot resist the powerful pull of drug dependence, and realizes that a positive result can cost him or her a job or even a career, cheating using one of the readily available techniques can prove an attractive option.

We agree with the point that tests requiring DO collections make up only a small percentage of all DOT drug tests, and hence do not affect the vast majority of workers who take and pass DOT drug tests. We want to correct the misunderstanding of some commenters, who appeared to believe that all DOT tests would be directly observed under the new rules. To the contrary, people taking pre-employment, random, reasonable suspicion, and post-accident tests are not subject to DO, unless their actions trigger a suspicion that they are trying to cheat. The only workers who are affected by DO testing are those who by their conduct at the collection site or by the results of their tests have demonstrated that they are willing to endanger public safety through violating Federal law prohibiting illegal drug use. As a joint comment from two employer associations noted, the propensity to avoid accountability for drug use is particularly marked among individuals who refuse to take a drug test.

Comments Opposing Mandatory Direct Observation Testing on Return-to-Duty and Follow-Up Tests

Sixteen commenters, including several unions and a number of individuals, opposed DO in general. They said it was too intrusive, violated employees' privacy, and would work a particular hardship on people who had anxiety disorders that made it difficult for them to urinate when someone was watching. A number of union commenters also said that they believed that expanding the scope of mandatory DO testing to all follow-up and return-to-duty tests would exceed the Department's constitutional authority as outlined in the 1989 Supreme Court case (*Skinner* v. *Railway Labor Executives' Association*, 489 U.S. 602 (1989)) that upheld the constitutionality of Federal Railroad Administration (FRA) drug testing requirements applying to the rail industry. In addition, some of these comments cited the provision of the Omnibus Transportation Employee Testing Act of 1991 directing the Department to "promote, to the maximum extent practicable, individual privacy in the collection of specimens" (see 49 U.S.C. 31306(c)(1) and parallel sections).

Three unions suggested that DO testing was not needed for return-to-duty and follow-up tests because employees who had tested positive had, in effect, shown themselves to be

willing to submit to testing without cheating. The unions reasoned that these employees were not the sort of people who had the motivation or propensity to cheat on tests. Moreover, one of the unions said, employees it represented must go through a detailed SAP evaluation process as well as vetting by DOT before returning to duty, so are likely to be drug-free.

One of the most frequent comments made by commenters opposing the mandatory use of DO for return-to-duty and follow-up tests was that there was insufficient evidence of the need to take this step. Sixteen comments, mostly from unions and some employer groups, took this view. One union said that the low overall violation rate and the small number of recorded cases of adulteration and substitution showed that DO collections were not needed. In addition, the commenter said, individuals had shown a SAP that they were successfully rehabilitated by the time they got to the follow-up test stage of the process. Four other unions said that there was no evidence demonstrating a higher level of adulterated or substituted tests in the return-to-duty and follow-up contexts, and there was no documentation that transportation employees actually used prosthetic and other cheating devices, or that DOT agency personnel had not seen evidence of cheating.

Eleven commenters, among which were unions, employers or employer associations, and collection sites or TPAs, urged the Department to retain the existing rule that makes the use of DO an employer option in the follow-up and return-to-duty contexts. One union said that DO should not be required for follow-up and return-to-duty tests unless there were specific findings or medical determinations backing the requirement for a given employee. Two other unions suggested that SAPs were in a good position to determine when DO was appropriate for an individual subject to return-to-duty and follow-up tests, and their findings could be a basis for such a decision. Another union suggested that the employer's designated employer representative (DER) could appropriately make this decision. On the other hand, two unions and a collection site operator said that, under existing DOT rules and guidance, DERs had too much discretion to direct that a test be conducted under DO.

Twelve commenters, mostly collection sites, expressed the concern that they would be unable to find enough people to act as observers. The rule requires observers to be the same gender as the employee being tested, they noted, and their experience was that most or all collection site personnel were women while most employees reporting for testing were men.

Seven commenters said that making DO mandatory in follow-up and return-to-duty testing would significantly increase the total number of DO collections. One employer association said that of the approximately 4000 such tests in its industry, employers found it necessary to use DO only rarely. A large employer said it chose to use DO in only a small number of the approximately 1200 return-to-duty and follow-up tests it administered per year. Another employer association predicted that the number of DO collections would double. A union projected that there would be a dramatic increase in the number of employees subject to DO tests and the number of such tests conducted, if all follow-up and return-to-duty tests are directly observed. Some commenters said that there would be increased costs, since in many cases a second person, other than the collector, would have to be paid to observe the tests. Five commenters, including a TPA, two collection sites, an employer, and an individual, said they feared that mandatory DO in follow-up and return-to-duty testing would lead to a decrease in the availability of collection facilities. Two commenters said that the prospect of additional costs had already persuaded a few collection sites to stop doing DOT testing.

In other comments, a TPA expressed concern that mandatory DO would lead employers to fire people rather than giving them a chance to return to work, because of extra costs of DO testing. A collection site said that only medical personnel should be observers in DO collections, while another collection site organization said that employer representatives should be able to act as observers.

DOT Response

The Department agrees with commenters that DO collections are intrusive. The Department's rule has always recognized that there is a subset of cases in which this intrusion is justified in the interests of program integrity and public safety. When employees' conduct at the collection site shows the likelihood of an attempt to tamper with a specimen, when unexplained invalid test results come back from the laboratory, or when employees test positive or refuse to take a test, the Department's regulations have always recognized that there is a higher risk of cheating and a higher risk to safety. In these situations, the Department's existing rules require or permit the use of DO testing in order to deter and/or detect attempts to cheat.

The Supreme Court's decision in *Skinner* held that the FRA's post-accident drug testing program for railroad employees was constitutional, notwithstanding the absence of individualized suspicion of drug use by employees subject to testing. A companion case (*National Treasury Employees' Union* v. *Von Raab*, 489 U.S. 656 (1989)) concerning the testing of Federal customs personnel and a subsequent case concerning the Federal Aviation Administration's (FAA) drug testing program (*Bluestein* v. *Skinner*, 908 F.2d 451 (9th Cir., 1990), cert. denied 498 U.S. 1083 (1991)) made similar findings with respect to random testing programs. All of these cases found that Federally mandated drug testing was subject to 4th amendment scrutiny but that the Federal agencies involved had successfully struck a balance between the safety needs of the government and the privacy interests of employees.

The courts in *Skinner* and *Von Raab* noted that the FRA's testing program avoided additional intrusion into employees' privacy by not using direct observation. Indeed, the FRA and Customs programs, like the current DOT program, did not use DO for all tests, as the Department of Defense program for military personnel does. Nothing in the decisions, however, suggests that the courts would regard any and all use of DO as unconstitutional on its face. In fact, *Bluestein* pertained to the FAA's drug testing program that was subject to 49 CFR Part 40 which, as noted above, has always made use of DO. In determining whether requiring, rather than merely permitting, the use of DO in return-to-duty and follow-up exceeds constitutional bounds, it is reasonable to believe that courts would continue to examine whether the Department had appropriately balanced the government's compelling safety interest with the legitimate privacy interests of employees. [*See Gonzales* v. *Metropolitan Transportation Authority*, 73 Fed. Appx. 986, 2003 WL 22006014 (9th Cir. August 25, 2003) (compelling interest in public safety supports random testing of employees who only very rarely perform safety-sensitive functions).] Given that the precise place where the Department strikes this balance can properly be affected by changes in society, such as the greater prevalence of cheating devices and products now compared to the 1980s, the Department believes it likely that the courts would find that the Department had acted constitutionally.

The privacy provision in the Omnibus Transportation Employee Testing Act gives discretion to the Department to determine the maximum extent to which the protection of individual privacy in the testing process is practicable. Part 40 has always contained extensive protections for individual privacy in the testing process. However, given the now-widespread availability and promotion of cheating devices and products, the purpose of which is to allow employees to conceal their illegal drug use while continuing to perform safety-sensitive functions, it is not practicable to turn a blind eye to the damage that cheating on drug tests can have on public safety. In the Department's judgment, it is essential to put into place additional countermeasures to deter and detect cheating, the likelihood of which has increased in the years since Part 40 was first adopted.

The Department gives little weight to the unions' argument that people who have tested positive are unlikely to try to cheat, simply because they either apparently did not cheat while providing a positive specimen the first time around or have been through the SAP process. (This argument does not apply at all to people who have refused a test, since they have already demonstrated their determination to circumvent the testing process.) Employees in safety-sensitive positions who test positive have shown a willingness to knowingly disregard public safety and violate Federal law by using illegal drugs. Employees who know that they have duties that impact public safety and then engage in illegal drug use have, by their actions, demonstrated a lack of integrity that could readily manifest itself in an attempt to cheat on return-to-duty and follow-up tests.

In this context, we note that DOT drug program statistics show that the violation (*i.e.*, positives and refusals to test) rates for return-to-duty and follow-up tests, in every regulated industry, are higher than the random testing violation rates. While a number of commenters asserted that employees who have previously violated the rules were seen by a SAP, participated in a program, and returned to duty were less likely to be prone to the temptation of continuing to use drugs or of adulterating or substituting their specimen on return-to-duty/follow-up tests, the Management Information System (MIS) data submitted by all transportation modes indicates that the violation rate for return-to-duty and follow-up testing is two to four times higher than that of random testing.

This situation is starkly illustrated in the aviation and rail industries, those most frequently represented in comments opposing DO in return-to-duty and follow-up testing. This data comes from the Department's MIS reports for 2007:

	Random (percent)	Return-to-duty (percent)	Follow-up (percent)
Aviation	.60	2.12	1.86
Rail	.52	1.2	1.5

Put another way, the violation rate on return-to-duty tests is almost four times as high as the random violation rate in the aviation industry. The violation rate on follow-up tests is over three times the random violation rate. In the rail industry, the return-to-duty violation rate is over twice the random violation rate, while the follow-up violation rate is nearly three times the random violation rate. In addition, when employees in these two industries tested positive on their follow-up tests, the most prevalent drugs identified were—in order—cocaine, marijuana, and amphetamines/methamphetamines.

This information supports SAP commenters' views of the motivation of previous violators to cheat. As SAP commenters pointed out, people who return to illegal drug use and realize that their jobs are at stake have strong motivation to take all necessary steps, including cheating, to avoid another positive result. The motive to cheat exists, widely advertised cheating devices and substances provide the means, and—in the absence of DO collections—current procedures for non-observed collections provide the opportunity. The Department stands by its view that return-to-duty and follow-up tests involve a heightened risk of cheating, compared to other testing occasions.

As noted above in the discussion of section 40.67(i), the Department believes it is illogical to conclude that a lack of drug test result data showing use of prosthetic and other devices supports a conclusion that there is no need for DO tests in follow-up and return-to-duty tests. Cheating attempts that evade detection, by definition, are not captured in program statistics. They are likely to be counted as normal negative test results, and not as adulterated or substituted tests. In any case, through experience in inspections, investigations, and during the course of its duties in assisting the public with complying with Part 40, the Department is aware of many instances of cheating. The FAA and the Federal Transit Administration, for example, have found hidden above ceiling tiles empty urine containers and plastic baggies brought into collection sites. Collectors have reported finding collection containers, baggies, bottles and plastic tubing hidden above ceiling tiles and in trash containers. MROs and collectors have told us about commercial vehicle drivers who used prosthetic cheating devices and accidentally revealed them to physicians and collectors shortly after providing their specimens. There are many more specific instances of cheating that we have become aware of over time.

While this information is anecdotal rather than statistical, it is the Department's view that when well-publicized and advertised means of cheating exist, and we know these means are being used to thwart our testing program, it is clear that the Department's program is not immune. Thus, it is reasonable for the Department to take steps to deter and detect the use of cheating devices.

At the time the Department initiated its drug testing program in the late 1980s, it was common for unions and other opponents of testing (including those whose challenges to the program were rejected by the courts in cases like *Skinner*, *Bluestein*, and *Von Raab*) to argue that the Department had no basis for its testing program because the Department had not proven by statistics or otherwise that there was really a drug abuse problem in the transportation industries. The Department replied that, when public safety was at stake, the Department could not take the risk of assuming that transportation workers were immune from a society-wide problem. Likewise, the Department cannot, in keeping with its public safety responsibilities, assume that means of cheating made widely available are somehow never used by transportation workers, especially when our experience demonstrates otherwise.

The Department does not intend to depend solely on DO testing to combat the problem of cheating. The June 25 final rule made specimen validity testing (SVT) mandatory for all DOT specimens. The Department has provided additional guidance to collection sites on maintaining the appropriate safeguards against cheating, mailing to over 24,000 collection sites "DOT's 10 Steps to Collection Site Security and Integrity" posters. The Department has explicitly supported legislation to strengthen program integrity, such as criminalizing the sale of cheating products and providing DOT agencies with civil penalty authority to sanction collection sites and other

service agents who do not carry out the rules properly. While these steps are important, they do not replace DO testing as a means of deterring and detecting cheating at the collection site when there is a heightened risk of cheating.

Some comments said that large employers or groups of employers choose to conduct DO testing on only a few follow-up and return-to-duty tests. The employer option in previous versions of Part 40 was intended to give employers the chance to make careful, case-by-case, determinations of whether DO was appropriate for particular employees undergoing these post-violation tests, using their discretion wisely to protect against cheating that undermines the deterrent effect of the testing program (We note with interest that some union commenters suggested that, under present rules, it would be appropriate for an employer to require DO in follow-up and return-to-duty testing based on the findings of a SAP or a designated employer representative.) To the extent that employers are not taking responsibility for doing so, and are instead using the option to avoid using DO in all or most return-to-duty and follow-up tests (e.g., for reasons of labor-management agreements, fear of upsetting employees, concern about costs), their behavior provides additional reason for the Department to mandate DO for these types of tests.

For almost 20 years, the rules have required same-gender observers for DO collections. This requirement has not changed. If some collection sites are staffed mostly by women at the present time, while employees being tested are mostly men, the evident course of action for these sites to follow would be to hire additional men, at least on an on-call basis, to handle DO duties. Return-to-duty and follow-up tests are conducted at a day and time set by the employer, so the employer has ample time to notify the collection site in advance that a same-gender observer will be needed for a DO collection. As a major drug and alcohol testing industry association responsible for training many collectors noted in their docket comment, collectors and collection facilities must have the ability to perform DO collections in order to be in compliance with 49 CFR part 40. Collection sites and employers have had to be ready with same gender observers for two decades.

It should be noted that observers do not need to be trained collectors. They need only be able to carry out basic instructions for the observation process. Being male would be a bona fide occupational qualification for such a position, such that collection sites could specifically seek men to play this role without running afoul of equal employment opportunity laws because most employees requiring observation are men. We do not believe that people acting as observers need to be medically trained, as they are not performing any specifically medical tasks (even trained collectors do not need to be medical professionals). DOT has produced an instruction sheet about DO procedures and made it available to all collectors and collection sites, as well as collector and MRO training organizations.

The Department also believes that, while there would be some increase in the number of DO tests, the increase would not be as dramatic as some commenters asserted. Therefore, the costs to collection sites and employers would not increase significantly.

One major drug and alcohol testing association specializing in collection activities, in their docket comments, estimated that the Department's new rule would effect less than 2% of employees. Our MIS data for 2006 shows that return-to-duty and follow-up made up 2% of all DOT tests. HHS Data for 2006 indicated that there were approximately 7.5 million tests conducted by HHS certified laboratories, of which we estimate that 7.32 million were DOT tests. That would mean that there could be approximately 146,400 return-to-duty and follow-up DOT tests annually. This figure includes those return-to-duty and follow-up tests already being conducted under DO by employer request.

The Department estimates that there are more than 24,000 collection sites throughout the United States. Even if there had been no DO collections for return-to-duty and follow-up testing, this would average only an increase of 6 DO collections per site per year. This is certainly a manageable number. As one testing industry commenter noted, if a collection site facility is currently required to conduct DO collections at any time to be compliant with part 40, "it should not matter whether they perform 1000 DO collections or 1020 (2% more)."

The Department recognizes that some collection sites may have to collect more than that, but then there will be others who will collect fewer than the average, just as some employers will be responsible for more than an average number of employees in return-to-duty and follow-up programs and others fewer than average.

The Department believes that a wide variety of factors affect an employer's decision about whether to retain an employee who has violated the rules, and we consequently doubt that requiring DO in follow-up and return-to-duty tests will cause a major shift in employers' decisions about retention. In any case, the Department's interest is in safety, and we have always left personnel decisions to employers.

The Department's experience is that there is a good deal of turnover in the collection site business, as some sites open and others close. Having to perform additional DO tests could lead some sites to leave the business; where there is a market demand for services, others are likely to take their place. Finally, we believe commenters did not correctly understand DOT guidance concerning the rule of employers and DERs in directing collection sites to conduct tests under DO. Employers and their DERs do not have unfettered discretion to direct collectors to use DO; they can only do so where the Department's rules require DO to be used. The Department will review its guidance documents to determine if any further clarification of this point should be made.

Use of Alternative Specimens

Fourteen commenters said that, rather than making DO mandatory in follow-up and return-to-duty tests, the Department should take other, less intrusive, actions to reduce the likelihood of cheating. One testing industry association, a collection site, an employer, and a few individuals recommended that the Department adopt hair or saliva testing as an alternative to urine testing, believing that these methods were less vulnerable to cheating. Other suggestions included tighter supervision of the collection process and better training of collection personnel and support of anti-cheating legislative proposals in Congress.

DOT Response

The Department is not opposed to the use of alternative, less intrusive, testing methods as a means of accomplishing the safety purposes of the program while preventing individuals from cheating. Under the Omnibus Transportation Employee Testing Act of 1991, however, the Department is authorized to use only testing methods that have been approved by the Department of Health and Human Services (HHS). To date, HHS has not approved any specimen testing except urine. To counteract serious concerns about potential cheating in urine testing, DOT must therefore rely for now on DO collections in the situations spelled out in Part 40; this is the tool we have available at this time to ensure that

cheating does not undermine the safety objectives of the Department's program.

However, we know that HHS is in the process of working toward the approval of updates to the Mandatory Guidelines for urine testing which also supports use of some alternative testing methodologies. Based upon our discussions with HHS, oral fluids and sweat specimen testing are areas of promise which will receive maximum focus in HHS's next approval process. When they are approved by HHS, these methodologies will be forensically and scientifically suitable to be used in the DOT testing programs. Both oral fluid and sweat specimen testing are considerably less intrusive than DO of urine collections. Because of their drug use detection timetables, after approval by HHS oral fluids would be very suitable for return-to-duty testing and sweat specimens would be very suitable for follow-up testing.

When HHS approves these specimens for testing, the Department intends to propose to amend Part 40 to provide for their use in appropriate testing situations. By doing so, the Department will provide a less intrusive alternative to DO urine testing in the return-to-duty and/or follow-up situations.

HHS is also considering the use of hair testing. There are a number of significant scientific and policy questions raised in public comments and Federal agency internal reviews of proposed revisions to the Mandatory Guidelines that must be answered before HHS and DOT could adopt the use of hair testing in the agencies' programs. The claimed 90-day detection window for hair testing also makes its use problematic in RTD testing and for FU tests as well, depending on when they occur. Nevertheless, at such time as HHS approves hair testing, we are open to considering its use as part of the DOT testing program.

Under authority separate from and predating the Omnibus Act, the FRA has long used blood testing and urine testing [as well as tissue and vitreous humor from cadavers] in its special post-accident testing. While blood testing is scientifically and forensically sound, its collection by needle is considered very intrusive. It also requires the use of medically-trained personnel as collectors. Importantly, blood affords a very brief window of detection. Consequently, while it can be used by the FRA appropriately in their special post-accident testing as a means of determining accident causative factors, it would not be a suitable methodology for return-to-duty and follow-up testing.

Other Agencies' Rules

While the drug testing rules of other Federal agencies do not determine the way the Department responds to comments on section 40.67(b), it is instructive to note that other agencies make significant use of DO in their testing programs. The Department of Defense, of course, has always used DO for all drug tests of military personnel, who generally are regarded, however, as having a lower expectation of privacy than civilian workers.

In new final rules that go into effect in March 2009 (73 FR 16966; March 31, 2008), the Nuclear Regulatory Commission (NRC) will also afford less privacy for its DO collections for return-to-duty and follow-up tests for nuclear industry personnel, as well as tests in which collection site behavior or laboratory results indicate an attempt to cheat. The NRC regulation requires an anti-prosthetic procedure as part of all its DO tests, in which an individual must raise and lower his or her clothing from waist to knee not only before providing the specimen (as in the DOT procedure) but also during urination. NRC's rationale for this action was the following:

> More detailed procedures are necessary because devices and techniques to subvert the testing process have been developed since [the NRC rule was originally issued] that are difficult to detect in many collection circumstances, including direct observation, such as a false penis or other realistic urine delivery device containing a substitute urine specimen and heating element that may be used to replicate urination. Therefore, the agency has made these changes to increase the likelihood of detecting attempts to subvert the testing process and increase the effectiveness of directly observed collections in assuring that a valid specimen is obtained from the donor. 73 FR 17071; March 31, 2008.

The HHS intends, in its upcoming Mandatory Guidelines for the Federal employee drug testing program, to require DO collections in all follow-up and return-to-duty tests. The HHS and NRC procedures are based on the same rationale as the DOT June 25 final rule: types of testing that present a heightened risk for cheating, given the ready availability of cheating products, call for appropriate countermeasures.

The Department's Decision

Having considered the comments, the Department remains convinced that conducting all return-to-duty and follow-up tests under DO is the most prudent course from the viewpoint of safety. It is the method we have available today to deter and detect attempts to cheat, pending the availability of less intrusive alternative specimen testing methods.

Under 40.67(b), there are no individuals who will be directly observed who have not already been subject to being directly observed under previous versions of Federal safety requirements by refusing to test, using illegal drugs, or otherwise breaching the rules. By this conduct, each of these individuals has shown a willingness to endanger public safety. Individuals in this category have a greater than average likelihood of using illegal drugs in the future and a higher than average motivation to cheat on a test. Under these circumstances, the Department is justified in regarding these individuals as having a reduced legitimate expectation of privacy, compared to covered employees in general. Given the increased availability of cheating products, compared to twenty years ago when Part 40 was first issued, the Department can properly adjust the balance between safety and privacy by making DO collections mandatory, rather than optional, in follow-up and return-to-duty testing.

The Department realizes that there may need to be some adjustments necessary for employers, collection sites and others in order to begin implementing this requirement. However, by the time the rule goes into effect on November 1, affected parties will have had four months to address implementation issues, including labor-management relations, providing for the availability of same-gender observers etc. Consequently, we do not believe that any further delay in the effective date of this provision is warranted. We emphasize that conducting all future return-to-duty and follow-up tests under DO is a requirement of Federal law (including for employees whose initial violations of the rules occurred or whose series of follow-up tests began before November 1).

For the reasons set forth in this notice, section 40.67(b), as issued in the Department's June 25, 2008, final rule will go into effect, without change, on November 1, 2008.

Issued this 16th day of October, 2008, at Washington, DC.

Jim L. Swart,

Director, Office of Drug and Alcohol Policy Compliance.

[FR Doc. E8–25102 Filed 10–21–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 0810141357–81371–01]

RIN 0648–XL30

Endangered And Threatened Species; Endangered Status for the Cook Inlet Beluga Whale

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

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final determination to list a Distinct Population Segment (DPS) of the beluga whale, *Delphinapterus leucas*, found in Cook Inlet, Alaska, as endangered under the Endangered Species Act of 1973, as amended (ESA). Following completion of a Status Review of this DPS (the Cook Inlet beluga whale) under the ESA, we published a proposed rule to list this DPS as an endangered species on April 20, 2007. We subsequently extended the date for final determination on the proposed action by 6 months, until October 20, 2008, as provided for by the ESA.

After consideration of public comments received on the proposed rule and other available information, we have determined that the Cook Inlet beluga whale is in danger of extinction throughout its range, and should be listed as an endangered species. We will propose to designate critical habitat for the Cook Inlet beluga whale in a future rulemaking.

DATES: This final rule is effective December 22, 2008.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection by appointment during normal business hours at the NMFS, Protected Resources Division, Alaska Region, 709 W. 9th Street, Juneau, AK. This final rule, references, and other material relating to this determination can be found on our website at *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, telephone (907) 271–5006, fax (907) 271–3030; Kaja Brix, NMFS, (907) 586–7235, fax (907) 586–7012; or Marta Nammack, NMFS, (301)713–1401.

SUPPLEMENTARY INFORMATION:

Background

In this document, we issue final listing regulations for the Cook Inlet beluga whale. NMFS is responsible for determining whether a species, subspecies, or Distinct Population Segment (DPS) for which we bear responsibility is threatened or endangered under the ESA. Section 3(6) of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range". The ESA lists factors that may cause a species to be threatened or endangered (section 4(a)(1)): (a) The present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence. Section 4(b)(1)(A) of the ESA requires NMFS to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account efforts being made to protect the species.

We initiated a Status Review for the Cook Inlet beluga whale in March 2006 (71 FR 14836). On April 20, 2006, we received a petition to list the Cook Inlet beluga whale as an endangered species. In response to the 2006 petition, we published a 90–day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (71 FR 44614; August 7, 2006). After completion of the Status Review in November 2006, we re-affirmed that the Cook Inlet beluga whale constitutes a DPS under the ESA. We had previously determined that the Cook Inlet beluga whale is a DPS in response to an earlier petition received in 2000 (65 FR 38778; June 22, 2000).

The ESA's definition of a species includes subspecies and DPSs. We consider a group of organisms to be a DPS for purposes of ESA listing when it is both discrete from other populations and significant to the species to which it belongs (61 FR 4722; February 7, 1996). We found the Cook Inlet beluga whale to be reproductively, genetically, and physically discrete from the four other known beluga populations in Alaska, and significant because it is the only beluga population occurring in the Gulf of Alaska, except as we discuss below with respect to 12 beluga whales in Yakutat Bay. Since we found that the Cook Inlet beluga whale population was discrete and significant, we determined that it constituted a DPS under the ESA.

A supplemental Status Review was released in April 2008 that included analysis of 2006 and 2007 abundance estimates and further review of the science presented in the 2006 Review. Based on the 2006 Status Review and the best available information, we concluded the Cook Inlet beluga whale is in danger of extinction throughout all or a significant portion of its range and published a proposed rule to list this species under the ESA on April 20, 2007 (72 FR 19854). The ESA provides that, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, the Secretary of Commerce may extend the 1–year period from the date of the proposed rule by not more than 6 months for the purposes of soliciting additional data. Several parties, including Alaska Department of Fish and Game, questioned the sufficiency or accuracy of the available data used in the rulemaking. We determined that substantial disagreement exists over a certain aspect of the data presented in the proposed rule. In particular, disagreement remained over the population trend of beluga whales in Cook Inlet, and whether the population is demonstrating a positive response to the restrictions on subsistence harvest imposed in 1999. Recognizing this disagreement, and as provided by the ESA, we extended the deadline for a final determination on the petitioned action for a 6–month period, until October 20, 2008 (73 FR 21578; April 22, 2008).

During the 6–month extension, we completed our analysis of 2008 survey data, prepared an abundance estimate for 2008, and prepared a supplemental Status Review, updating the November 2006 and April 2008 reviews. The results of the 2008 abundance survey found the abundance unchanged from 2007, estimating 375 whales. Thus, the trend for the period 1999 to 2008 is a negative 1.45 percent annually. This number is not significantly different from zero, but is significantly less than the expected growth for an un-harvested population (2–4 percent). The October 2008 review also considered new issues raised during the review process, including the possibility that small, gray calves and juveniles are undercounted in aerial surveys. Inclusion and consideration of these data do not alter our conclusion that the Cook Inlet beluga whale is an endangered species.

Cook Inlet Beluga Whales

The beluga whale (*Delphinapterus leucas*) is a small, toothed whale in the family Monodontidae, a family it shares with only the narwhal. Belugas are also known as "white whales" because of the white coloration of the adults. The beluga whale is a northern hemisphere species, ranging primarily over the Arctic Ocean and some adjoining seas, where they inhabit fjords, estuaries, and shallow water in Arctic and subarctic oceans. A detailed description of the biology of the Cook Inlet beluga whales may be found in the Proposed Rule (72 FR 19854; April 20, 2007).

Five distinct stocks of beluga whales are currently recognized in Alaska: Beaufort Sea, eastern Chukchi Sea, eastern Bering Sea, Bristol Bay, and Cook Inlet. The Cook Inlet population is numerically the smallest of these, and is the only one of the five Alaskan stocks occurring south of the Alaska Peninsula in waters of the Gulf of Alaska. Systematic surveys on beluga whales in Cook Inlet documented a decline in abundance of nearly 50 percent between 1994 and 1998, from an estimate of 653 whales to 347 whales. This decline was mostly attributed to the subsistence harvest (through 1998); however, even with the restrictions on this harvest, the population has continued to decline by 1.45 percent per year from 1999 to 2008. Annual surveys have continued since 1994, and indicate this population is not recovering.

Summary of Comments Received in Response to the Proposed Rule

We received public comment in response to the proposed rule, and held public hearings on the proposed listing in Anchorage, Homer, and Soldotna, Alaska, and in Silver Spring, Maryland. The original deadline for public comments was June 19, 2007 (60 days from the date of publication of the proposed rule (72 FR 19854; April 20, 2007), but was subsequently extended to August 3, 2007 (72 FR 30534; April 22, 2008). Approximately 180,000 comments were received. The majority of comments supported listing the Cook Inlet beluga whale as endangered under the ESA. We did not propose to designate critical habitat for the Cook Inlet beluga whale in the proposed listing rule, but we requested any comments that might benefit our consideration of critical habitat should we conclude that the Cook Inlet beluga whale warranted listing under the ESA. The few comments received concerning critical habitat are not germane to this action and will not be addressed in this final rule. However, such comments will be addressed during the subsequent rulemaking on critical habitat for the Cook Inlet beluga whale.

A joint NMFS/U.S. Fish and Wildlife Service policy requires us to solicit independent expert review from at least three qualified specialists (59 FR 34270; July 1, 1994). Further, In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to enhance the quality and credibility of the Federal Government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. Pursuant to our 1994 policy and the OMB Bulletin, we solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, genetics, and supportive biological and ecological information for the Cook Inlet beluga whale. We conclude that these expert reviews satisfy the requirements for "adequate peer review".

All of the independent experts found that the scientific information supported listing these whales as an endangered species, and all found the Cook Inlet population constituted a species, or DPS, as defined by the ESA. The findings of the independent experts, and responses to comments received from the public, are presented below.

Comments of the Independent Experts

Three independent reviewers were identified who had scientific expertise in marine mammalogy with specific knowledge of beluga whales. We asked these independent experts to review the proposed rule and supporting materials, and to comment on the matter of potential listing. Four specific questions were posed to this panel: (1) Do you find the Cook Inlet population of beluga whales exhibits sufficient discreteness and significance to constitute a Discrete Population Segment as presented in the 1996 Department of Commerce Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722); (2) Do you find the extant survey data and other information presented reasonably support the abundance and trend estimates used in the proposed rule?; (3) Do you believe the Population Viability Analysis in the NMFS' 2006 Status Review provides a reasonable biological model of these whales, and are the extinction risk probabilities supported by the PVA?; and (4) Do you believe the proposed rule accurately describes the present range of the Cook Inlet beluga whale?

All of the expert reviewers found the Cook Inlet population met the criteria for a DPS. They noted the discreteness of this population was established by its geographic segregation and genetic profiles. The "significance" DPS factor was supported by the fact that Cook Inlet beluga whales are one of a few sub-Arctic populations, having significantly different ecology from Arctic populations, and that there is little or no likelihood that this area could be re-colonized by other Alaska beluga whale populations.

All these reviewers found that the abundance and trend data reported in the 2006 Status Review and proposed rule were reasonable. One expert reviewer commented that the survey data indicate this population is likely stable, with a slight possibility towards a slow decline, and went on to state that the disparity between annual abundance estimates reflects the difficulty in surveying this species, whose distribution is very clumped.

All of the expert reviewers found the 2006 Status Review and its biological models provided a reasonable description of this population. One expert reviewer recommended the Population Viability Analysis (PVA) be re-run using different life-history parameters, specifically to include new information regarding the numbers of annual growth layers found in beluga teeth. This new information would mean belugas lay down a single growth layer each year rather than two, effectively doubling the current age estimates for these animals. A second expert also noted this new information, but felt that population growth rates will show minor, if any, changes. One reviewer asked if the model accounted for the possibility of subsistence hunts resulting in struck-but-lost whales and the possible separation of cow/calf pairs in which the cow may be harvested, leading to the death of the dependent calf. Another felt that mortality by killer whales had been underestimated in the models. None of the expert reviewers specifically commented on the Extinction Risk Analysis.

Finally, all of the expert reviewers agreed that the present range of the Cook Inlet population, as described in the proposed rule, was accurately described. One expert reviewer also noted the feeding ecology of the Cook Inlet beluga whale is presently poorly understood, and somewhat inconsistent

with that of the St. Lawrence beluga whales.

Response: We have considered the implications of new information regarding the numbers of annual growth layers found in beluga teeth and find it does not alter the current abundance estimate, growth rate and trends, or extinction risk probabilities. The PVA has been run using revised age data (i.e., assuming whales develop one growth layer annually) and abundance estimates for 2006, 2007, and 2008. That analysis is presented in the October 2008 Status Review. The analysis found little change in the estimated growth rate of the populations, estimating that there is a probability of only 5 percent that the growth rate is above 2 percent per year, and a probability of 62 percent that the population will decline further. The best available data at this time indicate that the Cook Inlet beluga whale DPS is not growing as expected despite limits on subsistence harvests. A doubling of the age structure (i.e., assuming a single growth layer each year rather than two) for this population changes some of the vital rates for these whales (e.g., age at first birth, senescence, and longevity) but not others (calving rates, calving intervals, sex ratios).

Regarding consideration in the model of the possibility for struck and lost whales, the model used in the 2006 Status Review and in the 2008 supplement uses an estimate of between 0.5 and 2 beluga whales struck and lost for each beluga whale that is landed. All struck and lost beluga whales were considered to have died, and calves in their first year were considered to have died if the mother was killed in the hunt or died of other causes.

We are particularly concerned that mortality due to killer whale predation may be underestimated. The analysis in the April 2008 Status Review included variations of the population model in which killer whale predation was doubled and increased to 5 times the reported level. The extinction risk is quite sensitive to this parameter with the risk of extinction in 50 years between 12 and 30 percent when killer whale predation averages 5 per year.

Public Comments

Comment 1: Several commenters noted the need for continuing and new research on Cook Inlet beluga whales to improve our understanding of the ecology of these whales and address the threats and impediments to recovery.

Response: More research would add to the ecological knowledge of these whales. We have prepared a Conservation Plan which will present most of what is known of the biology and threats confronting Cook Inlet beluga whales, and will use that Plan as a guide for funding and conducting research directed towards the recovery of the population. The ESA does not provide for further deferral of this listing action until additional studies are conducted. Consistent with the ESA, we previously extended the deadline for promulgation of this final listing rule because of substantial disagreement concerning the sufficiency or accuracy of the available data. Since that time, we analyzed 2008 survey data and prepared an abundance estimate and supplemental status review. Our determination to list the Cook Inlet beluga whale under the ESA, based upon the best available data, is well-supported by existing research and knowledge, as documented in the proposed rule and the additional analysis conducted in 2008.

Comment 2: NMFS had not made adequate use of the traditional knowledge and wisdom of Alaska Natives, or NMFS has failed to recognize their contribution.

Response: We have engaged the Native community in recent Federal actions concerning Cook Inlet beluga whales. We have entered into annual agreements with Alaska Native Organizations for the cooperative management of these whales. We have worked closely with the Cook Inlet Marine Mammal Council in developing harvest regulations and in coordinating actions which may affect beluga whales. We have funded studies to acquire and record traditional knowledge as part of our decision making process, and have offered to consult on the proposed listing action with affected Native organizations, tribes, and corporations. Additionally, we have attempted to incorporate the traditional knowledge and wisdom of Alaska Natives in our scientific publications, and to correctly cite the Alaska Native sources for such information. We greatly appreciate the contributions of Alaska Natives to the body of knowledge for Cook Inlet beluga whales, and acknowledge their consultation and advice have been essential to us.

Comment 3: One commenter stated that Alaska Native hunters have cooperated in dealing with the declining population, but in doing so have deprived themselves of their traditional hunting and way of life.

Response: We recognize the contributions of the Cook Inlet Marine Mammal Council and other Alaska Natives in conservation efforts for the Cook Inlet beluga whales. Native hunters voluntarily stood down from harvesting whales in 1999 to prevent further loss of this population and allow scientific evaluation of the impact of the harvest. The ESA provides an exemption from its prohibitions on the taking of an endangered species for traditional subsistence harvests by Alaska Natives. However, such subsistence harvests may be regulated when the population is designated as depleted under the MMPA as with the Cook Inlet beluga whale. NMFS published a rule to provide for long-term harvest regulations for these whales (73 FR 60976; October 15, 2008). The native hunting community was an integral part of this rulemaking and participated as a party to the administrative hearing process leading to harvest regulation. It is unfortunate but necessary that future subsistence harvests will be impacted by harvest regulations until the population has recovered sufficiently to allow unrestricted hunting by Alaska natives.

Comment 4: NMFS needs to recognize the potential negative consequences of global warming on the beluga population as it finalizes the listing rule and makes management goals.

Response: The comment is noted, and we are aware of the significant changes within many Arctic ecosystems attributable to climate change. Our Conservation Plan specifically addresses these changes and their potential effects to Cook Inlet beluga whales. Conservation of habitat will be a vital component to any plans for recovery of this population, and we anticipate future research will be directed to address habitat issues, including climate change.

Comment 5: The habitat is diminishing and reducing the carrying capacity of the Cook Inlet beluga whales.

Response: Portions of upper Cook Inlet that provide important habitat for beluga whales are filling in, and the gradual loss of these areas may in time reduce the numbers of whales that Cook Inlet can support. However, we have no data at this time to indicate that carrying capacity has decreased.

Comment 6: Several comments were received concerning the relationship between subsistence harvests and ESA listing for Cook Inlet belugas. Some commenters felt that subsistence harvests were responsible for the population's decline, others stated that because harvest is now controlled and the population has not increased, other factors have played a role in the decline. One commenter held that ESA listing was unnecessary because subsistence harvest is now controlled.

Response: We estimate the current abundance of Cook Inlet beluga whales as 375 individuals, and their historic numbers to be approximately 1300. The present risk of extinction is significant. The reasons or paths by which this reduction occurred are important in our understanding of how we might recover the population; however, subsistence harvests are now controlled, and over-harvests are unlikely to occur. As other commenters correctly observe, the population has not shown any signs of recovery despite harvest control. This strongly suggests other factors may now be involved in the lack of recovery of the Cook Inlet beluga whales, and that cessation of excessive harvests is not enough to bring about recovery.

Comment 7: One group of commenters stated their belief that oil and gas development, wastewater treatment facilities, mining, shipping, transfer facilities, pollution, commercial fishing, sport fishing, and whale watching are not causing problems for Cook Inlet belugas, or can be addressed through existing regulations and management practices.

Response: Comment noted. In the proposed rule (72 FR 19854; April 20, 2007), we described our analysis of the factors under section 4(a)(1) of the ESA and their contribution to the endangered status of these whales. In that analysis, many of the topics the commenter identifies are reviewed. The effect, if any, of these activities is also considered in the Conservation Plan for Cook Inlet beluga whales and will be considered in any future Recovery Plan.

Comment 8: Several comments were received saying Cook Inlet beluga whales had been harmed or have failed to recover due to various factors, including hunting, overfishing, entanglement by fishing gear, harassment, noise, pollution, vessel traffic, habitat degradation, disease, climate change, predation, or strandings.

Response: See response to Comment 7. All of the identified factors may have some impact on this population. These factors and others are addressed in the Conservation Plan and will be addressed in the Recovery Plan that will be developed for the Cook Inlet beluga whale.

Comment 9: Specific actions must be taken to protect Cook Inlet belugas. These include appointment of a recovery team and preparation of a recovery plan, research funding, and consultation on activities which may affect beluga whales or their habitat.

Response: We anticipate a recovery plan will be developed through the efforts of a recovery team, and that consultations under section 7(a)(2) of the ESA would occur after the listing becomes effective. We have previously discussed our intentions to continue certain research on Cook Inlet beluga whales, and our efforts to direct and coordinate other research through the Conservation Plan.

Comment 10: NMFS should not list the Cook Inlet beluga whale as an endangered species because the sole reason for its decline was subsistence harvests, while the other known causes of mortality (killer whale predation and mass strandings) are not associated with human activity. Listing would therefore have no benefit to belugas.

Response: We believe past subsistence harvests occurred at unsustainable levels and that these removals are at a level that could account for declines observed during the 1990s. However, we have not determined hunting to be the sole cause for decline in this population. Predation and stranding events would also have occurred during this period, and may have contributed to the decline. The ESA does not limit listing determinations to situations where the causes of decline stem only from human activity. Rather, the ESA specifically includes "other natural or manmade factors affecting its continued existence" among the reasons for which a species can be considered to be threatened or endangered.

Comment 11: A comment urged NMFS to pursue additional funding, research, and cooperative work with the mayors of Anchorage, Matanuska-Susitna, and Kenai Boroughs before making an unwarranted ESA decision.

Response: We believe the best currently available scientific and commercial information is sufficient to support this listing determination. We welcome future opportunities to work cooperatively with local municipalities and to continue to pursue research in support of a recovery program for these whales.

Comment 12: NMFS should not base its listing determination on the criteria established by the International Union for the Conservation of Nature and Natural Resources (IUCN).

Response: While the IUCN has determined the Cook Inlet beluga whale would be classified as endangered or critically endangered under their classification criteria, we do not use IUCN criteria in our ESA determinations. This decision was challenged and upheld in court (*Cook Inlet Beluga Whale* v. *Daley*, 156 F. Supp.2d 16 (D.D.C. 2001)), with the judge ruling that "the agency's obligations arise under the five statutory criteria of the ESA, and not the IUCN criteria".

Comment 13: A comment questioned how ESA listing would affect consultations under section 7 of the ESA when the population expands and theoretically occupies areas outside of Cook Inlet.

Response: It is possible that the range of the Cook Inlet beluga whale may expand as the population recovers, though we expect that such recovery would take many years. Any expansion could expand the areas in which ESA section 7 consultations may be required because consultation under the ESA is required whenever the actions of a Federal agency may affect listed species.

Comment 14: Recent studies show the population of Cook Inlet beluga whales is increasing. ESA listing should be delayed until NMFS has conducted further research to be certain the population is not increasing.

Response: No reference is provided to support this statement, and we are unaware of such studies. Results of population models using the most recent population data, as presented in the October 2008 Status Review, continue to show the likelihood that this population will continue to decline or go extinct within the next 300 years unless factors determining its growth and survival are altered in its favor. While the most recent abundance estimate (2008) of 375 whales is larger than or unchanged from the previous estimates within the last 4 years of 278, 302, and 375, it is not reasonable to conclude that this represents an increasing trend. We base our decision on consideration of the entire time series from 1994 to 2008, which continues to show that the population is not recovering. Rather, it has been decreasing at a rate of 1.45 percent annually.

Comment 15: The criteria for designating a distinct population segment are so broad that almost any geographic population could be considered a DPS. The DPS designation was not intended to allow listing of any local population for which an agency or private group has concerns. One sub-population of beluga whales is not critical to the survival of the species.

Response: The criteria used to determine whether a group of animals should be considered a DPS are described in the NMFS/U.S. Fish and Wildlife Service's (USFWS) *Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act* (61 FR 4722; February 7, 1996). Courts have found this joint policy to be consistent with Congressional intent behind the

ESA. We refer the commenter to this joint policy, and its preamble, for a discussion of issues concerning whether the policy is too broad or too restrictive. Many such comments were received in response to this policy. We stated in the joint policy that the ESA clearly intended to authorize listing of some entities that are not accorded the taxonomic rank of species, and that NMFS and USFWS are obligated to interpret this authority in a clear and reasonable manner. We believe we have done so, and that the Cook Inlet population of beluga whales is properly recognized as a DPS.

Congress has cautioned against overuse of the DPS classification. The requirement that a subpopulation be significant in order to be a DPS is intended to carry out the expressed congressional intent that this authority be exercised sparingly. Both NMFS and the scientific experts asked to review the proposed rule found the Cook Inlet population is discrete and significant, and meets the criteria established in the joint policy. While one subpopulation may not be critical to the survival of the species, it is not necessary for a subpopulation to be critical to the survival of the species in order to be listed under the ESA. If the subpopulation is found to be discrete and significant (i.e., to be a DPS), and in danger of extinction, it may be listed as an endangered species under the ESA. Finally, DPS status for Cook Inlet beluga whales has been previously established; this final rule reaffirms that finding. See also the discussion of DPS status in the Background section of this preamble.

Comment 16: NMFS' earlier models (produced when Cook Inlet beluga whales were first designated as depleted in 2000 and subsequently considered for listing) predicting recovery times for these whales were too optimistic. A population with a slow reproductive rate, such as belugas, will require many years to recover. Therefore, they do not warrant listing as endangered under the ESA.

Response: We acknowledge that, under the best of circumstances, beluga whale populations can sustain growth rates of at most 2 to 6 percent per year. However, results of population models using the most recent population data, presented in the October 2008 Status Review, indicate a probability of 80 percent that this population is declining, and a probability of extinction of 26 percent in 100 years for the model considered most representative of this population. We conclude this level of risk to the Cook Inlet beluga whales contributes to the determination to list this population as endangered under the ESA.

Comment 17: The 2007 proposed rule reflects omissions, errors, and unsubstantiated interpretations. Statements made regarding killer whale predation and disease cannot be substantiated by the best available data, and NMFS' conclusions about whether predation or disease are contributing to their decline are contradictory. NMFS' determination is based entirely on unsupported population modeling predictions of a continued decline and unsubstantiated speculation of possible increases in threats. Therefore, ESA listing is not warranted.

Response: Our determination to list the Cook Inlet beluga whale as endangered under the ESA is based, in part, on the results of population modeling which indicate a high probability of extinction within the next 100 years. Statements regarding killer whale predation are substantiated; predation events and annual predation rates are presented in a peer-reviewed scientific publication and reviewed in the 2006 and 2008 Status Reviews. Statements regarding the potential impact of disease are also substantiated; an extensive review of potential threats from disease is presented in the 2006 Status Review and 2008 supplement. The models used in the 2006 Status Review and Extinction Risk Assessment are supported by the 2006 and 2008 Status Reviews, which include population data through 2008. The model results are not based on any assumption or speculation of increased threats. In all variations of the model, all threats, with the exception of hunting mortalities prior to 1999, are considered to be constant throughout the time frame of the model analysis (1979–2307).

Comment 18: NMFS must designate critical habitat for the Cook Inlet beluga whale population at the same time that it is listed under the ESA. Another commenter stated that NMFS should defer designation of critical habitat until solid information is in hand, and not until an arbitrary deadline is set in regulation.

Response: The commenter is correct that the ESA states that a final regulation designating critical habitat shall be published concurrently with the final regulation implementing the determination that a species is endangered. However, the ESA allows for situations in which the Secretary may extend the period for 1 year if the scientific information is insufficient for determination of critical habitat. At the end of that additional year, the Secretary must publish a final regulation, based on the best available data, designating critical habitat to the maximum extent prudent. Because the scientific information available is insufficient for the determination of critical habitat, we defer designation of critical habitat in order to gather and assess additional information.

Existing data and information are lacking in several areas which are necessary to support designation of critical habitat. These include identification and descriptions of the physical and biological features essential to the conservation of these whales, and economic data which would allow consideration of the costs of designation. Information is presented in the Conservation Plan regarding Cook Inlet beluga habitat and relative value of different habitat types. That Plan does not identify the essential features of the habitat or provide any economic analysis of proposed critical habitat, as required in any such designation. However, we anticipate building on the information in the Conservation Plan and conducting an impacts analysis in developing a comprehensive assessment and recommendation for designating critical habitat. A final regulation to designate critical habitat must be issued within 1 year of the publication date of this listing action.

Comment 19: Beluga whales have been sighted in the Gulf of Alaska, Sitka, Kodiak, and Prince William Sound, yet these sightings are discounted in the proposed rulemaking.

Response: The commenter is correct that beluga sightings in the Gulf of Alaska have occurred outside of Cook Inlet; however, they are uncommon. A review of cetacean surveys conducted in the Gulf of Alaska from 1936 to 2000 revealed only 31 sightings of belugas among 23,000 whale sightings, indicating very few belugas occur in the Gulf of Alaska outside of Cook Inlet. Many of these reports are of single individuals or small groups, and almost all are episodic occurrences which do not suggest the whales regularly occupy such areas. One sighting from 1983 found approximately 200 beluga whales in the western portion of Prince William Sound. Despite numerous surveys in these waters, beluga whales have not been subsequently reported here. Individual beluga whales are occasionally reported along Kodiak Island or in Resurrection Bay. Both of these areas are proximate to the entrance of Cook Inlet. A small group of beluga whales observed near Yakutat has been reported many times and appears to be resident to that area. We considered whether these sightings were cause to expand the described range of

the Cook Inlet DPS, or whether these sightings should be considered extralimital, meaning that the animals sighted were beyond their normal range. Any determination as to whether these whales may be from the Cook Inlet DPS requires either genetic information or data on the movements and distribution of these whales over time, such as satellite tag data. Six genetic samples from the Yakutat belugas have been obtained and analyzed, representing five individual whales (O'Corry-Crowe *et al.*, 2006). Results from these samples indicate they all share a genetic marker that has also been found in other areas of Alaska, including Cook Inlet. These results also indicate that the sampled whales are unlikely to be a random sample of the Cook Inlet beluga whale population. This, taken with sighting data and behavioral observations, suggests that a small beluga whale group resides in the Yakutat Bay region year round. The Yakutat beluga whales have a unique ecology and a restricted home range, and management decisions for this group cannot be made using information from other stocks (O'Corry-Crowe *et al.*, 2006). We believe the best scientific information continues to support the classification of the Cook Inlet beluga whale as a DPS. The DPS excludes beluga whales found at Yakutat, as described in our proposed rule. No genetic or distributional data exist for the other Gulf of Alaska beluga sightings. We have not discounted these occurrences in this rulemaking process, but have no reason to conclude they are of the Cook Inlet DPS, nor that they represent persistent occurrences that justify extending the described range of the Cook Inlet belugas. It is possible for individual or groups of belugas to leave Cook Inlet, although data suggest this is rare. Such occurrences are considered extralimital.

Comment 20: The 1979 estimate of Cook Inlet beluga whale abundance was made with unspecified confidence. That survey's methodology was completely different from NMFS' current protocols. It should not be relied upon for determination of carrying capacity and is misleading in depicting trends.

Response: The commenter is correct in noting that the 1979 abundance estimate is based on a survey that used a different method from NMFS' current abundance surveys. However, the 1979 estimate was based on a valid survey protocol that is documented and repeatable, and similar to protocols used elsewhere on beluga whale populations. We have concluded that the estimate is valid and represents the maximum observed size of this population and consequently the best available estimate for carrying capacity. The 1979 estimate should not be used for estimating trends. We have based our analysis of trends on data collected between 1994 and 2008 because of the consistency in survey protocols used during the period 1994 to 2008.

Comment 21: Averaging in counts that show a precipitous decline before excessive hunting was restricted in 1999 is inappropriate. The important numbers are those since 1999, which indicate a stable trend.

Response: The April 2008 Status Review included a variation of the baseline model that considered only the abundance time series from 1999 to 2007. That variation showed the population has not been stable since 1999, and estimated a probability of 82 percent that the population continued to decline and a 2 percent probability that the population will go extinct within 100 years. These numbers were higher than the same results for the model that included the years 1994–2008.

Comment 22: NMFS should consider other methodologies, including those of recent studies by LGL, to determine whether they provide a more accurate indication of the immature component of the Cook Inlet beluga whale population. Aerial surveys are likely to undercount immature whales.

Response: We met with representatives of LGL in October 2007 to review photo identification methods, including those for estimating the immature component of the Cook Inlet beluga whale population as indicated by the fraction of gray animals. While the technique presented was considered promising for identifying individuals, both NMFS and LGL agreed that it was not sufficiently developed to allow estimates of the ratios of gray to white animals in the population. In the October 2008 Status Review we included variations in the extinction risk analysis model that assumed over half of the beluga whales younger than the age of maturity were missed in the aerial surveys. All of the versions of the model accounted for the selective depletion of the adult component of the population by hunting, so the potential effect of undercounting juveniles that results in delayed growth in the population was adequately represented. The model with missed gray animals estimated a probability of 64 percent that the population would decline. This compares to a probability of decline of 68 percent estimated by the model that assumed all gray whales are counted. While this 4 percent difference indicates that, if gray whales are undercounted, the probability of decline may be overestimated, the difference between the two results is not sufficient to warrant further analysis. Also, we employ a technique to adjust counts to estimate the individuals and groups that may be missed by video. Consequently, if some gray whales remain unaccounted for, it is unlikely that they represent more than a few percent.

Comment 23: Aerial surveys show an increase in Cook Inlet beluga whales from 278 to 302 between 2005 and 2006, an increase of nine percent. The raw counts from 2007 indicate a further increase.

Response: While the abundance estimate of 375 in 2007 was larger than the two previous estimates (2005: 278, 2006: 302), it is not reasonable to conclude this represents an increasing trend. The degree of variability in the abundance estimates is such that there is a high likelihood that increases in the point estimate will be seen in 2 or 3 sequential years (e.g. 1998–2000, 2002–2004). In the case of the 2005 estimate there is a 90–percent probability that the 3 subsequent years will all be larger and an 88 percent probability that a line fit to those data will show an increase greater than 2.0 percent per year. We base our decision on consideration of the entire time series from 1994 to 2008, which indicates a high probability of decline.

Comment 24: The quality of NMFS' population censuses is questionable, leading to insufficient knowledge to support a listing determination. NMFS' finding that this population has shown an average rate of decline of 4.1 percent from 1999 is not true within 95 percent confidence intervals and should not be used to show population trends. This lack of certainty makes any determination of endangered status equally speculative.

Response: The quality of these censuses is high. The abundance estimates that we calculated for each year resulted from aerial surveys conducted in June between 1994 and 2008 (except July in 1995) and used essentially the same methods through the entire series (reviewed in the April 2008 Status Review). During a 2–week period in early June of each year, three to seven surveys of the upper Inlet and one survey of the lower Inlet are conducted. During each survey, we survey the entire coastline to approximately 1-kilometer offshore and all river mouths. Transects are also flown across the inlet. When a group of whales is encountered, it is circled in a "racetrack" pattern 4 to 16 times to allow multiple counts by researchers and the collection of video data. Later, video sequences are reviewed frame by frame and all individuals counted.

Video data are the primary source of group size estimates. Video equipment and technology have improved over the course of these surveys, and the numbers of small or gray-colored whales missed by video may have declined through the time series. We tested this in the model analysis presented in the April 2008 Status Review.

Having a consistent methodology is important to determining trends. While the most recent data no longer indicate a decline of 4.1 percent per year since 1999, this decline is now estimated at 1.45 percent per year (1999–2008). Population models now estimate the probability of further decline within this population at 80 percent, and only a 5–percent probability for the growth rate to be 2 percent of more.

It is not necessary to have a declining growth rate significantly less than zero at the 95 percent confidence level to make a determination of endangered status. The ESA requires listing when a species "is in danger of extinction." A trend of a 1.45 percent decline per year (significantly less than the growth rate of 2 percent per year necessary for recovery) establishes that risk.

Comment 25: NMFS' methodologies for converting raw aerial counts in Cook Inlet are derived from Bristol Bay surveys, where there is significantly higher water clarity. NMFS methodologies need to be revised.

Response: Methodologies for converting raw counts in Cook Inlet are not derived from methods used in Bristol Bay. The methods we used for the 1994–2008 abundance estimates have been developed specifically for Cook Inlet and are calibrated to Cook Inlet (see above response). A parameter derived from Bristol Bay is used for Cook Inlet when the surveys from the 1970s are considered because the type of survey conducted then was very similar to those conducted in Bristol Bay.

Comment 26: NMFS' population modeling used insufficient time during the recovery period (1999+) to assess the true trajectory of the population's risk of extinction. Also, the risk of extinction within 50 years was zero for all reasonable models, indicating high uncertainty in the trajectory. The model referenced in the proposed rule indicating a 26 percent chance of extinction within 100 years is not defensible.

Response: The model results presented in the October 2008 Status Review include the abundance estimates from 1994 to 2008. This time frame allows for 9 years after 1999 (end of unrestricted harvest) for the population to recover. This is a sufficient time span for the model, which determined an 80 percent probability that the population will decline, and less than a 5 percent probability for recovery at a rate of 2 percent per year. All versions of the model accounted for the impact of hunting on the adult population and other delays to recovery resulting from the 10–year time-to-maturity in this population. The version of the model that we found to be most representative of the population found a 26–percent probability of extinction within 100 years. This model included 1 killer whale mortality per year (which is supported by a peer-reviewed paper) and a "catastrophic loss" estimate of 5 percent chance for a 20–percent mortality event in any year. Expert reviewers agreed that this was a reasonable representation of the possibility for unusual mortality events.

Comment 27: Why have a harvest management plan and implementing regulations not been published for Cook Inlet beluga whales?

Response: We have completed an Environmental Impact Statement for the long-term management of subsistence harvest of the Cook Inlet beluga whale, and final harvest regulations were published on October 15, 2008 (73 FR 60976). Currently, all harvests of Cook Inlet beluga whales must be authorized under agreement between an Alaska Native Organization and NMFS. Recent harvests have been very limited (only 5 whales have been struck since 1999), and it is doubtful harvests will resume without a significant increase in the growth rate within this population.

Comment 28: The draft Conservation Plan for Cook Inlet beluga whales was released in 2005. The ESA listing should not occur until that plan has been completed and implemented.

Response: A Conservation Plan is an important component to the recovery of the Cook Inlet beluga whales. The final Conservation Plan is available (see **ADDRESSES**).

Section 4 of the ESA requires consideration of conservation efforts to protect a species in making a determination for listing. NMFS and the USFWS published joint guidance on this issue: "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" (68 FR 15100; March 28, 2003). This guidance provides specific factors to be considered in evaluating conservation efforts that have not yet been implemented or have not demonstrated effectiveness. The basic criteria are whether there is: (1) certainty the conservation efforts will be implemented, and (2) certainty that these efforts will be effective. While the Conservation Plan presents recommendations that address various recovery needs, many of the actions are presently unfunded or have uncertain effectiveness. As a result, the existence of the Conservation Plan is not sufficient to obviate the need for ESA listing.

Comment 29: A commenter recommended not listing Cook Inlet belugas under the ESA because the MMPA provides adequate protection and gives NMFS the necessary authority to protect these whales.

Response: There are similarities between the ESA and MMPA. Both acts prohibit taking and provide exemptions for Alaska Native subsistence hunts and permits for scientific research or incidental taking. Both acts address habitat issues, and require preparation of plans to foster recovery (a Recovery Plan under the ESA; a Conservation Plan under the MMPA). The MMPA contains particular provisions for marine mammals that are found to be depleted, or below their optimum sustainable population level. An endangered species of marine mammal is automatically recognized as depleted under the MMPA. Despite these similarities, the ESA provides measures not found in the MMPA that are important in the recovery process. The consultation requirements of the ESA are unique in ensuring a Federal agency's actions are not likely to jeopardize the continued existence of a listed species, nor adversely modify its critical habitat. The ESA directs all Federal agencies to review their programs and use such programs in furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered and threatened species. The ESA also requires identification and designation of a species' critical habitat, so as to provide for its recovery. Moreover, declining to list a species under ESA because it is designated as depleted under the MMPA would not be consistent with the ESA, which requires us to list a species based on specified factors and after considering conservation efforts being made to protect the species. Therefore, the authorities of the MMPA do not remove or reduce the requirements to list a species under the ESA. The two acts work together and are not mutually exclusive.

Comment 30: The Cook Inlet population of beluga whales is showing signs of recovery, and 40 percent of the population consists of sub-adults whose contribution to the recovery would not be expected for 5 to 7 years.

Response: No scientific evidence exists that 40 percent of this population is sub-adult. Photographic analysis has documented the numbers of whales of various color phases and calves (which can be distinguished by size and color). However, color is not a reliable indicator of reproductive age. Many adults are white, but not all gray-colored beluga whales are sub-adults. One gray-colored Cook Inlet beluga whale was found to have teeth with 22 growth layers, clearly not a sub-adult. The commenter's theory assumes that the age of this population was reduced through selective removals of adults by subsistence harvests that targeted white whales. This removal would then have created a large adolescent component that would require time to reach reproductive age and begin to repopulate their numbers. There are several flaws in this theory. First, it is uncertain only white whales were taken in subsistence harvests; we have no data to substantiate this assumption. Second, there is evidence that gray beluga whales are of reproductive age. In fact we have sampled gray beluga whales that have shown evidence of prior pregnancies, or to have been lactating. Third, even if the age structure was significantly reduced through selective harvests ending in 1998, the recruitment into the adult population would have been expected to occur continuously, beginning the following year and continuing to the present. This would have resulted in a gradual increase in abundance figures and, by now, the "signal" from such selective removals would have grown through the population. The population model used to estimate the risk of extinction accounted for the reduction in the adult population during unrestricted harvest and the lag time of 9 or more years between birth and age of first reproduction.

Comment 31: Designating Cook Inlet belugas as a Distinct Population Segment is inconsistent with the standards set by a recent decision in the Ninth Circuit Court of Appeals and 2007 guidance from the Department of the Interior.

Response: In *Northwest Ecosystem Alliance* v. *USFWS*, 475 F.3d 1136 (9th Cir. 2007), the Ninth Circuit upheld the USFWS' determination that the Washington population of western gray squirrels did not constitute a DPS. First, the court of appeals held that the USFWS' and NMFS' joint policy defining what constitutes a "distinct population segment" under the ESA (61 FR 4722; February 7, 1996), is a reasonable interpretation (475 F.3d at 1140 45). Second, the court upheld the USFWS' application of that definition to the Washington population of western gray squirrels (475 F.3d at 1145 50). Specifically, the court ruled the USFWS did not act arbitrarily or capriciously in determining that, at that time, the best scientific and commercial data available did not indicate that the Washington population segment was "significant" (475 F.3d).

In 2000, we determined that the Cook Inlet population of beluga whales is a DPS. We made this determination pursuant to the very definition that the Ninth Circuit upheld in *Northwest Ecosystem Alliance* v. *USFWS*. The 2000 determination is thus fully consistent with the Ninth Circuit's decision. The Office of the Solicitor, Department of the Interior's March 16, 2007, Memorandum interprets a clause within the ESA's definition of endangered species; namely, what it means for a species to be "in danger of extinction *throughout all or a significant portion of its range.*" The Solicitor's Memorandum does not purport to address or redefine what constitutes a DPS. Therefore, there is nothing in that opinion that would lead NMFS to revisit its 2000 determination that the Cook Inlet population of belugas whales is a DPS.

Determination of Species Under the ESA

The ESA requires the Secretary of Commerce to determine whether species are endangered or threatened. The authority to list a "species" under the ESA is not restricted to species as recognized in formal taxonomic terms, but extends to subspecies and, for vertebrate taxa, to DPSs. NMFS and the USFWS issued a joint policy to clarify their interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722; February 7, 1996). The policy describes two elements to be considered in deciding whether a population segment can be identified as a DPS under the ESA: (1) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment in relation to the remainder of the species to which it belongs.

Under the first element, we found that the Cook Inlet beluga whale population is discrete because it is markedly separated from other populations of the same species (65 FR 38778; June 22, 2000). Of the five stocks of beluga whales in Alaska, the Cook Inlet population was considered to be the most isolated, based on the degree of genetic differentiation and geographic distance between the Cook Inlet population and the four other beluga stocks (O'Corry-Crowe *et al.*, 1997; 2002). This suggested that the Alaska Peninsula is an effective physical barrier to genetic exchange. The lack of beluga observations along the southern side of the Alaska Peninsula (Laidre *et al.*, 2000) also supported this conclusion. Murray and Fay (1979) stated that the Cook Inlet beluga population has been isolated for several thousand years, an idea that has since been corroborated by genetic data (O'Corry-Crowe *et al.*, 1997).

Under the second element, two factors we considered were: (1) persistence in an ecological setting that is unique; and (2) whether the loss of the discrete population segment would result in a significant gap in the range of the species. Cook Inlet is a unique biological setting because it supports the southernmost of the five extant beluga populations in Alaska, and is the only water south of the Alaska Peninsula, or within the Gulf of Alaska, that supports a viable population of beluga whales. The ecological setting of Cook Inlet is also unique in that it is characterized as an incised glacial fjord, unlike other beluga habitats to the north. Cook Inlet experiences large tidal exchanges and is a true estuary, with salinities varying from freshwater at its northern extreme to marine near its entrance to the Gulf of Alaska. No similar beluga habitat exists in Alaska or elsewhere in the United States. In the 2000 Status Review, the Cook Inlet beluga whale population segment was considered to be the only beluga population that inhabits the Gulf of Alaska (see discussion of whales in the Yakutat group below), and genetic data showed no mixing with other beluga population segments. Therefore, we determined that the loss of the Cook Inlet beluga population segment may result in the complete loss of the species in the Gulf of Alaska, resulting in a significant gap in the range with little likelihood of immigration from other beluga population segments into Cook Inlet.

Because we found that the Cook Inlet beluga whale population segment was discrete and significant, we determined that it constituted a DPS under the ESA (65 FR 38778; June 22, 2000). Since that time, new research has become available regarding the beluga whales that occur in Yakutat Bay, Alaska, as discussed in our proposed rule to list the Cook Inlet beluga whale as endangered (72 FR 19854; April 20, 2007). These Yakutat Bay whales were included in the Cook Inlet beluga whale DPS identified in 2000 (65 FR 38778; June 22, 2000). The

Yakutat group consists of 12 belugas that are regularly observed in Yakutat Bay and that existed there as early as the 1930s (O'Corry-Crowe *et al.*, 2006). Since the 2000 Status Review, we have obtained biopsy samples from these whales that provide genetic information on their relationship to other Alaska beluga whales. That evidence shows that members of the Yakutat group may be more closely related to each other than whales sampled in other areas, and are not likely to be random whales traveling from the Cook Inlet population (O'Corry-Crowe *et al.*, 2006).

Pursuant to the DPS Policy, geographic separation can also provide an indicator that population segments are discrete from each other. There is a large geographic separation (approximately 621 mi (1000 km)) between the Yakutat beluga group and the Cook Inlet beluga population segment, and no information exists that shows any association between these whales. The genetic, sighting, and behavioral data suggest that a small group of beluga whales may be resident to the Yakutat area year round, and that these whales have a unique ecology and a restricted home range.

We consider the viability of an isolated group of 12 belugas to be low. Genetic results and the fact that the 12 belugas in the Yakutat group are regularly observed in Yakutat Bay and not in Cook Inlet (O'Corry-Crowe, 2006) lead us to conclude that the Cook Inlet beluga whales are discrete from beluga whales near Yakutat. The conclusion reached in 2000 that the Cook Inlet population segment is significant to the beluga whale species remains valid for the same reasons mentioned in 2000, and is further supported by the information stated above regarding the low viability of the Yakutat group and the resultant potential for loss of beluga whales from Cook Inlet and the Gulf of Alaska. Most recently, a panel of independent experts found the Cook Inlet population met the criteria for a DPS. They noted the discreteness of this population was established by its geographic segregation and genetic profiles. Therefore, given the best scientific information available, we conclude the Cook Inlet beluga whales comprise a DPS which is confined to waters of Cook Inlet and does not include beluga whales found in Yakutat or other Gulf of Alaska waters beyond Cook Inlet. Through this rulemaking, we modify the present description of the Cook Inlet beluga whale DPS, which is considered a species under the ESA, by removing those beluga whales occurring near Yakutat or outside Cook Inlet waters.

Extinction Risk Assessment and Summary of Section 4(a)(1) Factors Affecting the DPS

The ESA defines endangered species as a species "in danger of extinction throughout all or a significant portion of its range. In order to assess the status of the Cook Inlet beluga DPS and to support any determination that it may be threatened or endangered, we prepared a Status Review of these whales in November 2006. The 2006 Review represented the best available scientific information, affirmed the Cook Inlet population to be a DPS, and found the Cook Inlet beluga whale DPS to be in danger of extinction throughout all of its range. Subsequently, a panel of independent experts completed a review of the science presented in the 2006 Review. That review, published in April 2008, provided an update of the best available science. After completion of the 2008 aerial abundance survey, a supplemental Status Review was completed in October 2008. The 2006 and 2008 Reviews include Population Viability Analyses (PVA), trend projections, and extinction risk analyses. The PVA in the 2008 Review included new data from 2008 and addressed issues and comments raised during the review process; in particular, the possibility that small, gray calves and juveniles are undercounted during aerial surveys. The 2006 and 2008 Status Reviews both found a significant probability of extinction. While many iterations of models were considered in these Reviews, using varying inputs for such variables as predation and survival, the model considered to be the most realistic and representative resulted in a 26 per cent probability of extinction within 100 years, and 70 per cent probability of extinction within 300 years.

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine whether a species is endangered or threatened because of any one or a combination of the five factors listed under Section 4(a)(1). In the proposed rule, we specifically recognized these factors as they concern the Cook Inlet beluga whale DPS, and found some of these factors to be present with regard to the proposed listing.

The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Concern is warranted about the continued development within and along upper Cook Inlet and the cumulative effects on important beluga whale habitat. Ongoing activities that may impact this habitat include: (1) continued oil and gas exploration, development, and production; and (2) industrial activities that discharge or accidentally spill pollutants (e.g., petroleum, seafood processing waste, ship ballast discharge, effluent from municipal wastewater treatment systems, and runoff from urban, mining, and agricultural areas). Destruction and modification of habitat may result in "effective mortalities" by reducing carrying capacity or fitness of individual whales, with the same consequence to the population survival as direct mortalities. Therefore, threatened destruction and modification of Cook Inlet beluga whale DPS habitat contributes to its endangered status.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

A brief commercial whaling operation existed along the west side of upper Cook Inlet during the 1920s, where 151 belugas were harvested in 5 years (Mahoney and Sheldon, 2000). There was also a sport (recreational) harvest for beluga whales in Cook Inlet prior to enactment of the Marine Mammal Protection Act (MMPA) in 1972. It is possible that some residual effects for this harvest may remain and may be a factor in the present status of this stock.

Alaska Natives have legally harvested Cook Inlet beluga whales prior to and after passage of the MMPA in 1972. The effect of past harvest practices on the Cook Inlet beluga whale is significant. While subsistence harvest occurred at unknown levels for decades, the observed decline from 1994 through 1998 and the reported harvest (including estimates of whales which were struck but lost, and assumed to have perished) indicated these harvest levels were unsustainable. Annual subsistence take by Alaska Natives during 1995–1998 averaged 77 whales (Angliss and Lodge, 2002). The harvest was as high as 20 percent of the population in 1996. Subsistence removals reported during the 1990s are sufficient to account for the declines observed in this population and must be considered as a factor in the proposed classification of the Cook Inlet beluga whale DPS as endangered.

Disease or Predation

Killer whales are thought to take at least one Cook Inlet beluga per year (Shelden *et al.*, 2003). The loss of more than one beluga whale annually could impede recovery, particularly if total mortality due to predation were close to the recruitment level in the DPS.

The Inadequacy of Existing Regulatory Mechanisms

Cook Inlet beluga whales are hunted by Alaskan Natives for subsistence needs. The absence of legal authority to control subsistence harvest prior to 1999 is considered a contributing factor to the Cook Inlet beluga whale DPS's decline. NMFS promulgated regulations on the long-term subsistence harvest of Cook Inlet beluga whales on October 15, 2008 (73 FR 60976). These regulations constitute an effective conservation plan regarding Alaska Native subsistence harvest, but they are not comprehensive in addressing the many other issues now confronting Cook Inlet beluga whales. At present, regulations cover the short-term subsistence harvest.

Other Natural or Manmade Factors Affecting its Continued Existence

Cook Inlet beluga whales are known to strand along mudflats in upper Cook Inlet, both individually and in number. The cause for this is uncertain, but may have to do with the extreme tidal fluctuations, predator avoidance, or pursuit of prey, among other possible causes. We have recorded stranding events of more than 200 Cook Inlet beluga whales. Mortality during stranding is not uncommon. We consider stranding to be a major factor establishing this DPS as endangered.

Efforts Being Made to Protect the Species

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires consideration of efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect such species. Such efforts would include measures by Native American tribes and organizations and local governments, and may also include efforts by private organizations. Also, Federal, tribal, state, and foreign recovery actions developed pursuant to 16 U.S.C. 1533(f) constitute conservation measures. On March 28, 2003, NMFS and USFWS published the final Policy for Evaluating Conservation Efforts (PECE)(68 FR 15100). The PECE provides guidance on evaluating current protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented or have been implemented but have not yet demonstrated effectiveness. The PECE establishes two basic criteria for evaluating current conservation efforts: (1) the certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. The PECE provides specific factors under these two basic criteria that direct the analysis of adequacy and efficacy of existing conservation efforts. Here we assess existing efforts being made to protect Cook Inlet beluga whales, then determine if those measures ameliorate risks to this DPS to a degree where listing is unnecessary.

Cook Inlet beluga whales benefit from protections afforded by the MMPA. The Cook Inlet beluga whale was designated as a depleted stock under the MMPA in 2000, and a draft Conservation Plan has been published (70 FR 12853; March 16, 2005). A final Conservation Plan is available (see **ADDRESSES**). The Conservation Plan is comprehensive and provides recommendations to foster recovery. While some recommendations are funded, many recommendations are unfunded. Therefore, it is uncertain whether these beluga conservation measures will be implemented.

Other provisions exist for the management of subsistence harvests of Cook Inlet beluga whales by Alaskan Natives. Federal law (Public Law 106–553) prohibits the taking of Cook Inlet beluga whales except through a cooperative agreement between NMFS and affected Alaska Native organizations. Presently, co-management agreements are signed annually with the Cook Inlet Marine Mammal Council to establish strike (harvest) limits and set forth requirements intended to minimize waste and prevent unintentional harassment. We have promulgated regulations on subsistence harvest of Cook Inlet beluga whales (73 FR 60976, October 15, 2008). These regulations constitute an effective conservation plan regarding Alaska Native subsistence harvest. They are not, however, comprehensive in addressing the many other issues now confronting Cook Inlet belugas.

We are not aware of conservation efforts undertaken by foreign nations specifically to protect Cook Inlet beluga whales. We support all conservation efforts by states and other entities that are currently in effect; however, these efforts lack the certainty of implementation and effectiveness so as to have removed or reduced threats to Cook Inlet belugas. In developing our final listing determination, we have considered the best available information concerning conservation efforts and any other protective efforts by states or local entities for which we have information. We conclude that existing conservation efforts do not provide sufficient certainty of effectiveness to substantially ameliorate the level of assessed extinction risk for Cook Inlet beluga whales.

Final Listing Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species.

We reviewed the petition, the 2006 and 2008 Status Reviews, other available published and unpublished information, and comments received in response to the proposed rule to list Cook Inlet beluga whales as an endangered species. We also consulted with beluga whale experts. On the basis of the best available scientific and commercial information available, we conclude the Cook Inlet beluga whale DPS is in danger of extinction, and should be listed as an endangered species.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Sections 7(a)(2) of the ESA requires Federal agencies to consult with us to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS. Examples of Federal actions that may affect Cook Inlet beluga whales include coastal development, oil and gas development, seismic exploration, point and non-point source discharge of contaminants, contaminated waste disposal, water quality standards, activities that involve the release of chemical contaminant and/or noise, vessel operations, and research. Sections 10(a)(1)(A) and (B) of the ESA authorize NMFS to grant exceptions to the ESA's Section 9 "take" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-federal) for scientific purposes or to enhance the propagation or survival of a listed species. The types of activities potentially requiring a

section 10(a)(1)(A) research/enhancement permit include scientific research that targets Cook Inlet beluga whales. Under section 10(a)(1)(B), the Secretary may permit takings otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Identification of Those Activities that Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, we and the USFWS published a series of policies regarding listings under the ESA, including a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272). The intent of this policy is to increase public awareness of the effect of our ESA listings on proposed and ongoing activities within the species' range. We identify, to the extent known, specific activities that will be considered likely to result in violation of section 9, as well as activities that will not be considered likely to result in violation. Activities that we believe could result in violation of section 9 prohibitions against "take" of the Cook Inlet beluga whale include: (1) Unauthorized harvest or lethal takes; (2) in-water activities which produce high levels of underwater noise which may harass or injure whales; (3) coastal development that adversely affects beluga whales (e.g., dredging, waste treatment); (4) discharging or dumping toxic chemicals or other pollutants into areas used by beluga whales; and (5) scientific research activities.

We believe, based on the best available information, the following actions will not result in a violation of Section 9: (1) federally funded or approved projects for which ESA section 7 consultation has been completed, and that are conducted in accordance with any terms and conditions we provide in an incidental take statement accompanying a biological opinion; and (2) takes of Cook Inlet beluga whales that have been authorized by NMFS pursuant to section 10 of the ESA. These lists are not exhaustive. They are intended to provide some examples of the types of activities that we might or might not consider as constituting a take of Cook Inlet beluga whales.

Critical Habitat

Section 3(5)(A) of the ESA defines critical habitat as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed...on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed...upon a determination by the Secretary that such areas are essential for the conservation of the species." Section 3(3) of the ESA (16 U.S.C. 1532(3)) also defines the terms "conserve," "conserving," and "conservation" to mean "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary."

Section 4(a)(3) of the ESA requires that, to the extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Designation of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to section 7's requirement that Federal agencies ensure their actions do not jeopardize the continued existence of the species.

In determining what areas qualify as critical habitat, 50 CFR 424.12(b) requires that NMFS consider those physical or biological features that are essential to the conservation of a given species including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species. The regulations further direct NMFS to "focus on the principal biological or physical constituent elements . . . that are essential to the conservation of the species," and specify that the "Known primary constituent elements shall be listed with the critical habitat description." The regulations identify primary constituent elements (PCEs) as including, but not limited to: "roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types."

The ESA also directs the Secretary of Commerce to consider the economic impact of designating critical habitat, and under section 4(b)(2) the Secretary may exclude any area from such designation if the benefits of exclusion outweigh those of inclusion, provided that the exclusion will not result in the extinction of the species. Such an economic analysis is not currently available; we intend to initiate this research upon listing.

At this time, we lack the data and information necessary to identify and describe PCEs of the habitat of the Cook Inlet beluga whale, as well as the economic consequences of designating critical habitat. In the proposed rule, we requested information on the economic attributes within the Cook Inlet region that could be impacted by critical habitat designation, as well as identification of the PCEs or "essential features" of this habitat and to what extent those features may require special management considerations or protection. However, few substantive comments were received on this request. We find designation of critical habitat to be "not determinable" at this time. The ESA requires publication of a final rule to designate critical habitat within 1 year of the date of publication of this final listing rule.

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. (See NOAA Administrative Order 216–6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analyses required by the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This final rule does not contain a collection of information requirement for the

purposes of the Paperwork Reduction Act.

E.O. 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. Section 6 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. We have determined that the rule to list the Cook Inlet beluga whale under the ESA is a policy that has federalism implications, as defined in Section 1. Consistent with the requirements of E.O. 13132, recognizing the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, and in keeping with Department of Commerce policies, we requested information from appropriate State resource agencies in Alaska regarding the proposed ESA listing. The Alaska Departments of Fish and Game (ADFG); Natural Resources; Commerce, Community and Economic Development; and Environmental Conservation responded with comments to the proposed rule. The ADFG raised concern for the adequacy of existing population trend data, and by letter dated December 24, 2007, requested a 6–month extension on the final listing decision to allow for incorporation of 2008 abundance estimates. As stated above, we determined that the extension was warranted, and we analyzed additional data and conducted further analyses during that time that support this final listing action.

E.O. 13175, Consultation and Coordination with Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175—Consultation and Coordination with Indian Tribal Governments—outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

We have contacted those tribal governments and Native corporations that may be affected by this action, provided them with a copy of the proposed rule, and offered the opportunity to comment on the proposed rule and discuss any concerns they may have. No requests for consultation were received.

References Cited

A complete list of all references cited in this rulemaking can be found on our website at *http://www.fakr.noaa.gov/* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

List of Subjects in 50 CFR Part 224

Endangered and threatened species.

Dated: October 17, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation of part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.101 [Amended]

■ 2. In § 224.101, amend paragraph (b) by adding, "Beluga whale (*Delphinapterus leucas*), Cook Inlet distinct population segment;" in alphabetical order.

[FR Doc. E8–25100 Filed 10–17–08; 11:15 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 205
Wednesday, October 22, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM–2–14; NRC–2007–0011]

State of Nevada; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for Rulemaking: Denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is denying a petition for rulemaking submitted by the State of Nevada (Nevada or petitioner). The petition requests that NRC modify its regulation regarding issues specified for review in a notice of hearing for the Department of Energy (DOE) application for a high-level waste (HLW) repository construction authorization at Yucca Mountain, Nevada. The petitioner asserts that the proposed regulation would "fill a gap" in the NRC's current regulations. Further, petitioner asserts that the proposed regulation fulfills the Commission's intent when it first required a hearing for any docketed applications for construction of a HLW repository. NRC is denying the petition because it is inconsistent with current NRC rules and inconsistent with the Commission's intent when it originally established regulations requiring an opportunity for a hearing for all docketed HLW repository construction applications.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking, the comments received, and NRC's letter of denial to the petitioner may be viewed electronically on public computers in NRC's Public Document Room (PDR), 01F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents may also be viewed and downloaded electronically via the federal rulemaking Web site at *http://www.regulations.gov* by searching Docket ID: [NRC–2007–0011]. For questions about regulations.gov, contact Carol Gallagher at (301) 415–5905.

Publicly available documents are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Sean Croston, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Mail Stop O15–D21, Washington, DC 20555–0001, telephone: (301) 415–2585, e-mail: *sean.croston@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 19, 2007, the State of Nevada (Nevada) submitted a Petition for Rulemaking (PRM), docketed as PRM–2–14. The NRC published a **Federal Register** notice of receipt for PRM–2–14 on August 29, 2007. *See* 72 FR 49668. PRM–2–14 asks NRC to amend 10 CFR 2.104, Notice of hearing, one of the 10 CFR Part 2 rules of practice for licensing proceedings.

A. Regulatory Background

10 CFR 2.101(e)(8) states the Commission's finding that "a hearing is required in the public interest, prior to issuance of a construction authorization" for a HLW geologic repository. *See* 46 FR 13974 (February 25, 1981). The proposed facility at Yucca Mountain is a HLW geologic repository and falls within the scope of § 2.101(e)(8). Section 2.101(e)(8) also requires the NRC to "recite the matters specified in § 2.104(a)" in the notice of docketing for any such hearings.

When Nevada filed its petition on June 19, 2007, the former 10 CFR 2.104(a) (2006) set out requirements for notices for hearing, which included specifying "the matters of fact and law to be considered." For mandatory hearings (hearings required by statute for production or utilization facility construction permit applications and for licensing the construction and operation of uranium enrichment facilities), this regulation effectively required the presiding officer to review specified matters, even if those matters were not raised by parties in admitted contentions. After Nevada filed PRM–2–14, the Commission concluded a prior rulemaking amending § 2.104, which removed all specified matters from notices for hearing under § 2.104(a). *See* 72 FR 49412 (August 28, 2007).

B. The Petition

PRM–2–14 would add a new paragraph (f) to 10 CFR 2.104. The proposed paragraph would apply to hearings on construction authorizations for HLW geologic repositories, such as the Yucca Mountain proceeding. Paragraph (f)(2) would order the Atomic Safety and Licensing Board (ASLB) to independently "determine" whether the application, hearing record, and staff review contain sufficient information. Paragraph (f)(3) would mandate an independent ASLB review of compliance with the Nuclear Waste Policy Act of 1982 and 10 CFR Part 51, along with an independent review of environmental and other factors in the record, before the presiding officer could make a decision on authorization. Finally, paragraph (f)(4) would reiterate that the ASLB must make the required determinations regardless of whether the issues were covered by admitted contentions. Paragraphs (f)(2) and (f)(4) also state that, in making the required "determinations," the ASLB should not conduct a *de novo* review of the application.

Nevada suggests that in the Yucca Mountain hearing, "the scope of [the] issues and of [the] required findings by the presiding officer must extend beyond admitted contentions," as is the case in reactor construction permit hearings. *See* PRM–2–14 at 4. Nevada argues that in requiring a hearing for

HLW geologic repositories, the Commission "must" have meant to require procedures and reviews analogous to those in its reactor construction permit hearings, "because otherwise, [NRC's] decision to hold a mandatory hearing would be nothing more than an empty gesture." *Id.* Nevada also comments that it would be inappropriate to allow the staff, rather than the Commission, to specify the scope of issues for the Yucca Mountain hearing.

C. Public Comments on the Petition

The NRC received two comments on the petition. A comment submitted by the Nevada Nuclear Waste Task Force, Inc. (NNWTF) supported the petition. The NNWTF asserted that NRC hearings often fail to cover "many important safety and environmental issues." The NNWTF also claimed that mandatory reviews of uncontested issues would "provide an independent check on the NEPA and safety decisions of the NRC Staff, whose conclusions on uncontested issues would otherwise escape any meaningful and public review." On the other hand, a comment submitted by the Department of Energy (DOE) opposed the petition. The DOE argued that the petition was late and unnecessary in light of recent amendments to 10 CFR 2.104, and would impose greater requirements for the Yucca Mountain HLW hearing than would apply to other mandatory NRC hearings. The DOE also stated that PRM–2–14 would conflict with 10 CFR 51.109(e).

II. Reasons for Denial

A. Recent Amendments to § 2.104

PRM–2–14 does not take note of recent NRC rule changes regarding 10 CFR 2.104, which removed many of its previous requirements. The rule no longer requires presiding officers in mandatory reactor construction permit hearings to consider a specific list of procedural, safety, and environmental issues regardless of admitted contentions. *See* 72 FR 49412 (August 28, 2007). As a result, the issue-review procedure that Nevada would like to apply to the Yucca Mountain HLW hearing no longer exists elsewhere in the agency's procedures; thus the requested provisions would no longer be "patterned essentially after 10 CFR 2.104(b)," *see* PRM–2–14 at 4, nor would they conform to agency "precedents." *Id.* Rather, granting PRM–2–14 would lead to different issue review requirements and would not provide the consistent process that Nevada allegedly seeks. In particular, PRM–2–14 would impose greater requirements for the Yucca Mountain HLW hearing than now apply to other NRC hearings.

B. Conflict With 10 CFR Part 2, Subpart J

By petitioning for "independent determinations" of various procedural, safety and environmental issues in the Yucca Mountain HLW hearing, *see* PRM–2–14 at 5–6, Nevada is essentially asking the Commission to mandate *sua sponte* review of those topics by the presiding officer to the extent that they are not reviewed pursuant to admitted contentions. But the NRC has previously adopted 10 CFR 2.1027, which specifies that in a HLW hearing, "the Presiding Officer * * * shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding." In the **Federal Register**, the Commission explained that it did "not believe that *sua sponte* authority is necessary * * * where a hearing is required * * * and where the parties will include entities that should be well-prepared and have had substantial involvement in the HLW licensing process." 54 FR 39389 (September 26, 1989). Nevada has not provided any information that contradicts the premise in that assessment.

Additionally, 10 CFR 2.1023(c)(2) already provides that "the Commission shall review * * * those issues that have not been contested in the proceeding before the Presiding Officer." This Commission-level review is explicitly "not part of the adjudicatory proceeding." *Id.* When the Commission indicated in the regulations that it would review the uncontested matters outside of the adjudicatory process, it clearly contemplated that these issues would not be subject to a hearing. It states that, "even if no hearing has been held, the Director of Nuclear Material Safety and Safeguards will not issue a construction authorization * * * until expressly authorized to do so by the Commission." 46 FR 13974 (February 25, 1981). Thus, even if there were no admitted contentions, the Commission, not a presiding officer, would review the construction authorization, including all uncontested matters.

The NRC also set out a schedule for the Yucca Mountain HLW hearing at Appendix D to 10 CFR Part 2. *See also* 10 CFR 2.1026(a) (requiring the presiding officer at the Yucca Mountain HLW hearing to adhere to the schedule at Appendix D). The Commission did not include time for review of uncontested issues by the presiding officer. This is additional evidence that, contrary to Nevada's assertion, the Commission clearly did not intend to require reviews and procedures analogous to those then in existence for construction permit proceedings.

C. Conflict With 10 CFR Part 51

Nevada's proposed § 2.104(f)(3) would require the presiding officer to "determine whether the requirements of section 102(2)(A), (C), and (D) of NEPA * * * have been complied with in the proceeding." This proposed requirement is inconsistent with 10 CFR 51.109, which prescribes the presiding officer's review of environmental impact statements (EISs) under section 102(2)(A), (C) and (D) of the National Environmental Policy Act (NEPA). Section 51.109(e) requires the presiding officer to conduct such a review only if it is impracticable to adopt DOE's EIS. The petition would ignore this limitation and mandate an independent review in each case, regardless of the adequacy of DOE's EIS.

D. Determination of Issues at Hearing

Nevada recommends specifying the issues for the Yucca Mountain hearing by regulation because it would be inappropriate to allow the staff, in an adversary role, to specify the scope of issues. The long-standing agency practice outside of reactor construction permit proceedings, however, has been to specify issues for hearing in the notice of hearing, not through regulation. Nevada must have been aware of this because it openly models its proposed rule after the issues listed in the *USEC* notice of hearing, which were not spelled out by any regulation. *See USEC, Inc. Notice of Hearing,* 69 FR 61411 (October 18, 2004). Moreover, Nevada's concern that the NRC staff will be responsible for determining the scope of issues is unfounded. "The Commission," not the staff, "will clearly define the precise scope of the hearing [and] outline the appropriate general issue areas to be considered in the proceeding * * *." 56 FR 7794 (February 26, 1991).

E. Commission's Intent in Issuing § 2.101(e)(8)

Nevada argues that when the NRC required a hearing for a HLW repository construction authorization at 10 CFR 2.101(e)(8), the Commission "must" have meant to require exhaustive procedural, safety and environmental reviews by the presiding officer, because otherwise a mandatory hearing would be "meaningless." *See* PRM–2–14 at 4.

Nevada suggests that if there were no contested issues, the required hearing would have to cover something, so the presiding officer should review key procedural, safety and environmental issues at a minimum.

An examination of the Commission's development of the position that a hearing would be held for Yucca Mountain indicates that it evolved from the unique nature of any decision on an application for a HLW repository, not from the regulatory framework for reactor licensing.

Before the Commission issued 10 CFR 2.101(e)(8), commenters noted "the national importance of [HLW repositories] and the concern that state and local governments and the general public have expressed with regard to nuclear waste disposal" and asked the NRC to require hearings before the construction of a HLW repository. *See* SECY–80–0474: Final Rule—10 CFR Part 60, Disposal of High-Level Radioactive Wastes in Geologic Repositories, Encl. B, App. B, PDR No. 6, ADAMS Accession No. ML041350273 (October 17, 1980). In response, the Commission determined that it would require a hearing, agreeing that a Yucca Mountain hearing would involve "numerous novel technical, policy, and legal issues of national importance." *See* NRC Response to Nevada's Petition on Procedures for the Yucca Mountain Licensing Hearing at 2, ML031631253 (July 8, 2003).

The Commission then reaffirmed its motivation for requiring a hearing when it noted that the Yucca Mountain proceeding would be a "unique" hearing, "likely to involve multiple parties," with "a large number of disputes over material facts." *See* 69 FR 2204 (January 14, 2004). In such an environment, the Commission believed it would be best to "provide an on-the-record hearing" in order to "advance public confidence in the Commission's repository licensing process." *Id.* This language also affirms that the Commission expectation was that it would offer an opportunity for a hearing on Yucca Mountain and expected to receive requests from multiple parties for such a hearing, indicating that the Commission discussion was in the context of a "contested" hearing and was not addressing uncontested issues.

Nevada's claim that the Commission must have required hearings for HLW geologic repository applications solely to increase the scope of issues before the presiding officer does not find support in the record. In the second paragraph of its own petition, Nevada explicitly recognized "the wide public interest in Yucca Mountain. * * *" *See* PRM–2–14 at 1. The record clearly shows that the Commission focused on a hearing as a method of public involvement, rather than a means of mandating or expanding the scope of review. The petition does not advance the Commission's prior plans in any form.

Nevada's theoretical question regarding the Commission's intent where a "mandatory" HLW construction authorization request did not result in any admissible contentions is, as a practical matter, only an academic exercise. The regulatory history shows that the Commission reasonably anticipated and was providing for a contested hearing for Yucca Mountain. *See* Appendix D to 10 CFR Part 2 (listing the milestone schedule for the Yucca Mountain HLW hearing, which does not include a review of uncontested issues); 10 CFR 2.1001 (assuming standing for a number of interested parties in the Yucca Mountain proceedings); 56 FR 7792 (February 26, 1991) (stating the Commission's expectation of well-prepared parties and thorough identification of issues for litigation); 54 FR 39389 (September 26, 1989) (expressing the Commission's view that there was "little likelihood that a significant issue will be overlooked" by admitted parties).

While the discussions in the supporting documentation for the rulemaking process addressing the hearing issue could have been clearer, the regulations themselves leave little doubt as to the Commission's intent. That intent always was to assure that an opportunity to request a hearing was provided. The Commission anticipated that the opportunity would result in the filing of a successful request. However, as noted earlier, 10 CFR 2.1023(c)(2) shows that the Commission always contemplated, and expressly provided that uncontested issues would be considered outside of the adjudicatory process.

The NRC has always expected to receive large numbers of contentions, and recent events show that these predictions were well-founded. The DOE submitted its repository license application for Yucca Mountain on June 3, 2008, and Nevada alone disclosed its plan to file between "251–500" contentions in the proceeding. *See U.S. Department of Energy* (High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board), Nevada Response to the Board's Notice and Memorandum of March 6, 2008 (March 24, 2008) at 2. The Commission stated that the contested hearing on DOE's Yucca Mountain application would likely be "one of the most expansive and complex adjudicatory proceedings in agency history." *See U.S. Department of Energy* (High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board), CLI–08–18 (August 13, 2008). In such an environment, there is little likelihood that the presiding officer at the Yucca Mountain hearing will be left without any issues to review.

Finally, Nevada refers to the Yucca Mountain hearing as a "mandatory hearing" and suggests that its proposed rules are necessary because of the hearing's "mandatory" nature. In 2005, the Commission clarified that in current usage, a "mandatory hearing" is "a hearing that must take place even if no intervenor contests the license application," covering both contested and uncontested issues. *See Exelon Generating Company, LLC (Early Site Permit for Clinton ESP Site) et al.*, CLI–05–17, 62 NRC 5 (July 28, 2005). This conception of a "mandatory hearing" stems from statutory provisions concerning reactor construction permit applications and construction and operation of uranium enrichment facilities. *Id.* at 26–27. The Commission did not extend its definition of "mandatory hearing" to hearing opportunities, such as the Yucca Mountain construction authorization hearing opportunity referenced in 10 CFR 2.101(e)(8). Any references to the Yucca Mountain hearing as a "mandatory" hearing used that term as a common synonym for the Commission mandating an opportunity to request a hearing as a matter of discretion, and do not indicate any intent to extend uncontested hearing procedures to the Yucca Mountain proceeding. In fact, the Commission generally disfavors the broad "mandatory hearing" process and will not apply it when it is not legally required. *See generally* Staff Requirements Memorandum—COMDEK–07–0001/COMJSM–07–0001, Report of the Combined License Review Task Force, ML071760109 (June 22, 2007). Likewise, the adoption of 10 CFR 2.1023, 2.1027, and Appendix D to 10 CFR Part 2 show that the Commission never planned to grant the presiding officer in the Yucca Mountain hearing any authority to conduct *sua sponte* review of uncontested issues.

III. Conclusion

The petition would conflict with existing 10 CFR Part 2, Subpart J regulations by requiring the presiding officer at HLW repository application hearings to review procedural, safety and environmental issues without regard to whether those issues were raised in admitted contentions. The requested provisions are also

inconsistent with 10 CFR 51.109 and the amended 10 CFR 2.104 requirements for other NRC hearings. Most importantly, the proposal is contrary to Commission intent when, in its discretion, it decided on the specific hearing requirements to apply to the Yucca Mountain application for a construction authorization. Nevada does not provide adequate support for its claim that its proposed provisions are a necessary consequence of the Commission's past positions. The requested rulemaking is both unwise and contrary to the Commission's long-standing policy.

For these reasons, the Commission denies PRM–2–14.

Commissioner Gregory B. Jaczko's Disapproval of the Denial of Petition for Rulemaking PRM–2–14

I disapprove the decision denying the State of Nevada's petition for rulemaking to specify issues for the Yucca Mountain proceeding. With respect to PRM–2–14, I believe some changes to the issues specified for hearing with respect to the Department of Energy's (DOE) application to construct a geologic waste repository at Yucca Mountain may be warranted, but that a rulemaking is not necessary to effect those changes. Instead, the Commission can formulate the Notice of Hearing on the DOE application to address whatever issues raised by the petition that may have merit. Accordingly, I would grant the petition with the understanding that it would be addressed in the hearing notice, and not in a rulemaking.

In its petition, Nevada presumes that a hearing will be conducted on all uncontested issues. With respect to such uncontested hearings, I believe that the goal of the petition's request that the Licensing Board conduct uncontested hearings on the application is better accomplished by the Commission. We have decided in the context of combined license (COL) proceedings to conduct uncontested hearings ourselves, and the rationale for that decision applies equally to this proceeding as to COL proceedings. For a matter as significant as this proceeding—and the majority references the significance of this proceeding in its denial of petition—I do not believe the Commission should eliminate the review of uncontested issues in the hearing process. If, as the majority argues, there are no uncontested issues because "there is little likelihood that the presiding officer at the Yucca Mountain hearing will be left without any issues to review," then there will be nothing to address in this hearing. If, however, some issues are not contested, my approach would ensure that all issues are properly addressed in a hearing. Simply put, the majority decision's reliance on intervenors to divulge and review all matters relevant to safety is misguided. In addition, I do not believe the majority interpretation of our regulations—namely that the Commission never intended to address uncontested issues in the hearing—is torturous and weak, relying on an unsubstantiated interpretation of § 2.1023(c).

I note that the majority would interpret the Commission's rules as follows: 10 CFR 2.101(e)(8) requires that the Notice of Hearing state that "a hearing is required in the public interest" but this does not mean that there will be a hearing on all uncontested issues. The interpretation refers to § 2.1023(c)(2), which states that the Commission will review uncontested issues outside the adjudicatory process, as precluding hearings on uncontested issues. Nonetheless, 10 CFR 51.109(e)(4) requires that the presiding officer (which could be an Atomic Safety and Licensing Board) make findings with respect to uncontested environmental issues, and the Notice provides for consideration of such issues in the hearing. Moreover, the Licensing Board would not have jurisdiction to consider uncontested safety issues, pursuant to 10 CFR 2.1027. Only the Commission would have such jurisdiction.

The upshot of the above is that under the view favored by the majority, uncontested environmental issues would be decided by the presiding officer (the Licensing Board or the Commission itself) in a hearing, but uncontested safety issues would only be considered by the Commission outside the adjudicatory process. I do not believe it makes sense to have a "mandatory" hearing on uncontested environmental issues, but not on uncontested safety issues, which fall within our core Atomic Energy Act responsibilities. Rather, in order to bolster public confidence, I would rewrite the Notice of Hearing to provide for hearings on both uncontested safety and environmental issues. I believe the Commission itself should hear these uncontested issues, whether safety or environmental, within the context of the adjudicatory process, just as we plan to do in combined license (COL) proceedings.

Moreover, under the approach taken in the draft Notice of Hearing, the provision for Licensing Board review of uncontested environmental issues under § 51.109 appears to conflict with the prohibition on Board review of uncontested issues in § 2.1027, and the Commission's ultimate review of such uncontested environmental issues in the adjudication would seemingly conflict with the provisions of § 2.1023. In contrast, the approach I recommend has the advantage of interpreting 10 CFR 2.1027 together with § 51.109(e)(4) such that the Licensing Board would be precluded from hearing uncontested environmental issues (under § 2.1027), and the Commission would function as the presiding officer for such uncontested issues (under § 51.109(e)(4)). This approach would similarly apply § 2.1027 with respect to uncontested safety issues, so that the Commission, rather than the Licensing Board, would conduct a hearing on such issues. This approach would also apply the language of § 2.101(e)(8) in a more literal fashion. Given the murkiness of the history and meaning of § 2.101(e)(8), such clarification is warranted.

This approach is also consistent with § 2.1023. Section 2.1023 provides for Commission review of both uncontested and contested issues outside the adjudicatory process under the Commission's supervisory authority. Obviously, contested issues will be decided in the adjudicatory proceeding. I believe § 2.1023 merely states our inherent supervisory authority to review any particular issue if the result of the adjudicatory proceeding is that the application should be granted, but a license has not yet been issued. The Commission would have this authority even if § 2.1023 did not exist. The language of § 2.1023(c)(2) (regarding uncontested issues) that states the Commission review is not part of the adjudicatory proceeding is parallel to language in § 2.1023(c)(1) (regarding contested issues). To interpret the language in § 2.1023(c)(2) to bar uncontested safety issues from adjudication (but not uncontested environmental issues) seems strained to me.

With respect to the issues specified for adjudication, I note that the Commission stated in the 1991 Statements of Consideration on Subpart J (56 FR 7787) that we would more clearly define the precise scope of the hearing in the Notice. The time has come for us to do so. In this regard, Nevada's petition for rulemaking requests that the Notice of Hearing specify that the presiding officer make findings that the standards of in §§ 63.10, 63.21, and 63.24(a) and the requirements of § 63.31 have been met. I believe that specifying these sections in the Notice of Hearing has merit, particularly with respect to § 63.31, and I would include in the Notice a

paragraph similar to paragraph 2.(1) on page 5 of Nevada's petition. While the Notice of Hearing requires the general finding that all the Commission's regulations have been met, and I would not delete this, reference to the specific regulations may help the parties and Licensing Boards focus on the issues most pertinent to the Yucca Mountain proceeding.

Additional Views of the Commission

The Commission majority does not share Commissioner Jaczko's dissenting views. The Commission is responding to Nevada's arguments, which rest largely on a mistaken interpretation of the current rules. Nevada did not show that the existing rules are inadequate to permit a thorough and probing evaluation of a HLW repository application. The Commission's notice of denial reflects careful consideration of Nevada's petition and explains in considerable detail the reasons why the petition should be denied.

We also see no need for Commissioner Jaczko's proposal that the Commission hold adjudicatory hearings on uncontested safety and environmental issues. Such an approach would not only be a departure from long-standing rules but would likely and unnecessarily prolong what promises to be the most thoroughly-contested and complex licensing review in NRC history. Our existing rules require the staff to conduct a sound and exhaustive review, permit interested parties to intervene and litigate what we anticipate to be a very large number of contentions about the adequacy of the application, and, as Commissioner Jaczko acknowledges, provide for a Commission review of both uncontested and contested issues outside the adjudicatory process. While we agree with Commissioner Jaczko that public confidence in our decision making is of vital importance, we also believe that the multiple layers of review provided under our existing rules will be more than adequate to provide that confidence. Deviating from our well-established rules would not serve that objective.

Dated at Rockville, Maryland, this 17th day of October 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–25290 Filed 10–21–08; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133–AD52

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

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

DATES: Comments must be received by November 21, 2008.

ADDRESSES: You may submit comments by any of the following methods. (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on FCU Bylaws" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGC Mail@ncua.gov.*

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

SUPPLEMENTARY INFORMATION:

A. Background

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

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

to all members conducting share or share deposit transactions." *Id.*

NCUA first adopted this requirement for a second sign in shared branches back in 1971. 36 FR 902, 903 (Jan. 25, 1971). The requirement ensures members of nonfederally insured credit unions are not confused regarding the insurance status of their accounts when those members make deposits through tellers shared with federally insured credit unions and that display the mandatory official NCUA sign. 63 FR 10743, 10755 (March 5, 1998).

During the past 37 years, however, the nature of shared branching has changed considerably. The first shared branches were local operations involving just a few credit unions. Now, some shared branch networks are national in scope and service hundreds, if not thousands, of individual credit unions.[1] Under these circumstances, NCUA believes the requirement for by-name listing of each participating federally insured credit union is problematic. Since the vast majority of credit unions participating in the larger shared branch networks are federally insured, members must now sift through a lengthy list of credit unions to ascertain the insurance status of their particular credit union. The length of the list would also require a large, obtrusive sign, and it is difficult to keep the sign up-to-date as federally insured credit unions frequently join or leave these networks.

Share branch networks are not only increasing in size but are also changing in the nature of the facilities they employ. The earliest shared branches consisted of shared service facilities run by non-credit union entities such as credit union service organizations. Now, some shared branch networks are structured to allow credit unions to use their own branches, rather than separate facilities, to service members of other credit unions. Given this trend, NCUA understands that some nonfederally insured credit unions participating in shared branch networks may accept deposits for federally insured credit unions at the nonfederally insured credit union's locations, and vice versa. The current rule does not adequately address the signage requirements in these situations, such as whether the official NCUA sign should be placed in nonfederally insured credit unions accepting federally insured share deposits.

[1] Two of the largest shared branch networks are Credit Union Service Centers (CUSC) and the Financial Service Centers Cooperative (FSCC). Currently, CUSC appears to have about 1,200 participating federally insured credit unions and 22 participating nonfederally insured credit unions. FSCC appears to have about 270 participating federally insured credit unions and 12 participating nonfederally insured credit unions. Further, these organizations interlink, allowing deposits to be made through participants in one organization for the accounts at participants in the other.

B. Proposed Amendments to Part 740

The proposed revision to § 740.4(c) retains the general prohibition on federally insured credit unions receiving funds at any teller station or window where any nonfederally insured credit union also receives account funds. The proposal contains three exceptions to this prohibition.

The first two exceptions permit tellers at federally insured credit unions and shared branches operated by non-credit union entities to receive deposits for nonfederally insured credit unions if these tellers post a second sign adjacent to the official NCUA sign. In lieu of a listing of all federally-insured credit unions, the revised second sign will state that the credit union or facility participates in a shared branch network and accepts deposits for members of other credit unions, not all of which are federally insured. The revised second sign will advise members to contact their credit union for information about its insurance status.

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

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

The current prohibition applies to tellers that accept deposits from nonfederally insured credit unions and "other institutions." As far as the Board is aware, banks and thrifts are the only types of non-credit union institutions that take deposits, and, currently, they are all federally insured. Accordingly, there is no need for the rule to address "other institutions" and the proposed rule deletes that phrase. Also, although the rule only addresses deposit-taking, federally insured credit unions must ensure that if they participate in a shared branching network that includes a nondeposit investment sales function, that function is physically separated from the deposit-taking function. *See* NCUA Letter to Credit Unions No. 150, *Sales of Mutual Funds, Annuities, and Other Non-Deposit Investments,* December 1993.

The proposed revisions also include additions to the definitions in § 740.1. 12 CFR 740.1. The phrase "nonfederally insured credit union" is defined as a credit union with either no account insurance or with primary account insurance from an entity other than NCUA. The phrases "insured credit union" and "federally insured credit union," as used in the rule, both refer to a credit union with NCUA account insurance.

C. 30-Day Comment Period

NCUA seeks public comment on the proposals discussed above. NCUA is particularly interested in commenters' views about whether the proposals are adequate to ensure that credit union members understand the insurance status of their credit union accounts.

As a matter of agency policy, the NCUA Board generally provides a 60-day comment period for proposed regulations. NCUA's Interpretive Ruling and Policy Statement (IRPS) 87–2, 52 FR 35231 (Sept. 18, 1987), as amended by IRPS 03–02, 68 FR 31949 (May 29, 2003). In this case, the NCUA Board believes a 30-day comment period will suffice because the proposal simplifies an existing rule and eases compliance burdens for federally insured credit unions.

Regulatory Procedures

Regulatory Flexibility Act

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

Paperwork Reduction Act

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

Executive Order 13132

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

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

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

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on October 16, 2008.

Mary F. Rupp,

Secretary of the Board.

For the reasons set forth above, NCUA proposes to amend 12 CFR part 740 as follows.

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

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

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

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

§ 740.1 Definitions.

* * * * *

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

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

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

§ 740.4 Requirements for the official sign.

* * * * *

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

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

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

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

* * * * *

[FR Doc. E8–25116 Filed 10–21–08; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1116; Directorate Identifier 2007–NM–231–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. For certain airplanes, this proposed AD would require deactivation or modification of the wiring to the outboard landing lights, until the wire bundles and electrical connectors have been replaced. For all airplanes, this proposed AD would also require an inspection for any broken, damaged, or missing fairleads, grommets, and wires in the four electrical junction boxes of the main wheel well, and corrective actions if necessary. For certain airplanes, this proposed AD would also require replacement of certain wire bundles for the landing lights and fuel shutoff valves, and related investigative, other specified, and corrective actions if necessary. For certain airplanes, this proposed AD would also require replacement of certain electrical connectors and backshell clamps. This proposed AD results from reports of uncommanded engine shutdowns and burned and damaged wire bundles associated with the outboard landing lights and engine fuel shutoff valves. This proposed AD also results from reports of damaged and missing grommets and broken and damaged fairleads in the electrical junction boxes of the main wheel well. We are proposing this AD to prevent a hot short between the outboard landing light and fuel shutoff valve circuits, which could result in an uncommanded engine shutdown. We are also proposing this AD to prevent corrosion of the electrical connectors of the wing rear spars, which could result in short circuits and consequent incorrect functioning of airplane systems needed for safe flight and landing.

DATES: We must receive comments on this proposed AD by December 8, 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.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6480; fax (425) 917–6590.

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–2008–1116; Directorate Identifier 2007–NM–231–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

We have received reports of uncommanded engine shutdowns and burned and damaged wire bundles where the wire bundle exits the main wheel well in the area of the wing rear spar on Boeing Model 737–300, –400, and –500 series airplanes. Investigation revealed that the uncommanded engine shutdowns were caused by uncommanded closure of the engine fuel shutoff valves, which resulted from short circuits between the 115 volt alternating current (VAC) circuits of the outboard landing lights and the 28 volt direct current (VDC) circuits of the engine fuel shutoff valves. This short circuit causes the valve to move towards the closed position. Failure of the valve occurs shortly after reaching the closed position due to exposure of the 28–VDC valve to 115–VAC power from the outboard landing light circuit. The loss of ability to reopen the valve prevents restarting the engine due to the unavailability of fuel. Uncommanded closure of the fuel shutoff valve due to a hot short between the outboard landing light and the fuel shutoff valve circuits, if not corrected, could result in an uncommanded engine shutdown.

Subsequently, Boeing published Boeing Service Bulletin 737–28–1241, dated April 7, 2006, to provide instructions for replacing certain wire bundles with new, re-designed wire bundles to prevent short circuits between the outboard landing light and engine fuel shutoff valve circuits. After issuing that service bulletin, Boeing discovered that some of the replacement wire bundles were inadvertently assembled and delivered with electrical connectors and backshells having a cadmium-plated finish instead of an anodized aluminum finish. The electrical connectors and backshells are located on the rear spar of the left and right wings. The cadmium-plated connectors and backshells corrode quickly when exposed to potassium-based de-icing fluids. This corrosion leads to moisture ingress into the electrical connectors and subsequent corrosion of the electrical contacts within the electrical connectors. This condition, if not corrected, could result in short circuits and consequent incorrect functioning of airplane systems needed for safe flight and landing.

We have also received reports of damaged and missing grommets and broken and damaged fairleads in the electrical junction boxes of the main wheel well on Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. Although there is no evidence that these wiring discrepancies have contributed to uncommanded engine shutdowns, the wiring in this area includes the wire bundles for the engine fuel shutoff valves, as well as wiring for other systems needed for continued safe flight and landing of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006, for Model 737–300, –400, and –500 series airplanes. The service bulletin specifies accomplishing the actions in either Part 1 or Part 2 of the Accomplishment Instructions. Part 1 describes procedures for deactivating the outboard landing lights. The deactivation includes installing collars and "do not close" tags on the circuit breakers for the outboard landing lights, and capping and stowing the wires from the circuit breakers. Part 2 describes procedures for modifying the wiring to the outboard landing lights. The modification includes capping and stowing the existing wires to the outboard landing lights, and routing new wires to the outboard landing lights.

We have also reviewed Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007, for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. Part 1 of the Accomplishment Instructions of the service bulletin applies to certain Model 737–300, –400, and –500 series airplanes. Part 1 describes procedures for replacing certain wire bundles for the landing lights and fuel shutoff valves with new, re-designed wire bundles, and doing related investigative, other specified, and corrective actions if necessary. The related investigative actions include (1) doing a detailed inspection for any broken, damaged, or missing grommet where the wire bundles go from the wheel well to the wing and (2) doing a detailed inspection for any broken, damaged, or missing fairleads, any damaged or missing grommets, and any chafed or damaged wires or wire bundles in the electrical junction boxes of the main wheel well. The other specified actions include (1) removing any additional outboard landing light wires from the wire bundles installed in accordance with Boeing Alert Service Bulletin 737–33A1140 and (2) terminating the outboard landing lights at the circuit breakers, as necessary. The corrective actions include (1) replacing any broken, damaged, or missing fairlead with a new fairlead, (2) replacing any damaged or missing grommet with a new grommet, and (3) repairing or

replacing any chafed or damaged wires and wire bundles with new wires and wire bundles.

Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–28–1241 describes procedures for doing a detailed inspection for any broken, damaged, or missing fairleads, any damaged or missing grommets, and any chafed or damaged wires or wire bundles in the four electrical junction boxes of the main wheel well, and doing the corrective actions as necessary.

Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–28–1241 applies to certain Model 737–300, –400, and –500 series airplanes on which the wire bundle replacement was done in accordance with the original issue of the service bulletin, dated April 7, 2006. Part 3 describes procedures for replacing certain electrical connectors and backshell clamps with new, improved electrical connectors and backshell clamps.

Accomplishing the applicable actions specified in Boeing Service Bulletin 737–28–1241 would end the need for accomplishing the deactivation or modification specified in Boeing Alert Service Bulletin 737–33A1140.

Boeing Alert Service Bulletin 737–33A1140 and Boeing Service Bulletin 737–28–1241 specify prior or concurrent accomplishment of Boeing Special Attention Service Bulletin 737–28–1196, dated December 5, 2002; Revision 1, dated March 13, 2003; Revision 2, dated August 21, 2003; or Revision 3, dated April 1, 2004. Boeing Special Attention Service Bulletin 737–28–1196 describes procedures for changing the wire connections for the engine fuel shutoff valves and the outboard landing lights.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require the following actions:

- For Model 737–300, –400, and –500 series airplanes, deactivation or modification of the wiring to the outboard landing lights, until the wire bundles and electrical connectors have been replaced.
- For all airplanes, a detailed inspection for any broken, damaged, or missing fairleads, any damaged or missing grommets, and any chafed or damaged wires or wire bundles in the four electrical junction boxes of the main wheel well, and corrective actions if necessary.
- For certain airplanes, replacement of certain wire bundles for the landing lights and fuel shutoff valves with new, re-designed wire bundles, and related investigative, other specified, and corrective actions if necessary.
- For certain airplanes, replacement of certain electrical connectors and backshell clamps with new, improved electrical connectors and backshell clamps.

Difference Between the Proposed AD and Service Bulletins

Although Boeing Service Bulletin 737–28–1241 and Boeing Alert Service Bulletin 737–33A1140 specify prior or concurrent accomplishment of Boeing Special Attention Service Bulletin 737–28–1196, this proposed AD would not require that action. The accomplishment of Boeing Special Attention Service Bulletin 737–28–1196 is already required by AD 2005–10–11, amendment 39–14088 (70 FR 28419, May 18, 2005).

Costs of Compliance

We estimate that the actions specified in Boeing Alert Service Bulletin 737–33A1140 would affect about 511 Model 737–300, –400, and –500 series airplanes of U.S. registry. Operators may accomplish either the deactivation or modification.

We estimate that the deactivation would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the deactivation to the U.S. operators to be $40,880, or $80 per product.

We estimate that the modification would take about 31 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts for the modification would cost about $573 per product. Based on these figures, we estimate the cost of modification to the U.S. operators to be $1,560,083, or $3,053 per product.

We estimate that the actions specified in Boeing Alert Service Bulletin 737–28–1241 would affect up to 891 Model 737–100, –200, –200C, –300, –400, and –500 series airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per work-hour, for U.S. operators to comply with the actions specified in that service bulletin.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part 1—Replacement of wire bundles	Up to 91	Up to $18,439	$25,719	511	$13,142,409
Part 2—Inspection of junction boxes	1	0	80	891	71,280
Part 3—Replacement of electrical connectors	2	298	458	400	183,200

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Boeing: Docket No. FAA–2008–1116; Directorate Identifier 2007–NM–231–AD.

Comments Due Date

(a) We must receive comments by December 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007.

Unsafe Condition

(d) This AD results from reports of uncommanded engine shutdowns and burned and damaged wire bundles associated with the outboard landing lights and engine fuel shutoff valves. This AD also results from reports of damaged and missing grommets and broken and damaged fairleads in the electrical junction boxes of the main wheel well. We are issuing this AD to prevent a hot short between the outboard landing light and fuel shutoff valve circuits, which could result in an uncommanded engine shutdown. We are also issuing this AD to prevent corrosion of the electrical connectors of the wing rear spars, which could result in short circuits and consequent incorrect functioning of airplane systems needed for safe flight and landing.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Deactivation or Modification of the Outboard Landing Lights

(f) For Model 737–300, –400, and –500 series airplanes identified in Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006 ("the alert service bulletin"): Within 180 days after the effective date of this AD, accomplish the actions specified in either paragraph (f)(1) or (f)(2) of this AD. Accomplishing the applicable actions required by paragraph (g) of this AD terminates the requirements of this paragraph.

(1) Deactivate the outboard landing lights, by accomplishing all of the actions specified in Part 1 of the Accomplishment Instructions of the alert service bulletin.

Note 1: The Master Minimum Equipment List (MMEL) prohibits dispatching an airplane for night operations with deactivated outboard landing lights in the event that either of the inboard landing lights fail. Operators should note that, if the outboard landing lights are deactivated in accordance with Part 1 of the service bulletin, there is no MMEL relief allowing for this configuration for night operations should any inboard landing light fail.

(2) Modify the wiring to the outboard landing lights, by accomplishing all of the actions specified in Part 2 of the Accomplishment Instructions of the alert service bulletin.

Inspection and Replacements

(g) For all airplanes: Within 60 months after the effective date of this AD, do the applicable actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007. For Model 737–300, –400, and –500 series airplanes identified in Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006, accomplishing the applicable actions required by this paragraph terminates the requirements of paragraph (f) of this AD.

(1) Replace the wire bundles for the landing lights and fuel shutoff valves with new, re-designed wire bundles, and do the related investigative, other specified, and corrective actions, as applicable. The related investigative, other specified, and corrective actions must be done before further flight after the replacement.

(2) Do a detailed inspection for any broken, damaged, or missing fairleads, any damaged or missing grommets, and any chafed or damaged wires or wire bundles in the four electrical junction boxes of the main wheel well, and do the applicable corrective actions. The corrective actions must be done before further flight after the inspection.

(3) Replace the electrical connectors and backshell clamps with new, improved electrical connectors and backshell clamps, as applicable.

Credit for Actions Done According to Previous Issue of Service Bulletin

(h) For airplanes identified as Groups 1 and 2 in Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007: Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 737–28–1241, dated April 7, 2006, are acceptable for compliance with the requirements of paragraph (g) of this AD.

(i) For all airplanes: Actions done before the effective date of this AD in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–28–1241, dated April 7, 2006, are acceptable for compliance with the requirements of paragraph (g)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6480; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on October 10, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25048 Filed 10–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0873; Airspace Docket No. 08–AGL–7]

Proposed Establishment of Class E Airspace; Branson, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E2 and E5 airspace at Branson Regional Airport, Branson, MO. The establishment of an air traffic control tower and a new Standard Instrument Approach Procedure (SIAP) have made it necessary for the safety of Instrument Flight Rule (IFR) operations at Branson Regional Airport.

DATES: 0901 UTC. Comments must be received on or before December 8, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–0873/Airspace Docket No. 08-AGL–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Area, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 222–5582.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2008–0873/Airspace Docket No. 08–AGL–7." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E2 and E5 airspace for IFR operations at Branson Regional Airport, Branson, MO. This area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6002, and 6005, respectively, of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E area designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Branson Regional Airport, Branson, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Branson, MO [New]

Branson Regional Airport, TX
(Lat. 36°21'56" N., long. 93°12'02" W.)

Within a 4.1-mile radius of Branson Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Branson, MO [New]

Branson Regional Airport , MO
(Lat. 36°21'56" N., long. 93°12'02" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Branson Regional Airport.

* * * * *

Issued in Fort Worth, TX on October 10, 2008.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E8–25049 Filed 10–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket OSHA–S215–2006–0063]

RIN 1218–AB67

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Limited Reopening of Record

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of limited reopening of rulemaking record.

SUMMARY: On June 15, 2005, OSHA published a proposed rule to revise the general industry and construction standards for electric power generation, transmission, and distribution work and for electrical protective equipment. Public comments were received, a hearing was held, and the final posthearing briefs were due on July 14, 2006.

The proposed general industry and construction standards for electric power generation, transmission, and distribution work included revised minimum approach distance tables. Those tables limit how close an employee (or a conductive object he or she is contacting) may get to an energized circuit part. After the rulemaking record on the proposal closed, the technical committee responsible for developing the tables in the consensus standards on which the proposal was based discovered what in their view was an error in their calculation of minimum approach distances for certain voltages.

OSHA is reopening the record on this proposal to obtain comments related to the affected minimum approach distances. The record will remain open on this limited basis for 30 days.

DATES: Comments must be postmarked no later than November 21, 2008.

ADDRESSES: You may submit comments, identified by Docket No. OSHA–S215–2006–0063, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* If your comments, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.
- *Mail, hand delivery, express mail, messenger, or courier service:* You must submit two copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–S215–2006–0063, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., *e.s.t.*

Instructions: All submissions must include the agency name and the docket number (Docket No. OSHA–S215–2006–0063) or Regulatory Information Number (RIN 1218–AB67) for this rulemaking. All comments received will be posted without change to *http://dockets.osha.gov*, including any personal information provided.

Docket: To read or download comments and materials submitted in response to this **Federal Register** notice, go to Docket OSHA–S215–2006–0063 at *http://www.regulations.gov* or at the OSHA Docket Office at the previously listed address. All comments and submissions are listed in the *http://www.regulations.gov* index. However, some information (for example, copyrighted material) is not publicly available to read or download through that Web page. All comments and submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: General information and press inquiries: Contact Ms. Jennifer Ashley, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION: On June 15, 2005, OSHA issued a proposed rule to revise the general industry and construction standards for electric power generation, transmission, and distribution work and for electrical protective equipment (70 FR 34822). The Agency solicited public comments and held a public hearing on March 6 through 14, 2006. Administrative Law Judge William Colwell set a deadline of July 14, 2006, for the filing of written comments, summations, position statements, and briefs.

The proposed requirements for electric power generation, transmission, and distribution work for general industry and construction would be contained in 29 CFR 1910.269 and 29 CFR part 1926, subpart V (§§ 1926.950 through 1926.968), respectively. Proposed § 1926.960(c)(1) would require employees to maintain minimum approach distances from exposed energized parts. The minimum approach distances are specified in proposed Tables V–2 through V–6. Existing § 1910.269(l)(2) and proposed Tables R–6 through R–10 contain equivalent requirements for general industry.

OSHA developed the minimum approach distance tables in the proposal using the following principles (see 70 FR 34862):

- ANSI/IEEE [1] Standard 516–1987 was to be the electrical basis for approach distances: Table 4 (Alternating Current) and Table 5 (Direct Current) for voltages above 72.5 kV. Lower voltages were to be based on ANSI/IEEE Standard 4. The application of ANSI/IEEE Standard 516–1987 was inclusive of the formula used by that standard to derive electrical clearance distances.
- Altitude correction factors were to be in accordance with ANSI/IEEE Standard 516–1987, Table 1.
- The maximum design transient overvoltage data to be used in the development of the basic approach distance tables were:
  - 3.0 per unit for voltages of 362 kV and less
  - 2.4 per unit for 500 to 550 kV
  - 2.0 per unit for 765 to 800 kV
- All phase-to-phase values were to be calculated from the EPRI [2] Transmission Line Reference Book for 115 to 138 kV.
- An inadvertent movement factor (ergonomic component) intended to account for errors in judging the approach distance was to be added to all basic electrical approach distances (electrical component) for all voltage ranges. A distance of 0.31 meters (1 foot) was to be added to all voltage ranges. An additional 0.3 meters (1 foot) was to be added to voltage ranges below 72.6 kV.

[1] ANSI is the American National Standards Institute. IEEE is the Institute of Electrical and Electronics Engineers, Inc.

[2] EPRI is the Electric Power Research Institute.

- The voltage reduction allowance for controlled maximum transient overvoltage was to be such that the minimum allowable approach distance was not less than the given approach distance specified for the highest voltage of the given range.
- The transient overvoltage tables were to be applied only at voltage ranges inclusive of 72.6 kV to 800 kV. All tables were to be established using the higher voltage of each separate voltage range.

As noted in Appendix B to existing § 1910.269 and in Appendix B to proposed subpart V, the following equation is used to calculate the electrical component of the minimum approach distance for voltages of 72.6 kV to 800 kV:

$$D = (C + a) \times pu \times V_{max} \qquad \text{Equation (1)}$$

Where:

D = Electrical component of the minimum approach distance in air in feet

C = 0.01 to take care of correction factors associated with the variation of gap sparkover with voltage

a = A factor relating to the saturation of air at voltages [3] of 345 kV or higher

pu = Maximum anticipated transient overvoltage, in per unit (p.u.)

V_{max} = Maximum rms system line-to-ground voltage in kilovolts—it should be the "actual" maximum, or the normal highest voltage for the range (for example, 10 percent above the nominal voltage).

Source: Formula developed from ANSI/IEEE Standard No. 516–1987.

For phase-to-phase exposures, the maximum phase-to-phase transient overvoltage must be used to calculate minimum approach distances from one phase to another. As noted in Appendix B to existing § 1910.269 and in Appendix B to proposed subpart V, the following equation is used in determining the phase-to-phase maximum transient overvoltage based on the per unit of the system nominal voltage phase-to-ground crest:

$$pu_p = pu_g + 1.6 \qquad \text{Equation (2)}$$

Where:

pu_p = p.u. phase-to-phase maximum transient overvoltage

pu_g = p.u. phase-to-ground maximum transient overvoltage.

This value was to be used in Equation (1) to calculate the phase-to-phase minimum approach distance (MAD).

The technical committees responsible for ANSI/IEEE and the National Electrical Safety Code (NESC, ANSI C2) calculated minimum approach distances based on these equations. Because OSHA intended to use the same methodology, it relied on the technical committees' calculations as they appeared in the two consensus standards and carried those distances into the proposed standard.

During the most recent revision cycle for ANSI/IEEE Standard 516, the IEEE technical committee responsible for revising that standard identified what in their view was an error in the calculations of phase-to-phase minimum approach distances for nominal voltages 230 kV and higher. At these voltages, the saturation factor, a, which appears in Equation (1), varies depending upon the voltage. The value of a increases with increasing voltage. The NESC subcommittee originally calculated the phase-to-phase minimum approach distances using a value for the saturation factor, a, corresponding to the phase-to-ground maximum transient overvoltage rather than the maximum phase-to-phase transient overvoltage.[4] Because the MADs used in OSHA's 2005 proposal were taken from the consensus standard, OSHA wants to obtain comments on whether changes are necessary to the tables as proposed.

The IEEE committee proposed a correction in a draft revised IEEE Standard 516 (Draft #9).[5] Table 1 shows the difference between the minimum approach distances in that draft IEEE Standard 516 and those contained in proposed § 1910.269 Table R–6 and proposed Subpart V Table V–2 for voltages over 72.5 kV. A subsequent draft from the IEEE committee (Draft #10) dropped values for voltages with temporary overvoltages exceeding 1600 kV.[6] Draft #10 leaves the determination of these values to "good engineering judgment."

TABLE 1—COMPARISON OF MINIMUM APPROACH DISTANCES

Nominal voltage in kilovolts phase-to-phase	Distance (m)			
	Phase-to-ground exposure		Phase-to-phase exposure	
	Draft IEEE 516 [1]	Proposed tables R–6 and V–2	Draft IEEE 516 [1]	Proposed tables R–6 and V–2
72.6 to 121	1.01	0.95	1.36	1.29
138 to 145	1.15	1.09	1.57	1.50
161 to 169	1.29	1.22	1.85	1.71
230 to 242	1.71	1.59	2.91	2.27
345 to 362	2.72	2.59	5.13	3.80
500 to 550	3.54	3.42	6.89	5.50

[3] This voltage is the maximum transient overvoltage.

[4] ANSI/IEEE Standard 516–1987 did not contain distances for phase-to-phase exposures. The NESC subcommittee derived them by applying the IEEE equation to the phase-to-phase temporary overvoltages calculated using Equation (2).

[5] This document is available for inspection and copying in the Docket Office at the address listed in the ADDRESSES section of this notice.

[6] This document is also available for inspection and copying in the Docket Office at the address listed in the ADDRESSES section of this notice.

TABLE 1—COMPARISON OF MINIMUM APPROACH DISTANCES—Continued

Nominal voltage in kilovolts phase-to-phase	Distance (m)			
	Phase-to-ground exposure		Phase-to-phase exposure	
	Draft IEEE 516[1]	Proposed tables R–6 and V–2	Draft IEEE 516[1]	Proposed tables R–6 and V–2
765 to 800	4.64	4.53	9.35	7.91

[1] Draft #9 of IEEE Standard 516 provides separate minimum approach distances for exposures with and without tools in the air gap. The distances in the table are for tools in the air gap (called "minimum tool insulation distances" in the IEEE standard.). The NESC minimum approach distances tables are derived from the distances in IEEE Standard 516 corresponding to exposures with tools in the air gap.

As can be seen from Table 1, the IEEE's proposed approach from Draft #9 results in a substantial increase in MAD for phase-to-phase exposures at voltages of 230 kV and higher.

For purposes of the public's consideration of the issues in this reopening notice, OSHA points out the following technical issues:

1. For voltages over 72.5 kV, the electrical component of the minimum approach distances[7] in OSHA's proposal is based on testing of rod-to-rod gaps performed by 13 laboratories. This testing extends to approximately 1.6 MV. This voltage is sufficient to cover the maximum transient overvoltage for all phase-to-ground exposures. However, it does not extend to the maximum transient overvoltages for phase-to-phase exposures of voltages 362 kV and higher, as shown in Table 2.

TABLE 2—MAXIMUM TRANSIENT OVERVOLTAGES

System voltage (in kV) V_{max}	Maximum anticipated per-unit transient overvoltage *pu*	Maximum transient overvoltage (in kV)	
		Phase-to-ground exposure	Phase-to-phase exposure
362	3.0	1086	1665
552	2.4	1325	2208
800	2.0	2208	2880

Note: The maximum transient overvoltage for phase-to-ground exposure equals $V_{max} \times pu$. The maximum overvoltage for phase-to-phase exposures equals $V_{max} \times (pu + 1.6)$.

In Draft #9, the IEEE committee addressed this issue by extending the equations used for calculating the minimum air insulation distance beyond the highest voltage covered by the test data. Other approaches using the same criteria upon which the minimum approach distances are based could include: (1) Using available test data for conductor-to-conductor gaps and converting them to equivalent rod-to-rod values, and (2) commissioning further tests.

2. IEEE Drafts #9 and #10 also include other refinements of the method used to calculate minimum approach distances intended to make the calculations more precise and repeatable. For example, the saturation factor is now based on equations resulting from curve fitting the test data rather than from reading the value directly from a graph of these data.

3. If the minimum approach distances are based on the minimum tool insulation distance, as is done in the NESC, there would be additional slight increases in MAD for all voltages of 72.6 kV and higher with both phase-to-ground and phase-to-phase exposures.

In light of the IEEE committee's draft revisions, OSHA is reopening the record on the electric power generation, transmission, and distribution standard to invite comments, evidence, and data on the limited question of whether the Agency should adopt minimum approach distances different from those proposed for voltages of 72.6 kV and higher. The Agency strives to adopt a final rule that is based on sound and up-to-date engineering, and scientific principles and is specifically inviting comments on the following questions:

1. Should OSHA adopt MADs that are different from those proposed for voltages of 72.6 kV and higher and, if so, should it adopt the distances in Draft #9 or #10 of IEEE Standard 516?

2. Are there methods other than those in Drafts #9 and #10 of IEEE Standard 516 that would be more appropriate in the calculation of MAD for maximum transient overvoltages beyond existing data for rod-to-rod gaps?

3. Should MAD for voltages of 72.6 kV and higher be based on the minimum tool insulation distance as is the case in the 2007 NESC?

4. Should the final rule include separate minimum approach distance tables for air gaps and for tools as is done in Drafts #9 and #10 of IEEE Standard 516?

OSHA is reopening the record solely on issues related to minimum approach distances for voltages of 72.6 kV and higher. The record is not being reopened on any other issue.

List of Subjects in 29 CFR Parts 1910 and 1926

Electric power, Fire prevention, Hazardous substances, Occupational safety and health, Safety.

Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657),

[7] The electrical component of the minimum approach distance is called "minimum tool insulation distance" or MTID in the IEEE draft.

Secretary's Order 5–2007 (72 FR 31160), and 29 CFR Part 1911.

Signed at Washington, DC, this 16th day of October 2008.

Edwin G. Foulke, Jr.

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–25079 Filed 10–21–08; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0389; FRL–8711–4]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Approval of Rule Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on March 28, 2008. The WDNR has submitted for approval revisions to incorporate Federal regulations into the Wisconsin Administrative Code, to clarify construction permit requirements under general permits, to revise portable source relocation requirements, and to amend rule language to streamline the minor revision permit process to allow construction permits to be issued concurrently with operation permits. EPA is approving these revisions because they are consistent with Federal regulations governing State permit programs.

DATES: Comments must be received on or before November 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0389, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: blakley.pamela@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 a.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Susan Castellanos, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, *castellanos.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 21, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

[FR Doc. E8–25040 Filed 10–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0736; FRL–8732–2]

Approval and Promulgation of Air Quality Implementation Plans; The Metropolitan Washington Nonattainment Area; Determination of Attainment of the Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Metropolitan Washington, DC-MD-VA nonattainment area for the 1997 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has attained the 1997 $PM_{2.5}$ NAAQS. This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and continues to monitor attainment of the standard based on 2005–2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA Air Quality System (AQS) database, but not yet certified, show this area continues to attain the 1997 $PM_{2.5}$ NAAQS. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration and associated reasonably available measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard shall be suspended for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before November 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0736 by one of the following methods:

A. *www.regulations.gov.* Follow the online instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2008–0736, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0736. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by e-mail at *linden.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What Action Is EPA Taking?

EPA is proposing to determine that the Metropolitan Washington, DC-MD-VA $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and monitoring data that continue to show attainment of the 1997 $PM_{2.5}$ NAAQS based on the 2005–2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA AQS database, but not yet certified, show this area continues to attain the 1997 $PM_{2.5}$ NAAQS.

II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's $PM_{2.5}$ implementation rule (see 40 CFR 51.1004(c)), the requirements for the Metropolitan Washington, DC-MD-VA $PM_{2.5}$ nonattainment area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS would be suspended for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

As further discussed below, the proposed determination would: (1) For the Metropolitan Washington, DC-MD-VA nonattainment area, suspend the requirements to submit an attainment demonstration and associated reasonably available control measures (RACM) (including reasonably available control technologies (RACT)), a reasonable further progress plan (RFP), contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS; (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 1997 $PM_{2.5}$ NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Metropolitan Washington, DC-MD-VA area based on the 2006 $PM_{2.5}$ NAAQS; and (4) remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 $PM_{2.5}$ NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 1997 $PM_{2.5}$ NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist, and the area would thereafter have to address the pertinent requirements.

The determination that EPA proposes with this **Federal Register** notice, that the air quality data shows attainment of the 1997 $PM_{2.5}$ NAAQS, is not equivalent to the redesignation of the area to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 1997 $PM_{2.5}$ NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the Metropolitan Washington, DC-MD-VA $PM_{2.5}$ area has attained the 1997 $PM_{2.5}$ NAAQS. The 1997 $PM_{2.5}$ NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR 50.7. The 2006 $PM_{2.5}$ NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR 50.13. EPA is currently in the process of making designation determinations, as required by CAA section 107(d)(1), for the 2006 $PM_{2.5}$ NAAQS. EPA has not made any designation determination for the Metropolitan Washington, DC-MD-VA area based on the 2006 $PM_{2.5}$ NAAQS. This proposed determination, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the 2006 $PM_{2.5}$ NAAQS for the Metropolitan Washington, DC-MD-VA area. Conversely, any future designation determination of the Metropolitan Washington, DC-MD-VA area, based on the 2006 $PM_{2.5}$ NAAQS, will not have

any effect on the determination proposed by this notice.

If this proposed determination is made final and the Metropolitan Washington, DC-MD-VA area continues to demonstrate attainment with the 1997 $PM_{2.5}$ NAAQS, the requirements for the Metropolitan Washington, DC-MD-VA area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS would remain suspended, regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 $PM_{2.5}$ NAAQS. Once the area is designated for the 2006 NAAQS, it will have to meet all applicable requirements for that designation.

III. What Is the Background for This Action?

On July 18, 1997 (62 FR 36852), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a twenty-four hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and State air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999, and developed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Metropolitan Washington, DC-MD-VA (Charles, Frederick, Montgomery, Prince George's, Alexandria, Arlington, Fairfax, Loudoun, Prince William, Falls Church, Manassas, Manassas Park, Fairfax City, and the District of Columbia) area was designated nonattainment for the 1997 $PM_{2.5}$ NAAQS (see 40 CFR part 81).

IV. What Is EPA's Analysis of the Relevant Air Quality Data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA AQS database for the Metropolitan Washington, DC-MD-VA $PM_{2.5}$ nonattainment area from 2004 through the present time. On the basis of that review, EPA has concluded that this area attained the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and continues to monitor attainment of the NAAQS based on 2005–2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA AQS database, but not yet certified, show this area continues to attain the 1997 $PM_{2.5}$ NAAQS.

Under EPA regulations at 40 CFR Part 50, § 50.7:

(1) The annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$.

(2) The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 65 $\mu g/m^3$.

Table 1 shows the design values for the 1997 Annual $PM_{2.5}$ NAAQS for the Metropolitan Washington, DC-MD-VA nonattainment area monitors for the years 2004–2006 and 2005–2007. Table 2 shows the design values for the 1997 24-Hour $PM_{2.5}$ NAAQS for these same monitors and the same 3-year periods.

TABLE 1—DESIGN VALUES FOR COUNTIES IN THE METROPOLITAN WASHINGTON NONATTAINMENT AREA FOR 1997 $PM_{2.5}$ NAAQS—ANNUAL STANDARD

Location	AQS site ID	1997 Annual attainment standard	2004–2006 Design values	2005–2007 Design values
District of Columbia	110010041	15	14.4	14.0
District of Columbia	110010042	15	14.5	14.2
District of Columbia	110010043	15	14.0	13.5
Montgomery County, MD	240313001	15	12.5	12.2
Prince George's, MD	240338003	15	13.1	12.8
Arlington, VA	510130020	15	14.2	14.0
Fairfax, VA	510590030	15	13.4	13.0
Fairfax, VA	510591005	15	13.6	13.5
Fairfax, VA	510595001	15	13.9	13.7
Loudoun, VA	511071005	15	13.6	13.2

TABLE 2—DESIGN VALUES FOR COUNTIES IN THE METROPOLITAN WASHINGTON NONATTAINMENT AREA FOR 1997 $PM_{2.5}$ NAAQS—24-HOUR STANDARD

Location	AQS site ID	1997 Annual 24-hour attainment standard	2004–2006 Design values	2005–2007 Design values
District of Columbia	110010041	65	37	35
District of Columbia	110010042	65	35	33
District of Columbia	110010043	65	34	34
Montgomery County, MD	240313001	65	31	30
Prince George's, MD	240338003	65	35	32
Arlington, VA	510130020	65	34	32
Fairfax, VA	510590030	65	35	34
Fairfax, VA	510591005	65	34	32

TABLE 2—DESIGN VALUES FOR COUNTIES IN THE METROPOLITAN WASHINGTON NONATTAINMENT AREA FOR 1997 $PM_{2.5}$ NAAQS—24-HOUR STANDARD—Continued

Location	AQS site ID	1997 Annual 24-hour attainment standard	2004–2006 Design values	2005–2007 Design values
Fairfax, VA	510595001	65	34	33
Loudoun, VA	511071005	65	35	33

EPA's reviews of these data indicate that the Metropolitan Washington, DC-MD-VA nonattainment area has met and continues to meet the 1997 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Proposed Action

EPA is proposing to determine that the Metropolitan Washington, DC-MD-VA nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS and continues to attain the standard based on data through 2008. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it would suspend the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal applications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks" (62 FR 19885, April 23, 1997) because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This proposed rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Under Executive Order 12898, EPA finds that this rule, pertaining to the District of Columbia, Maryland and Virginia's determination of attainment of the fine particle standard for the Metropolitan Washington, DC-MD-VA area, involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 9, 2008.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–25160 Filed 10–21–08; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 73, No. 205
Wednesday, October 22, 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

Natural Resources Conservation Service

Notice To Reinstate a Previously Approved Information Collection

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice to reinstate a previously approved information collection for review and comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces NRCS' intention to reinstate a previously approved information collection. The collected information will help NRCS match the skills of individuals who are applying for volunteer work that will further the Agency's mission, and provides a timekeeping method for volunteers. Information will be collected from potential volunteers who are 14 years of age or older.

DATES: Comments will be received for a 60-day period commencing with the date of this publication.

Additional Information or Comments: Contact Michele Eginoire, National Volunteer Coordinator, at (515) 289–0325, extension 102. Submit comments to Michele Eginoire by fax at (515) 289–4561, or e-mail: *michele.eginoire@ia.usda.gov.*

SUPPLEMENTARY INFORMATION: Collection of this information is necessary to match volunteer assignments to Agency mission as required by Federal Personnel Manual, Supplement 296–33, Subchapter 3. Agencies are authorized to recruit, train, and accept with regard to Civil Service classification laws, rules, or regulations, the services of individuals to serve without compensation. Volunteers may assist in any Agency program/project and may perform activities which Agency employees are allowed to perform. Volunteers must be at least 14 years of age. Persons interested in volunteering must write, call, e-mail, or visit NRCS' office. The forms will be available electronically and can be completed electronically.

Description of Information Collection: Form NRCS–PER–002, Volunteer Interest and Placement Summary, is an optional form and assists the volunteer's supervisor in placing the volunteer in a position which is beneficial to the volunteer and the Agency. Form NRCS–PER–004, Time Sheet also is an optional form, which provides the volunteer and volunteer's supervisor a simplified method for tracking the volunteer's time. The above mentioned forms are placed in a volunteer "case file" and will be destroyed 3 years after the volunteer has completed service. In the event that the volunteer is injured, the "case file" will be transferred to an Official Personnel Folder (OPF). Comments are invited on: (1) 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) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques, and other forms of information technology. Comments may be sent to Michele Eginoire, National Earth Team Office, Natural Resources Conservation Service, Suite C, 5140 Park Avenue, Des Moines, Iowa 50321; telephone: (515) 289–0325, extension 102, by fax at (515) 289–4561, or by e-mail: *michele.eginoire@ia.usda.gov.* All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Signed in Washington, DC on October 10, 2008.

Arlen L. Lancaster,

Chief, Natural Resources Conservation Service.

[FR Doc. E8–25074 Filed 10–21–08; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the Manoa Watershed, Honolulu County, HI

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of Intent (Withdrawal).

SUMMARY: Withdraw from publication the Notice of Intent dated Thursday, March 22, 2007, **Federal Register**/Vol. 72. No. 55, the Natural Resources Conservation Service (NRCS) announced its intention to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act for the Manoa Watershed Plan to mitigate residential and commercial flooding in Manoa Valley, City and County of Honolulu, Hawaii. The Manoa Watershed Plan and joint EIS would be prepared by NRCS, State of Hawaii Department of Land and Natural Resources, and the City and County of Honolulu. The federal authority for the project was the Watershed Protection and Flood Prevention Act (Pub. L. 83–566, as amended). The EIS would evaluate the full range of alternatives to mitigate flooding of the magnitude experienced on October 30, 2004, when an intense rainstorm hit the upper Manoa Valley, causing nearly $100 million in flood damage to residences, businesses, and facilities at the University of Hawaii. The Manoa Watershed project has not received funding in the 2007 and 2008 fiscal years. The Manoa Watershed area will be incorporated into the Ala Wai Canal Project, administered by the U.S. Army Corps of Engineers which will continue to pursue a flood protection plan for Manoa Valley. The U.S. Army Corps of Engineers published a Notice of Intent to prepare an Environmental Impact Statement for the Ala Wai Canal

Project in the **Federal Register** on October 2, 2008. Therefore, NRCS is withdrawing its Notice of Intent to prepare an EIS.

FOR FURTHER INFORMATION CONTACT: Lawrence T. Yamamoto, Director, Pacific Islands Area, Natural Resources Conservation Service, 300 Ala Moana Blvd., Room 4–118, P.O. Box 50004, Honolulu, HI 96850; Telephone: (808) 541–2600, ext. 105.

SUPPLEMENTARY INFORMATION: NRCS has provided technical and financial assistance for planning and implementation of water resources projects to state and county sponsors in Hawaii and the Pacific Islands through the Watershed Protection and Flood Prevention Act, as amended, since 1964. Funding for the Manoa Watershed project was authorized in Section 726 of the 2006 Agricultural Appropriations Act. The funds have produced significant planning products for the Manoa Watershed, including community and public planning events, topographic mapping, hydrologic and hydraulic modeling, initial environmental and historic assessments, and formulation of measures to reduce flood damage. These planning products will be documented in technical reports to be completed by September 30, 2008, instead of a preliminary EIS. The technical reports will be utilized for the Manoa Subwatershed phase of the U.S. Army Corps of Engineers' Ala Wai Canal Watershed Project. A public meeting was conducted on July 22, 2008, to report on the termination of the Manoa Watershed project by NRCS, review the planning products, and discuss the transition of the Manoa Watershed into a phase of the Ala Wai Canal Project.

(This activity is listed in the catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: October 7, 2008.

Lawrence T. Yamamoto,

Director, Pacific Islands Area, Natural Resources Conservation Service.

[FR Doc. E8–25213 Filed 10–22–08; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the voting rights subcommittee of the Kentucky Advisory Committee (Committee) to the Commission will convene at 10 a.m. and adjourn at 11:30 a.m. on Monday, November 3, 2008, at the Bowling Green Human Rights Commission, 491 Double Springs Rd., Bowling Green, Kentucky. The purpose of the meeting is for the subcommittee to discuss and plan the Committee's project to examine voting rights for ex-felons.

Members of the public are entitled to submit written comments; the comments must be received in the Southern Regional Office of the Commission by November 17, 2008. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, Georgia 30303. Persons wishing to e-mail comments may do so to *pminarik@usccr.gov*. Persons who desire additional information should contact Dr. Peter Minarik, Regional Director, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, October 17, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–25175 Filed 10–21–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 59–2008]

Expansion of Manufacturing Authority; Subzone 15E; Kawasaki Motors Manufacturing Corp., U.S.A.; Maryville, MO (Internal Combustion Engines)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, requesting on behalf of Kawasaki Motors Manufacturing Corp., U.S.A. (KMMC), operator of FTZ Subzone 15E, KMMC plant, Maryville, Missouri, to expand the scope of KMMC's manufacturing authority to include new engine production capacity under FTZ procedures. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and section 400.28(a)(2) of the Board's regulations (15 CFR Part 400). It was formally filed on October 14, 2008.

Subzone 15E (114 acres/1.13 million sq.ft./1,100 employees) was approved by the Board in 1989 with authority granted for the manufacture of internal-combustion engines and transmissions for motorcycles, personal water craft, and all-terrain vehicles (Board Order 454, 54 FR 50257, 12–5–89). In 1991, the Board authorized an expansion of the scope of manufacturing authority under FTZ procedures to include engines for lawn/garden equipment and for additional production capacity to 500,000 units annually (Board Order 1014, 64 FR 5765, 2–5–99). The Board subsequently approved an expansion of the scope of authority to include the manufacture of diesel engines (up to 150,000 annually) and parts of industrial robots (up to 900 units annually) in 2002 (Board Order 1239 67 FR 51535, 8–8–2002).

The applicant is now requesting authority to expand KMMC's scope of authority to include additional engine production capacity. Under the current expansion plan, production capacity at the KMMC plant will increase to 1.1 million units per year within the existing designated subzone. KMMC's manufacturing activity involves die-casting, machining, assembly, finishing, and quality control using domestic and foreign-origin materials and components. Foreign-sourced components and materials (about 8% of finished engine value) include: Tubes/pipes/hoses of plastic and rubber, spark plugs, belts, electrical components, tube/pipe fittings, fuel pumps, housings, fasteners, gaskets, flywheels, chain,

rocker arms, pistons, crankshafts, connecting rods, cylinder heads, balancer shafts, manifolds, crankcases, intake/exhaust valves, flanges/spacers/grommets, starter motors, breathers, pulleys, exhaust components, carburetors, pumps, resins, cements, adhesives, plates/sheets/film of plastic, paper packaging, filters, base metal mountings, netting, articles of aluminum and zinc, fabricated steel and copper tube/wire/chain/springs, turbojets/props/turbines and parts, parts of transmissions, gears, instruments, gauges, bearings, hoses, o-rings, articles of plastic/rubber, electrical motors, and generators (duty rate range: free–12.5%, 25 ea. +3.9%).

The expanded operations will involve a continuation of KMMC's utilization of foreign-sourced materials and components. Expanded FTZ procedures could continue to exempt KMMC from customs duty payments on the foreign-origin inputs used in production for export (about 22% of shipments). On its domestic shipments, the company would be able to elect the duty free rate that applies to finished engines for the foreign-sourced components listed above. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is December 22, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 5, 2009.

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 2509 Commerce Tower, 911 Main Street, Kansas City, MO 64105; and, at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: *pierre_duy@ita.doc.gov*, or (202) 482–1378.

Dated: October 14, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–25168 Filed 10–21–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems; Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 5, 2008, 9 a.m. in the Herbert C. Hoover Building, Room 3884 and November 6, 2008, 9 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, November 5

Public Session

1. Welcome and Introduction.
2. Digital Forensics.
3. Industry Encryption Presentation.
4. Future Microprocessor Technologies.
5. Working Group Reports.
6. Discussion of Wassenaar Proposals for 2009.

Thursday, November 6

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov*, no later than October 29, 2008.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on June 30, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section (10)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 section 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

October 14, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–25179 Filed 10–21–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Meeting With Interested Public on the Proposed Rule: Export Administration Regulations: Establishment of License Exception Intra-Company Transfer (ICT)

ACTION: Notice.

SUMMARY: The Bureau of Industry and Security (BIS) will hold a public meeting on October 27, 2008 for those companies, organizations, and individuals that have an interest in learning about the new license exception entitled "Intra-Company Transfer (ICT)" that would be established under the Export Administration Regulations (EAR) as presented in the proposed rule published in the **Federal Register** on October 3, 2008. U.S. Government officials will explain the amendments to the EAR proposed in the rule and answer questions from the public.

DATES: The meeting will be held on October 27, 2008 at 9 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4830, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For questions related to this notice, contact Yvette Springer, Office of Technology Evaluation; Telephone: 202–482–2813; e-mail: *yspringer@bis.doc.gov*. For questions related to the proposed rule setting forth the ICT license exception, contact Steven Emme, Regulatory Policy

Division; Telephone: 202–482–2440; e-mail: *semme@bis.doc.gov.*

Status: This meeting will be open to the public. A limited number of seats will be available for the meeting. Reservations are not accepted. The meeting will be accessible via teleconference to 20 participants on a first come, first served basis. To join the meeting, submit inquiries to Yvette Springer at *yspringer@bis.doc.gov* no later than October 23, 2008.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 2008, the President announced a package of directives to ensure that the export control policies and practices of the United States support the National Security Strategy of 2006, while facilitating the United States' continued international economic and technological leadership. In addition, the Deemed Export Advisory Committee (DEAC) recently undertook a comprehensive examination of the national security, technology, and competitiveness aspects of the deemed export rule and presented its findings to the Secretary of Commerce in December 2007. The DEAC concluded that the deemed export rule, "no longer effectively serves its intended purpose and should be replaced with an approach that better reflects the realities of today's national security needs and global economy." Among its recommendations, the DEAC proposed that BIS create a category of "Trusted Entities" that voluntarily elect to qualify for streamlined treatment after meeting certain criteria. Further, the DEAC recommended that these "Trusted Entities" include subsidiaries located abroad so that individuals and ideas could move within the company structure without the need for separate deemed export licenses.

In response to the President's directives on U.S. export control reforms and the DEAC's recommendations on deemed export controls, BIS published a proposed rule that would create a license exception for intra-company transfers.

The proposed rule would amend the Export Administration Regulations (EAR) to establish a new license exception entitled "Intra-Company Transfer (ICT)." Pursuant to ICT, an approved parent company and its approved wholly-owned or controlled in fact entities to export, reexport, or transfer (in-country) many items on the Commerce Control List among themselves for internal company use. Prior authorization from BIS would be required to use the license exception, and certain terms and conditions would apply. The proposed rule describes the criteria pursuant to which entities would be eligible to use License Exception ICT and the procedure by which they must apply for ICT authorization.

The purpose of the public meeting is for U.S. Government officials to explain the amendments to the EAR proposed in the rule and answer questions from the public. This effort is intended to assist the public submit helpful comments on the rule to BIS by the November 17, 2008 deadline.

Dated: October 16, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–25180 Filed 10–21–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–933

Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination

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

EFFECTIVE DATE: October 22, 2008.

SUMMARY: We preliminarily determine that frontseating service valves ("FSVs") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Pursuant to a request from an interested party, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination. *See* the "Postponement of the Final Determination" section below.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–0414 or 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On March 19, 2008, Parker–Hannifin Corporation ("Petitioner") filed an antidumping petition in proper form on behalf of the domestic industry concerning imports of FSVs from the PRC ("Petition"). The Department of Commerce ("the Department") initiated this investigation on April 15, 2008.[1] In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate–rate status in non–market economy ("NME") investigations. The process requires exporters and producers to submit a separate–rate status application ("SRA").[2] However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed. The SRA for this investigation was posted on the Department's website on April 10, 2008, at http://ia.ita.doc.gov/ia–highlights-and–news.html. The due date for filing an SRA was June 16, 2008. No party beyond the mandatory respondents filed an SRA.

On May 12, 2008, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of FSVs from the PRC.[3]

Period of Investigation

The period of investigation ("POI") is July 1, 2007, through December 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 19, 2008.[4]

Postponement of Preliminary Determination

On July 30, 2008, Petitioner made a timely request, pursuant to section

[1] *See Frontseating Service Valves from the People's Republic of China: Notice of Initiation of Antidumping Duty Investigation*, 73 FR 20250 (April 15, 2008) (*"Initiation Notice"*).

[2] *See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries* (April 5, 2005) (*"Policy Bulletin 05.1"*), available at http://ia.ita.doc.gov/policy/bull05-1.pdf.

[3] *See Investigation Nos. 731-TA-1148 (Preliminary): Frontseating Service Valves from China*, 73 FR 28507 (May 16, 2008) (*"ITC Preliminary Determination"*).

[4] *See* 19 CFR 351.204(b)(1).

733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determination. On August 11, 2008, the Department published a postponement of the preliminary antidumping duty determination on FSVs from the PRC.[5]

Postponement of Final Determination and Extension of Provisional Measures

On October 7 2008, Zhejiang Sanhua Co., Ltd. ("Sanhua") made a timely request pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) that the Department postpone the final determination and extend the provisional measures from a four-month period to not more than six months in duration. We are granting Sanhua's request in accordance with section 733(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii).

Scope of Investigation

The merchandise covered by this investigation is frontseating service valves, assembled or unassembled, complete or incomplete, and certain parts thereof. Frontseating service valves contain a sealing surface on the front side of the valve stem that allows the indoor unit or outdoor unit to be isolated from the refrigerant stream when the air conditioning or refrigeration unit is being serviced. Frontseating service valves rely on an elastomer seal when the stem cap is removed for servicing and the stem cap metal to metal seat to create this seal to the atmosphere during normal operation.[6]

For purposes of the scope, the term "unassembled" frontseating service valve means a brazed subassembly requiring any one or more of the following processes: the insertion of a valve core pin, the insertion of a valve stem and/or O ring, the application or installation of a stem cap, charge port cap or tube dust cap. The term "complete" frontseating service valve means a product sold ready for installation into an air conditioning or refrigeration unit. The term "incomplete" frontseating service valve means a product that when sold is in multiple pieces, sections, subassemblies or components and is incapable of being installed into an air conditioning or refrigeration unit as a single, unified valve without further assembly.

The major parts or components of frontseating service valves intended to be covered by the scope under the term "certain parts thereof" are any brazed subassembly consisting of any two or more of the following components: a valve body, field connection tube, factory connection tube or valve charge port. The valve body is a rectangular block, or brass forging, machined to be hollow in the interior, with a generally square shaped seat (bottom of body). The field connection tube and factory connection tube consist of copper or other metallic tubing, cut to length, shaped and brazed to the valve body in order to create two ports, the factory connection tube and the field connection tube, each on opposite sides of the valve assembly body. The valve charge port is a service port via which a hose connection can be used to charge or evacuate the refrigerant medium or to monitor the system pressure for diagnostic purposes.

The scope includes frontseating service valves of any size, configuration, material composition or connection type. Frontseating service valves are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85, of the Harmonized Tariff Schedule of the United States ("HTSUS"). It is possible for frontseating service valves to be manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. In addition, if unassembled or incomplete frontseating service valves are imported, the various parts or components would be classified under HTSUS subheadings 8481.90.1000, 8481.90.3000, or 8481.90.5000. The HTSUS subheadings are provided for convenience and customs purposes, but the written description of the scope is dispositive.

Scope Comments

We set aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). In our *Initiation Notice*, we encouraged parties to submit such comments regarding the scope of the merchandise under investigation by April 28, 2008. On April 28, 2008, Sanhua submitted scope comments. No other party submitted scope comments. On May 8, 2008, Petitioner submitted rebuttal scope comments. No other party submitted rebuttal comments. Sanhua requested that the Department limit the scope to FSVs made of brass or copper and not include forged products with integrated feet because the scope as written covers too broad a range of service valves. Sanhua argues that service valves may erroneously be classified as FSVs when they enter the United States under the current scope description. Specifically, Sanhua contends that the scope as written currently suggests that FSVs are made of any material. Sanhua argues that, in fact, FSVs must stand up to certain operating conditions and brass FSVs are the only product that meet those conditions and demands. Petitioner argues that the Department should not consider any changes that would limit the scope to specific material composition, mounting type or that would attempt to remove all forged valve bodies from the scope.

In the *Initiation Notice*,[7] we stated that the scope of merchandise includes FSVs of any size, configuration, material composition or connection type. FSVs are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85 of the HTSUS. Additionally, we stated that it is possible for FSVs to be manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. Based upon the above, we have preliminarily determined that the scope of the merchandise under consideration as it is currently written clearly describes the scope of the merchandise under consideration.

Non-Market Economy Country

For purposes of initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.[8] Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC.[9] Additionally, in recent investigations, the Department also treated the PRC as an NME country.[10] In accordance with section

[5] *See Postponement of Preliminary Determination of Antidumping Duty Investigation: Frontseating Service Valves from the People's Republic of China*, 73 FR 46586 (August 11, 2008).

[6] The frontseating service valve differs from a backseating service valve in that a backseating service valve has two sealing surfaces on the valve stem. This difference typically incorporates a valve stem on a backseating service valve to be machined of steel, where an frontseating service valve has a brass stem. The backseating service valve dual stem seal (on the back side of the stem), creates a metal to metal seal when the valve is in the open position, thus, sealing the stem from the atmosphere.

[7] *See Initiation Notice*, 73 FR at 20251.

[8] *See Initiation Notice*, 73 FR at 20253.

[9] *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China")-China's status as a non-market economy ("NME")," dated August 30, 2006. This document is available online at: http:// ia.ita.doc.gov/ download/prc-nmestatus/ prc-lined-paper-memo-08302006.pdf.

[10] *See Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of*

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771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The presumption of the NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of this investigation.

Selection of Respondents

The Department issued its Quantity and Value ("Q&V") questionnaire to Zhejiang DunAnn Hetian Metal Co., Ltd. ("DunAn"), Sanhua, and Anhui Tianda Group, Ltd. ("Tianda"), exporters of FSVs from the PRC. In its Q&V questionnaire the Department requested that the firms provide a response on May 8, 2008. On May 8, 2008, DunAn and Sanhua each submitted a Q&V questionnaire response. Both DunAn and Sanhua stated that they exported FSV's to the United States during the POI. The Department did not receive a Q&V response from Tianda. On June 30, 2008, the Department selected DunAn and Sanhua as mandatory respondents and issued an antidumping duty questionnaire to both companies.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base normal value ("NV") on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below. *See also* Factor Valuation Memorandum.[11]

On September 10, 2008, the Department determined that India, Indonesia, Thailand, the Philippines, and Colombia are countries comparable to the PRC in terms of economic development.[12] On September 11, 2008, the Department requested comments on the selection of a surrogate country from the interested parties in this investigation. Petitioner and DunAn submitted comments on September 22, 2008. Both Petitioner and DunAn stated the Department should select India as the surrogate country.

The Department's practice is to select an appropriate surrogate country from the Policy Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a level of economic development comparable to that of the PRC, is a significant producer of comparable merchandise (*i.e.*, FSVs) and has publicly available and reliable data. Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate country selection.[13] We obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in antidumping investigations, interested parties may submit publicly available information to value FOPs under 19 CFR 351.408(c) within 40 days after the date of publication of this preliminary determination.[14]

Separate Rates

In the *Initiation Notice*, the Department notified parties of the recent application process by which exporters and producers may obtain separate–rate status in NME investigations. *See Initiation Notice* at 20254. The process requires exporters and producers to submit an SRA. *See also Policy Bulletin 05.1*.[15] However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to this investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Policy Bulletin 05.1*. Exporters can demonstrate this independence through the absence of both de jure and de facto government control over export activities. The Department analyzes each entity exporting the merchandise subject to this investigation under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign–owned or located in an ME, then a separate–rate analysis is not necessary to determine whether it is independent from government control.

A. Separate–Rate Recipients

In this investigation, no company reported that it is wholly owned by individuals or companies located in an ME or that it is located outside the PRC. Therefore, we are not addressing these ownership structures in this preliminary determination.

1. Joint Ventures between Chinese and Foreign Companies or Wholly Chinese–Owned Companies

Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008).

[11] *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Frontseating Service Valves from the People's Republic of China: Factor Valuations for the Preliminary Determination," dated concurrently with this notice ("Factor Valuation Memorandum").

[12] "*See* the Department's memorandum entitled, "Antidumping Duty Investigation of Frontseating Service Valves ("FSVs") from the People's Republic of China ("PRC"): Request for a List of Surrogate Countries" from the office of Policy, dated September 10, 2008 (identifying the list of potential surrogate countries comparable to the PRC in terms of economic comparability) ("Policy Memorandum").

[13] "See Id.

[14] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[15] *Policy Bulletin 05.1* states: "while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See Policy Bulletin 05.1* at 6.

In this investigation no company reported that its ownership structure is that of a wholly Chinese–owned company. However, both respondents examined (*i.e.*, DunAn and Sanhua) reported that they are joint ventures between Chinese and foreign companies. Therefore, the Department must analyze whether DunAn and Sanhua can demonstrate the absence of both *de jure* and *de facto* government control over their export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by DunAn and Sanhua supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See, e.g.*, DunAn's and Sanhua's SRA submissions dated June 17, 2008, and June 13, 2008, respectively.

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence placed on the record of this investigation by DunAn and Sanhua demonstrate an absence of *de jure* and *de facto* government control with respect to their respective exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.[16]

B. Companies Not Receiving a Separate Rate

The Department has determined that all parties applying for a separate rate in this segment of the proceeding have demonstrated an absence of government control both in law and in fact (see discussion above), and is, therefore, not denying separate–rate status to any respondent that has applied (*i.e.*, DunAn and Sanhua).

Facts Available and the PRC–wide Entity

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On April 19, 2008, the Department sent Tianda a Q&V questionnaire requesting information on the quantity and U.S. dollar sales value of all exports of FSVs to the United States.[17] A response was due by close of business on May 8, 2008. The Department did not receive a response from Tianda.

We find that because Tianda failed to respond to the Department's requests for information, it failed to demonstrate that it operates free of government control and that it is entitled to a separate rate. Therefore, we are treating Tianda as part of the PRC–wide entity. Based on the above facts, the Department preliminarily determines that there were exports of the merchandise subject to this investigation from a PRC exporter/producer that did not respond to the Department's Q&V questionnaire, and section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, 870 (1994) ("SAA"). By failing to respond to the Department's Q&V questionnaire, we preliminarily determine that the PRC–wide entity did not cooperate to the best of its ability. Accordingly, we find that an adverse inference is warranted for the PRC–wide entity, which includes Tianda.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available ("AFA"), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse so "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[18] It is also the

[16] *See* DunAn's and Sunhua's SRAs, dated June 13, 2008.

[17] *See* the Department's letter to all interested parties, dated April 19, 2008.

[18] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access*

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Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[19]

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be appropriate.[20] It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[21] In the instant investigation, as AFA, we have preliminarily assigned to the PRC–wide entity, including Tianda, the highest rate on the record of this proceeding, which in this case is the 55.62 percent margin from the petition.[22] The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC–wide entity including Tianda.[23]

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."[24] To "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.[25] Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[26] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[27]

The AFA rate that the Department used is from the petition.[28] Petitioners' methodology for calculating the United States price and NV in the petition is discussed in the initiation notice.[29] To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondents. We found that the margin of 55.62 percent has probative value because it is in the range of margins we found for the mandatory respondents. Accordingly, we find that the rate of 55.62 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate--the PRC–wide rate--to producers/exporters that failed to respond to the Department's antidumping questionnaires, or requests for shipment information, or did not apply for a separate rate, as applicable. The PRC–wide rate applies to all entries of the merchandise under investigation except for entries from respondents, DunAn and Sanhua. These companies and their corresponding antidumping duty cash deposit rates are listed below in the "Preliminary Determination" section of this notice.

Fair Value Comparisons

To determine whether sales of FSVs to the United States by the respondents were made at LTFV, we compared constructed export price ("CEP") to NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for DunAn's and Sanhua's sales because the sales were made by the U.S. affiliate in the United States.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States.[30] In accordance with section 772(d)(1) of the Act, we made deductions from the starting price for billing adjustments, movement expenses, discounts and rebates. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where applicable, foreign inland freight from the plant to the port of exportation, ocean freight, U.S. customs duty, U.S. brokerage and handling, U.S. inland freight from port to the warehouse, and warehousing expense. In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 773(a) of the

Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

[19] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005), quoting SAA at 870.

[20] *See, e.g., Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005), unchanged in *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366, (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 10.

[21] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying Issues and Decision Memorandum at "Facts Available."

[22] *See Initiation Notice.*

[23] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79053-54 (December 27, 2002), unchanged in Notice of *Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2003).

[24] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479, 6481 (February 4, 2008), quoting SAA at 870.

[25] *See Id.*

[26] *See Id.*

[27] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

[28] *See Initiation Notice.*

[29] *See Initiation Notice.*

[30] On October 7, 2008, DunAn submitted an unsolicited revised Section C questionnaire response, stating that it was reporting revised standard and actual weights for its sales of FSVs and that, in accordance with these revised weights, it had also revised all reported U.S. selling expenses that had been calculated based on allocations relying on those weights. Due to the timing of this unsolicited submission, and the magnitude of the changes, we are unable to review this submission for purposes of the preliminary determination. However, we will review this submission after issuance of the preliminary determination and will address any issues attendant to this submission at that time.

Act, we calculated DunAn's and Sanhua's credit expenses and inventory carrying costs based on the Federal Reserve short–term rate.

Normal Value

We compared NV to weighted–average CEPs in accordance with section 777A(d)(1) of the Act. Further, section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. The Department's questionnaire requires that the respondent provide information regarding the weighted–average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.[31]

Sanhua

Sanhua reported a quantity of brass bar consumed for the production of self–produced semi–finished valve bodies, a quantity for its claimed brass and copper scrap by–product offsets and quantities for the remaining FOPs used in the production of subject merchandise. We have determined not to grant Sanhua's requested by–product offsets for brass scrap and copper waste because Sanhua did not properly report actual scrap generated and consumed, despite the Department's request in a supplemental questionnaire. *See* Sanhua'sSupplemental Response, dated September 29, 2008. For the subject merchandise produced by Sanhua that does not incorporate a semi–finished valve body from a toller, we have calculated NV using the reported FOPs, except for the by–product offsets for brass scrap and copper waste.

With respect to the semi–finished valve bodies produced by the toller, Sanhua only reported the FOPs of the brass bar consumed in production. Sanhua did not report the remaining FOPs used by its toller for the production of semi–finished brass valve bodies. Therefore, valuing only the brass bar would not capture costs associated with the processing of the semi–finished valve body. For the calculation of NV for subject merchandise using a semi–finished valve body from a toller, we applied a surrogate value ("SV") for semi–finished brass valve bodies directly to the reported standard weight of the brass body. Finally, we determined not to value the reported semi–finished valve body because the reported weights for that input are not sufficient to make the merchandise. *See* Sanhua's Preliminary Determination Analysis Memorandum, dated concurrently with this notice.

DunAn

In its September 22, 2008, Section D, FOP database, DunAn reported FOPs and a by–product offset for brass scrap. However, its net FOPs (*i.e*, the reported FOPs less the claimed brass scrap by–product offset) were insufficient to account for the reported weight of its finished products. In response to a request from the Department, DunAn reviewed its reporting methodology and submitted a revised FOP database to the Department on October 7, 2008, claiming to have addressed this issue. In the narrative portion of this submission, DunAn stated that it had revised only its claimed brass scrap offset. However, upon reviewing the October 7, 2008, FOP database, we found that DunAn had also revised its reported brass inputs. Due to the timing of this submission, we are unable to address these unidentified data changes with DunAn prior to the preliminary determination. Therefore, for purposes of the preliminary determination, as facts available, we used the FOP data from DunAn's September 22, 2008, submission, but did not grant DunAn's requested by–product offset for brass scrap. We will address this issue further after issuance of the preliminary determination. For further discussion of this issue, please see DunAn's Preliminary Determination Analysis Memorandum.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by the respondent for the POI. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Indian SVs. In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). A detailed description of all SVs used can be found in the Factor Valuation Memorandum.

For this preliminary determination, in accordance with the Department's practice, we used import values from the World Trade Atlas® online ("Indian Import Statistics"), which were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI to calculate SVs for the mandatory respondents' material inputs. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive.[32]

In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index ("WPI"), as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to the Indian import–based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[33] We are

[31] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

[32] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

[33] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final*

Continued

also guided by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.[34] The Department bases its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based SVs. In addition, we excluded Indian import data from NME countries from our SV calculations.[35]

We used Indian transport information to value the inland freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from the following website: http://www.infobanc.com/logistics/logtruck.htm. The logistics section of this source contains inland truck freight rates from four major points of origin to 25 destinations in India. The Department obtained inland truck freight rates updated through September 2008 from each point of origin to each destination and averaged the data accordingly. Since this value is not contemporaneous with the POI, we deflated the rate using the WPI. *See* Factor Valuation Memorandum.

We used three sources to calculate an SV for domestic brokerage expenses. The Department averaged July 2004–June 2005 data contained in the January 9, 2006, public version of Kejriwal Paper Ltd.'s ("Kejriwal") response submitted in the antidumping duty investigation of lined paper products from India,[36] the February 2004–January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's ("Agro Dutch") response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India,[37] and the December 2003–November 2004 data contained in the February 28, 2005, public version of Essar Steel's ("Essar") response submitted in the antidumping duty administrative review of hot-rolled carbon steel flat products from India.[38] The brokerage expense data reported by Kejriwal, Agro Dutch, and Essar in their public versions are ranged data. The Department first derived an average per-unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the three per-unit amounts to derive an overall average rate for the POI. *See* Factor Valuation Memorandum.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, available at http://ia.ita.doc.gov/wages/index.html. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.[39] If the NME wage rates are updated by the Department prior to issuance of the final determination, we will use the updated wage rate in the final LTFV determination.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Factor Valuation Memorandum.

To value factory overhead, selling, general, and administrative expenses ("SG&A") and profit, we used audited financial statements of Carbac Holdings Ltd. ("Carbac"), an Indian brass valve producer; Upadhaya Valves Manufacturers Private Limited ("Upadhaya"), an Indian producer of valves and fittings; and Oswal Valves Pvt. Ltd. ("Oswal"), an Indian producer of valves. We did not rely upon three company's financial statements that were placed on the record, namely the financial statements of Brassomatic Pvt. Ltd. ("Brassomatic"), Larsen & Toubro ("L&T"), and Valve Power Engineers Private Limited ("Valve Power"). We did not rely upon the Brassomatic financial statement because it did not report a profit. It is the Department's practice to disregard financial statements with zero profit when there are financial statements on the record of other surrogate companies that have earned a profit. *See Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 72 FR 52850 (September 17, 2007), citing *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2, section B. Additionally, we did not rely upon L&T's financial statement because L&T's financial statement identifies mixed operations and a significant portion of its business activities is not related to production of comparable merchandise.[40] It is the Department's practice to disregard financial statements with mixed operations and significant operations unrelated to production of comparable merchandise where there are sufficient financial statements on the record for producers of comparable merchandise. *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 159 (January 2, 2008), and accompanying Issues and Decision Memorandum at Comment 10. Further, we did not rely upon Valve Power's financial statement because Valve Power is not a producer of comparable merchandise. Valve Power stated in its financial statement that "the company is in the business of production & sales of manual operated quarter turn gearboxes required to open & close valves." It is the Department's practice to disregard financial statements that indicate that the company is not a producer of identical or comparable merchandise. *See Wooded Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New*

Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

[34] *See Omnibus Trade and Competitiveness Act of 1988*, Conference Report to Accompanying H.R. 3, H.R. Rep. 100-576 at 590 (1988).

[35] For a detailed description of all SVs used for each respondent, *see* Factor Valuation Memorandum.

[36] *See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products from India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006).

[37] *See Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 10597, 10599 (March 4, 2005), unchanged in *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005).

[38] *See Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006), unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006).

[39] *See* Factor Valuation Memorandum.

[40] *See* DunAn's September 29, 2009, submission at Exhibit 9C.

Shipper Review, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 1C. *See* Factor Valuation Memorandum for a full discussion of the calculation of Carbac's, Upadhaya's, Oswal's ratios.

The Department valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

Post–Preliminary Determination Supplemental Questionnaire

In reviewing Sanhua's and DunAn's original and supplemental questionnaire responses, we have determined that certain reported items require additional supplemental information. We expect to issue post–preliminary determination supplemental questionnaires to both Sanhua and DunAn to address these and other deficiencies.

Critical Circumstances

A. DunAn and Sanhua

On September 9, 2008, Petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the antidumping investigation of FSVs from the PRC. Because Petitioner submitted its critical circumstances allegation more than 20 days before the preliminary determination, the Department is issuing a preliminary finding of critical circumstances with its preliminary determination.[41] Section 733(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether the above statutory criteria have been satisfied, the Department examined the following information: (1) evidence presented in Petitioner's September 9, 2008, submission; (2) evidence obtained since the initiation of the LTFV investigation (*i.e.*, import statistics obtained from the ITC Data Web); and (3) the ITC's preliminary material injury determination.[42]

To determine whether a history of dumping and material injury exists, the Department generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise. Petitioner makes no statement concerning a history of dumping with respect to FSVs from the PRC in the United States or elsewhere. Moreover, the Department is not aware of any other antidumping order in the United States or in any country on FSVs from the PRC. Therefore, the Department finds no history of injurious dumping of FSVs from the PRC in accordance with section 733(e)(1)(A)(i) of the Act.

To determine whether an importer knew, or should have known, that the exporter was selling subject merchandise at LTFV in accordance with section 733(e)(1)(A)(ii) of the Act, the Department must rely on the facts before it at the time the determination is made. The Department normally considers margins of 25 percent or more for export price ("EP") sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.[43] Petitioner suggests the use of the margins used by the Department at the investigation initiation.[44] However, we find the use of the alleged rates in the Petition to be unnecessary in this case because the Department's preliminary determination has found margins of 26.72 percent for DunAn, and 15.41 percent for Sanhua. Based on these margins, the Department preliminarily finds that both DunAn's and Sanhua's importers knew, or should have known, that DunAn and Sanhua were selling subject merchandise at LTFV.

To determine whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports consistent with section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.[45] In the instant case, the ITC preliminarily determined that material injury to the domestic industry exists due to imports of FSVs from the PRC, which are alleged to be sold in the United States at LTFV and, on this basis, the Department imputes knowledge of the likelihood of injury to Petitioner. *See ITC Preliminary Determination.*

As DunAn and Sanhua meet the first prong of the critical circumstances test according to section 733(e)(1)(A)(i) of the Act, the Department must examine whether imports from DunAn and Sanhua were massive over a relatively short period. Section 733(e)(1)(B) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department will normally examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "In general, unless the imports during the relatively short period . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," the Department

[41] *See* 19 CFR 351.206(c)(2)(ii).

[42] *See ITC Preliminary Determination.*

[43] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271 (November 28, 2007), and accompanying Issues and Decisions Memorandum at Comment 4.

[44] *See* Petitioner's September 9, 2008, submission at 3-4, citing *Initiation Notice.*

[45] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997).

may consider a period of not less than three months from that earlier time. The Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition ("base period") to a comparable period of at least three months following the filing of the petition ("comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[46]

Petitioner based its allegation of critical circumstances in this investigation on the increase in imports of FSVs that began with the filing of the antidumping duty petition on March 19, 2008. The Department's practice is to rely upon the longest period for which information is available from the month that the petition was filed through the date of the preliminary determination.[47]

Generally, the Department's approach has been to examine overall industry imports as well as company–specific imports to corroborate whether massive imports have occurred within the designated comparative period, that is, the point at which importers had reason to believe that a proceeding was likely. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999); *see also Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527 (February 4, 2000). However, the Department is unable to rely on the ITC Data Web for imports within the HTSUS subheadings identified in the scope of the investigation because those HTSUS subheadings are basket categories that may include non–subject merchandise. Petitioner has acknowledged that the HTSUS data, in and of itself, is not a reliable measure to be used in the instant investigation as the HTSUS subheadings are basket categories that contain many types of merchandise. For example, HTSUS 8481.80.10.95 is a category for high–pressure valves, cocks, and taps and HTSUS 8415.90.80.85 is a category for generic air conditioner parts.[48] Additionally, Petitioner contends that parties misreport under the HTSUS system.[49] Finally, Petitioner cites that one of the HTSUS subheadings is reported in units rather than kilograms.[50] Lacking information on whether there was a massive import surge, the Department is unable to determine whether there have been massive imports of FSVs from the PRC.

On September 30, 2008, the Department requested that both DunAn and Sanhua provide the quantity and value of their monthly shipments of FSVs to the United States for the period November 2007 through August 2008. We received DunAn's and Sanhua's responses on October 14, 2008. Because we received DunAn's and Sanhua's information one day before the preliminary determination, we are unable to review this information prior to making our preliminary determination; however, we will review this information for purposes of the final determination. Thus, lacking the appropriate subject merchandise–specific information on whether there was a massive import surge, the Department is unable to determine, with the necessary accuracy, whether there have been massive imports of FSVs from the PRC during the designated relatively short period. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan*, 68 FR 71072, (December 22, 2003). Consequently, the criteria necessary for determining affirmative critical circumstances have not been met and, therefore, the Department preliminarily determines that critical circumstances do not exist for imports of FSVs from the PRC.

The Department will issue a final determination concerning critical circumstances for DunAn and Sanhua for FSVs from the PRC when it issues the final determination in the instant investigation. In making our final determination, we will examine the company–specific shipment data from DunAn and Sanhua to determine if critical circumstances existed for these two companies. Additionally, the Department has requested and will examine a sampling of entry packages from U.S. Customs and Border Protection ("CBP") for certain entries of FSVs during the base and comparison periods in our analysis for the final determination.

B. PRC–Wide Entity

The Department follows the traditional critical circumstances criteria with respect to the companies covered in the PRC–wide entity.[51] First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling FSVs at LTFV, we look to the PRC–wide rate.[52] The dumping margin for the PRC–wide entity is 55.62 percent, which is more than the 15 percent threshold necessary to impute knowledge of dumping consistent with section 733(e)(1)(A)(ii) of the Act. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise consistent with 19 CFR 351.206.[53]

Finally, with respect to massive imports, the Department's general approach is to examine CBP data on overall imports from the country in question to see if the Department could ascertain whether an increase in shipments occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely.[54] However, we are unable to rely on information supplied by CBP because in this investigation the HTSUS subheadings listed in the scope of the investigation are basket categories that include non–subject merchandise. Lacking information on whether there was a massive import surge for the PRC–wide entity, we are unable to determine whether there have been massive imports of FSVs from the producers included in the PRC–wide entity.[55]

Consequently, the criteria necessary for determining affirmative critical circumstances have not been met.

[46] *See* 19 CFR 351.206(h)(2).

[47] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557 (August 24, 2005), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006).

[48] *See* Petitioner's September 9, 2008, submission at 6.

[49] *Id.*

[50] *Id.*

[51] *See, e.g., Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Affirmative Preliminary Determination of Critical Circumstances*, 73 FR 21312 (April 21, 2008), unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008).

[52] *See Id.*

[53] *See ITC Preliminary Determination.*

[54] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999).

[55] *See, e.g., Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 7916 (February 15, 2006).

Therefore, we have preliminarily determined that critical circumstances do not exist for imports of FSVs for the PRC–wide entity.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from DunAn and Sanhua upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*; the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[56] This practice is described in *Policy Bulletin 05.1*.

Preliminary Determination

The weighted–average dumping margins are as follows:

Exporter/Producer Combination	Percent Margin
Exporter: Zhejiang Sanhua Co., Ltd. Producer: Zhejiang Sanhua Co., Ltd.	15.41
Exporter: Zhejiang DunAn Hetian Metal Co., Ltd. Producer: Zhejiang DunAn Hetian Metal Co., Ltd.	26.72
PRC–Wide Entity*	55.62

* The PRC–wide entity includes Tianda.

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of merchandise subject to this investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For the exporter/producer combinations listed in the chart above, the following cash deposit requirements will be effective upon publication of the preliminary determination for all shipments of merchandise under consideration entered or withdrawn from warehouse, for consumption on or after publication date: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash–deposit rate will be the PRC–wide rate; (3) for all non–PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. These suspension–of–liquidation instructions will remain in effect until further notice. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of FSVs, or sales (or the likelihood of sales) for importation of FSVs within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. The Department also requests that parties provide an electronic copy of its case and rebuttal brief submissions in either a "Microsoft Word" or "pdf" format.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.[57] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, at a time and location to be determined. *See* 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 15, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–25178 Filed 10–21–08; 8:45 am]

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[56] *See Initiation Notice*, 73 FR at 20255.

[57] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI77

Marine Mammal Protection Act; Final Conservation Plan for the Cook Inlet Beluga Whale

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

ACTION: Notice; response to comments.

SUMMARY: NMFS announces the availability of the final conservation plan for the Cook Inlet Beluga Whale pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA). NMFS incorporated into this document new information on Cook Inlet beluga whales and comments received on the draft conservation plan released for public review and comment on March 16, 2005.

ADDRESSES: The conservation plan is available on the Internet at the following address: *http://www.alaskafisheries.noaa.gov/protectedresources/whales/beluga/management.htm.* Copies of the conservation plan may be reviewed and/or copied at NMFS, Protected Resources Division, 222 W. 7th Ave., Room 517, Anchorage, AK 99513; or at NMFS, Alaska Regional Office, Protected Resources Division, 709 W. 9th St., Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Mandy Migura, NOAA/NMFS, Alaska Region, Anchorage Field Office, (907) 271–5006, or Kaja Brix, NOAA/NMFS, Alaska Region, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Background

The MMPA requires NMFS to prepare a conservation plan to promote the conservation and recovery of any species or stock designated as depleted. The Cook Inlet beluga whale stock declined by nearly 50 percent from 1994 to 1998. In response to this significant decline, NMFS designated the Cook Inlet beluga as depleted under the MMPA on May 31, 2000 (64 FR 34580). A draft conservation plan was released for public review and comment on March 16, 2005 (70 FR 12853). This conservation plan incorporates new information on Cook Inlet beluga whales as well as information and suggestions received from the public, State, Federal and municipal agencies, Alaska Natives, industry and environmental groups. The goal of this conservation plan is restore the Cook Inlet beluga whale population to its optimum sustainable population (OSP). The conservation strategy NMFS developed to attain this goal has four components: (1) improve our understanding of the biology of Cook Inlet beluga whales and the factors limiting the population's growth; (2) stop direct losses to the population; (3) protect valuable habitat; and (4) evaluate the effectiveness of these strategies and the success of the conservation actions in restoring the Cook Inlet beluga whale population. The Plan will be reviewed and updated every five years. The goal of the Plan will be met when the depleted designation for Cook Inlet beluga whales can be removed.

Comments and Responses

NMFS received 115 letters of comment on the draft conservation plan for the Cook Inlet beluga whale. Substantive comments of a similar nature are consolidated, grouped by subject and responded to below.

NMFS received suggestions regarding editorial and format changes to the draft conservation plan. Generally, these suggestions regarding editorial and format changes were accepted, and the plan has been modified accordingly. Substantive comments are summarized and addressed in this notice.

Comment 1: More than one hundred commenters advocated habitat protection. Comments varied with some recommending development prohibition in Type 1 habitat, prevention of oil and gas activities in Type 1 and 2 habitats, providing for discrete protected areas, and broadening Type 1 and 2 habitat areas. One commenter said NMFS failed to recommend measures that adequately protect these key beluga feeding and breeding areas. Comments also expressed concern about specific development projects such as Knik Arm Bridge, Coastal Trail, Port of Anchorage expansion, Campbell Creek, and coastal development. Many commenters urged additional habitat research.

Response: NMFS believes habitat protection to be one of the principal actions needed to recover this population to its OSP. The conservation plan outlines what we believe to be appropriate conservation actions associated with varying habitat types as determined by specific habitat characteristics and frequency and timing of use by Cook Inlet beluga whales.

Beluga habitat use was ascertained by examining long-term data derived from intensive annual aerial surveys conducted from 1993–2007, monthly surveys from June 2001 to June 2002, aerial surveys in August 2006 and August 2007, traditional knowledge gathered through interviews with Cook Inlet beluga hunters, habitat modeling, Cook Inlet aerial surveys conducted by other government agencies (Alaska Department of Fish and Game and Minerals Management Service), satellite tracking of 14 beluga whales, stranding data, archeological studies, opportunistic reports, and other scientific study reports.

The final conservation plan has reexamined and updated habitat information and valuable habitat types. Additional information was incorporated into the definitions of habitat types I, II and III from NMFS analyses and from surveys conducted for the Knik Arm Bridge and Toll Authority and the Port of Anchorage. Important habitat has been identified and will be reassessed periodically when new data are gathered, the population recovers, or as habitat changes over time. Habitat classifications and corresponding management goals will be reassessed as this conservation plan is periodically updated.

Response to proposed habitat alterations will vary according to the sensitivity of the habitat.

Comment 2: NMFS should prioritize actions, and fully fund and identify funding sources for the research plan set forth in the draft conservation plan. Two commenters requested that NMFS ask Congress for $20M per year during the next five years to manage and research the Cook Inlet beluga whale stock. Four commenters recommended that a "team" of experts convene a workshop to review the priorities and funding needs for Cook Inlet beluga recovery.

Response: Priorities for research and management projects were updated in the final conservation plan. Costs for various activities have been estimated, but identifying funding sources is outside the scope of this document. Current NMFS funding supports annual abundance surveys and co-management activities. The conservation plan takes a comprehensive look at identifying funding needs and will be used (adaptively) to set regional management and research priorities.

Comment 3: The draft conservation plan failed to address non-hunting impacts on belugas and their important habitats, including pollution, noise, oil and gas development, aviation impacts, sewage, military activities, coastal development, and food supplies, among other things.

Response: Subsistence hunting was a major contributing factor in the Cook Inlet beluga decline during the 1990s. The long-term harvest regulatory process will be finalized in 2008. NMFS agrees that research and management should address non-hunting impacts and expanded these aspects in the conservation plan. The threats discussion has been updated in the final conservation plan to address the concerns from these commenters.

Comment 4: More detail is needed on the overview of Cook Inlet beluga whales.

Response: NMFS has updated and expanded the background information on Cook Inlet beluga whales. NMFS will continue to use and gather the best available information on Cook Inlet belugas and provide that information to the public through updates to the conservation plan.

Comment 5: Discrete action thresholds need to be provided which describe specific management steps should the beluga population continue to decline.

Response: NMFS has revised the Conservation Action section of the conservation plan to include more specific actions necessary for the conservation and management of the Cook Inlet beluga whales.

Comment 6: More outreach and development of a broader stakeholder group is necessary.

Response: NMFS conducted significant outreach to the public and interested groups when the draft conservation plan was published (e.g., notice in the **Federal Register**, public meetings, mailings, press release, NMFS website). The comment period for the draft conservation plan was extended 30 additional days to enable all interested parties to formulate their comments. Consequently, NMFS' address list for interested parties on Cook Inlet beluga whales has been expanded. Specific outreach on stranding response was conducted in local area communities to improve the capacity for stranding *Response:* Homer in 2003, Anchorage in 2006 and 2007, and Seward in 2008.

Comment 7: Some commenters opposed NMFS' restrictions in Cook Inlet on coastal development, oil and gas, National pollutant discharge elimination system (NPDES) permits, vessel traffic, etc. unless objective scientific research supports the conclusion that restrictions would aid in Cook Inlet beluga whale recovery. Some commenters said the draft conservation plan was inaccurate if it implied development had significantly impacted the beluga population or their recovery. Commenters supported additional research for Cook Inlet belugas and their habitat.

Response: NMFS agrees that more research should be done for the Cook Inlet belugas. The habitat research and monitoring sections have been expanded in the final conservation plan. Although the Cook Inlet beluga population decline in the 1990s was attributed primarily to Native subsistence harvests, since 1999 the harvest has been severely restricted (only five belugas taken from 1999–2008) and the population has not increased as expected. It is probable that other factors are keeping the beluga population from recovering, and it is prudent to protect their habitat. Important habitat has been characterized in this conservation plan and will be reassessed periodically when new data are available, the population recovers, or as habitat changes over time. With so few belugas remaining (estimated abundance of 375 belugas in 2008), failure to protect important habitats could rapidly reduce the Cook Inlet beluga population to a level where recovery is impossible.

The conservation plan develops a strategy based on what is known about these whales and what can be done to understand them better, prevent further declines, and aid the stock to recover its population to the OSP. NMFS pursued a scientifically-based conservation plan, while using a precautionary approach to management. We believe this plan is (1) appropriate given our current knowledge of Cook Inlet belugas and their low population abundance, (2) comprehensive in nature by combining management and applied research for many different issues, and (3) adaptive through subsequent revisions and updates. The conservation plan has used the best available scientific, commercial, and traditional ecological knowledge available at this time.

Comment 8: Commenters expressed concern about pollutants from sewage, industry, aircraft, storm drains, Eagle River Flats, and ballast water. Stronger environmental standards and monitoring were recommended.

Response: The final conservation plan included additional pollution information when available. Information was added on Anchorage wastewater treatment, Anchorage stormwater, Stevens International Airport deicing, ballast water discharges, and military testing at Eagle River Flats. Contaminant analysis has been done on Cook Inlet belugas since 1992 and results are presented in the conservation plan. Contaminant analysis will continue to be a priority and funded when possible. NPDES permits for outfalls and oil and gas development will be reviewed and appropriate mitigation will be recommended.

Comment 9: The final conservation plan should address acoustic impacts as related to geophysical operations in Cook Inlet. Some commenters noted that mitigation measures have been implemented during seismic surveys to eliminate noise impacts to beluga whales. Other commenters advocated additional acoustic restrictions on geophysical operations in Cook Inlet not be included, while yet other commenters advocated additional noise restrictions and another recommended additional acoustic studies before restrictive actions are instituted.

Response: NMFS recognizes the cooperation and effort of industry to eliminate and reduce impacts to the marine environment. NMFS agrees that additional acoustic studies and monitoring should occur and will continue to gather acoustic information and update protocols to protect beluga whales. Recommendations for noise regulation and acoustic studies have been improved in the final conservation plan.

Comment 10: Some commenters supported a status review under the ESA.

Response: Even though a status review under the ESA occurs independently from a conservation plan under the MMPA, NMFS agreed with commenters that a second status review was necessary for Cook Inlet belugas. The purpose of a status review is to assemble the best scientific or commercial data available, in this case on Cook Inlet beluga whales, within its known historic range. Since publication of the draft conservation plan in 2005, NMFS released a status review for the Cook Inlet beluga whales in November 2006, followed by an update in April 2008. NMFS considered the information presented in, and conclusions drawn from the status reviews for the conservation plan.

Comment 11: NMFS needs to update the historic Cook Inlet beluga abundance and carrying capacity.

Response: The conservation plan used the best available scientific data, both for Cook Inlet beluga whale population status and carrying capacity determinations. Cook Inlet beluga whale data collected before 1990 have been reviewed and included where appropriate in the conservation plan. NMFS has also included traditional ecological knowledge on the population where appropriate.

Historic abundance of Cook Inlet beluga whales was estimated from an Alaska Department of Fish and Game survey conducted in 1979. The 1979 beluga count was the most comprehensive survey for Cook Inlet belugas prior to 1993, and by using a conversion factor for missed belugas, it provides the best scientific method and available data for a historical abundance estimate. Given that the true number of whales Cook Inlet could support is unknown, NMFS is using this historical abundance estimate as the carrying capacity. Edits were incorporated into the conservation plan to better clarify the historical abundance estimate and carrying capacity. The beluga population trend analysis was updated with the most recent abundance surveys.

Comment 12: NMFS should establish guidelines that protect the whales from undue harassment from tour operators and jet skis.

Response: Harassment of marine mammals under the MMPA is currently considered as part of the definition of a "take." Takes are prohibited under the MMPA. NMFS will evaluate the need

for further guidelines as they might pertain to tour operators and jet ski operations that may cause takings of Cook Inlet beluga whales.

Comment 13: Some commenters supported tighter controls on oil and gas activity. Commenters urged NMFS to take a stronger approach to determine the effects of existing oil and gas activity.

Response: NMFS agrees that monitoring oil and gas activity in Cook Inlet should be comprehensive and effective. NMFS reviews all applicable Federal permits for oil and gas development and recommends appropriate mitigation measures and stipulations as necessary.

Comment 14: NMFS should invoke its statutory authority to implement various management tools to protect Cook Inlet beluga whales.

Response: Under various authorities, NMFS has implemented management measures to protect Cook Inlet beluga whales. Among the protection measures, NMFS enforces the MMPA marine mammal take moratorium. NMFS has issued regulatory provisions that prevent or restrict Native subsistence harvests. NMFS is listing the whale as an endangered species under the ESA. Also, with this conservation plan, NMFS is describing methods to stop direct population losses and restore the stock.

Comment 15: The marine mammal stranding plan and network should be expanded. Commenters indicated that more stranding data in Cook Inlet should be collected and analyzed.

Response: NMFS agrees. The conservation plan reflects NMFS' efforts to improve stranding response and agreements. Furthermore, stranding outreach workshops have been held (with USFWS) in Homer (2003), Anchorage (2006, 2007), and Seward (2008). NMFS plans to update the Cook Inlet stranding plan in 2008/2009.

Comment 16: Four commenters indicated that the draft conservation plan used flawed methodology, flawed population estimates, and unrealistic recovery rates.

Response: The final conservation plan was updated with the most recent abundance surveys and trend analysis. The annual abundance surveys on Cook Inlet beluga whales are a comprehensive and statistically validated assessment of the Cook Inlet beluga whale population Aerial survey methodology has been consistent since 1994 and video analysis has been improved over the years as technology has advanced. For odontocetes, the typical average growth rate is 4 percent per year. The Cook Inlet beluga population has seen a 1.5 percent annual decline since 1999 when the harvest was regulated. This declining trend since 1999 indicates that factors other than subsistence hunting may be preventing recovery. A detailed discussion on population abundance estimates and recovery rates is included in the conservation plan.

Comment 17: The draft conservation plan failed to adequately address beluga whale subsistence issues.

Response: The final conservation plan was edited to better clarify subsistence issues. NMFS recognizes the cultural and nutritional values of subsistence foods, including beluga whale, for Alaska Natives. Harvests from this stock have been severely restricted (0 to 2 whales annually) since 1999. Alaska Native subsistence harvests will continue at low levels when the five year population average is more than 350 Cook Inlet belugas. The conservation efforts on subsistence harvests are due to both the voluntary efforts by the Native hunters and conditions imposed by Federal law.

Since 2000, six annual co-management agreements have been signed between NMFS and Cook Inlet Marine Mammal Council in compliance with Public Laws 106–31 and 106–553. NMFS has worked extensively with experts, including Native hunters, to use the best available science and traditional knowledge in our management and conservation of Cook Inlet belugas. This includes workshops by NMFS, Cook Inlet Marine Mammal Council, and Alaska Beluga Whale Committee.

A technical working group was created by an administrative law judge to develop a Cook Inlet beluga harvest management plan for 2005 and subsequent years that would recover Cook Inlet belugas while allowing for traditional subsistence use. The long-term harvest regulations were finalized in 2008. It is probable that other factors, not subsistence harvest, keep the population from recovering. This is addressed in the final conservation plan.

Comment 18: NMFS should immediately enter into agreements with relevant Federal agencies to ensure enhanced protection measures are in place for Cook Inlet issues, concerns, and development projects that are outside NMFS direct jurisdiction.

Response: NMFS has good working relationships with other State and Federal agencies and does not believe additional agreements are necessary at this time. No changes were made to the conservation plan to develop agreements with other agencies.

Comment 19: While beluga tagging efforts provide invaluable information on beluga movements and behavior, the actual tagging process and subsequent tag conveyance by whales poses heightened risk (stress) to the tagged whales.

Response: Some research activities may have the potential to negatively affect the small population of Cook Inlet beluga whales. NMFS carefully evaluates all marine mammal research permit applications to ensure that the proposed research is not likely to have a long term direct or indirect impact on the stock.

Comment 20: A goal of the conservation plan should be to analyze Cook Inlet salmon and other prey availability more closely.

Response: NMFS agrees. The need for a forage fish analysis research project was included in the conservation plan.

Comment 21: Reorganize and clarify the conservation strategy and step-down outline. The step-down outline needs better organization and specificity.

Response: NMFS agrees. The entire conservation program, including the conservation strategy, has been reorganized for clarity and re-prioritized in the conservation plan.

Comment 22: Improve the enforcement plan by adding specific information on who will conduct air, boat, and vehicle patrols and when; and specifically how NMFS will interface with citizens and community groups to enhance enforcement oversight.

Response: The enforcement section was updated to include the 2008 NOAA Law Enforcement Plan for Cook Inlet belugas (see Appendix D); however, this plan does not describe specific enforcement methods and activities which may compromise the effectiveness of the enforcement plan.

Comment 23: Exploratory drilling should not be limited to November 1 through April 1 of each year. Due to winter ice conditions in Cook Inlet, this restriction will effectively eliminate all exploratory drilling in the inlet.

Response: This specific condition has been eliminated in the final conservation plan. However, NMFS will develop mitigation measures (including timing) tailored to drilling locations and beluga presence on a case by case basis as coordinated under the MMPA, ESA, Fish and Wildlife Coordination Act, and Magnuson-Stevens Act (as it pertains to Essential Fish Habitat).

Comment 24: One commenter encouraged NMFS to avoid recommending an outright prohibition on wastewater discharge permits for Type 1 habitat. Wastewater treatment needs can be tailored to meet even the

most stringent receiving water requirements identified in a permit.

Response: NMFS has reassessed its position in the conservation plan. NMFS acknowledges that a lack of sewage treatment in a growing urban area would have negative impacts. Further, NMFS acknowledges that wastewater treatment needs can be tailored to meet a permit's requirements; therefore, this prohibition was removed.

Comment 25: One commenter noted that Type I and II habitat management measures place severe restrictions on any work that would be associated with placing and maintaining undersea electrical cables. The commenter said it is not aware that previous cable circuit installation and subsequent operation have negative impacts on the beluga whale population.

Response: NMFS has no evidence that electrical cable operation or maintenance has had negative impacts on beluga whales. Any cable installation must go through the Corps of Engineers permitting process, as required by law. The goal of the conservation plan is not to restrict development or prohibit maintenance for undersea electrical cables, but rather to protect beluga habitat and allow the population to recover and expand to its historic range. Projects in Type I habitat area (which has been redefined in the conservation plan) should not adversely affect the beluga habitat.

Comment 26: One commenter says that NMFS must continue to study belugas to help future preservation and knowledge efforts, and must not delay actions ensuring the belugas' survival.

Response: With the continued annual decline at 1.5 percent since harvest was regulated in 1999, we agree that conservation actions need to occur immediately. The conservation plan develops a strategy based on: (1) improving our knowledge about the biology of these belugas and the factors that are limiting their population growth; (2) stopping direct losses to the population; (3) protecting valuable habitat; and (4) evaluating the effectiveness of these strategies and the success of the conservations actions in restoring the Cook Inlet stock to its OSP. NMFS pursued a scientifically-based conservation plan while using a precautionary approach to management. As monitoring and studies provide additional scientific information, management can be adjusted accordingly. This section was clarified in the final conservation plan.

Comment 27: One commenter is concerned that NMFS plans to re-assess this stock for possible listing under ESA, and asserts that it is inappropriate for NMFS to abandon the current co-management agreement and conservation measures.

Response: Although NMFS is listing Cook Inlet beluga whales as an endangered species, NMFS will continue to co-manage Cook Inlet belugas with the Cook Inlet hunters and make use of conservation measures under the MMPA while a recovery plan under the ESA is being prepared.

Comment 28: NMFS should not manage or authorize fishing operations that are likely to have an impact on beluga whales. The commenter adds that the draft conservation plan is unclear as to NMFS' role in Federal and State fisheries.

Response: The conservation plan has been clarified to differentiate between managing Federal fisheries and providing input to State fisheries.

Dated: October 16, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies To Assess Conformity With Part 1508, Part 1509, and/or Part 1511 of Title 16, Code of Federal Regulations

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies To Assess Conformity With Part 1508, Part 1509, and/or Part 1511 of Title 16, Code of Federal Regulations.

Introduction: The Consumer Product Safety Act ("CPSA"), at section 14(a)(3)(B)(ii) as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Public Law 110–314, directs the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") to publish this notice of requirements for accreditation of third party conformity assessment bodies ("third party laboratories") to test children's products for conformity with the Commission's regulations for full-size baby cribs at 16 CFR part 1508, for non-full-size baby cribs at 16 CFR part 1509, and/or for pacifiers at 16 CFR part 1511.[1] [2] Each manufacturer (including the importer) or private labeler of cribs and/or pacifiers subject to those regulations must have products manufactured more than 90 days after the **Federal Register** publication date of this notice tested by a laboratory accredited to do so and must issue a certificate of compliance with the applicable regulations based on that testing.[3] [4]

The Commission is also recognizing limited circumstances in which testing performed by a laboratory on or after May 16, 2008, 90 days prior to the date of enactment of CPSIA (August 14, 2008), but prior to Commission acceptance of the laboratory's preexisting accreditation, provided that accreditation is accepted not later than December 26, 2008, may form the basis for the certificate of compliance with the crib and/or pacifier regulations required of the manufacturer or private labeler.

This notice provides the criteria and process for Commission acceptance of accreditation of "third party" laboratories for testing to the regulations for cribs and/or pacifiers (laboratories that are not owned, managed; or controlled by a manufacturer or private labeler of a children's product to be tested by the laboratory for certification purposes), "firewalled" laboratories (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the laboratory for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" laboratories), and laboratories owned or controlled in whole or in part by a government.

The requirements of this notice are effective upon its publication in the **Federal Register** and are exempted by CPSIA from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.[5]

[1] Section 102 of CPSIA also required the Commission to publish requirements for accreditation of laboratories for testing to the lead paint ban at 16 CFR part 1303. Those requirements were published in the **Federal Register** on September 22, 2008. 73 *FR* 54564–6.

[2] Children's products are those designed or intended for use primarily by children 12 years old and younger.

[3] Section 14(a)(2) of the CPSA as added by § 102(a)(2) of CPSIA requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product.

[4] Of course, irrespective of certification, the children's product in question must comply with applicable CPSC requirements. See, *e.g.*, CPSA § 14(h) as added by CPSIA § 102(b).

[5] CPSA section 14(a)(3)(G) as added by section 102(a)(2) of CPSIA exempts publication of this

Continued

Baseline accreditation of each category of laboratory to the International Organization for Standardization ("ISO") Standard ISO/IEC 17025:2005—General Requirements for the Competence of Testing and Calibration Laboratories—is required. The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement ("ILAC–MRA") and the scope of the accreditation must include testing for compliance with the crib regulations of 16 CFR part 1508 and/or part 1509 and/or the pacifier regulations of part 1511.[6] A laboratory owned or controlled by a manufacturer or private labeler of products to be tested by the laboratory is subject to additional requirements intended to assure that the Commission is immediately and confidentially notified of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over the laboratory's test results. A governmental laboratory may be accredited subject to additional requirements concerning independence of its relationship with the host government and freedom of manufacturers in the host country to elect to use accredited non-government laboratories for certification testing without suffering disadvantage.

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site.

Although the accreditation requirements in this notice for testing to the crib and/or pacifier regulations are effective upon their publication in the **Federal Register**, the Commission solicits comments on the accreditation procedures as they apply to that testing and on the accreditation approach in general, since the Commission must publish additional testing laboratory accreditation procedures over the coming months.

DATES: *Effective Date:* The requirements for accreditation of laboratories for testing to the crib and/or pacifier regulations are effective upon publication of this notice in the **Federal Register**, that is October 22, 2008.

Request for Comments: Please provide comments in response to this notice by November 21, 2008. Comments on this notice should be captioned "Laboratory Accreditation Process for Crib and Pacifier Testing." Comments should be submitted to the Office of the Secretary by e-mail at *cpscos@cpsc.gov*, or mailed or delivered, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Acting Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov*.

I. Accreditation Requirements

A. Baseline Third Party Laboratory Accreditation Requirements

For a third party laboratory to be accredited to test children's products for conformity with the Commission's crib and/or pacifier regulations, it must be accredited by an ILAC–MRA signatory accrediting body and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html*. The accreditation must be to ISO Standard ISO/IEC 17025:2005—General Requirements for the Competence of Testing and Calibration Laboratories and the scope of the accreditation must expressly include testing to the regulations of 16 CFR part 1508, 1509, and/or 1511 as applicable to the product(s) to be tested.[7] A true copy of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental laboratories are described below in sections I.B and I.C.

The Commission will maintain on its Web site an up-to-date listing of laboratories whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of "retrospective" testing performed by other than firewalled laboratories noted in Section III. below, once the Commission adds a laboratory to that list, the laboratory may commence testing of children's products to support certification by the manufacturer or private labeler of compliance with the crib and/or pacifier regulations, as applicable.

B. Additional Accreditation Requirements for Firewalled Laboratories

In addition to the baseline accreditation requirements in section I.A, firewalled laboratories seeking accredited status must submit to the Commission for review copies of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over the laboratory's test results. This additional requirement applies to any laboratory in which a manufacturer or private labeler of a children's product to be tested by the laboratory owns a ten percent or more interest. While the Commission is not addressing common parentage of a lab and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be dealt with in the future.

The Commission must formally accept, by order, the accreditation application of a laboratory before the laboratory can become an accredited firewalled laboratory.

C. Additional Accreditation Requirements for Governmental Laboratories

In addition to the baseline accreditation requirements of section I.A, CPSIA permits accreditation of a laboratory owned or controlled in whole or in part by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose laboratories that are not owned or controlled by the government of that nation;
- The laboratory's testing results are not subject to undue influence by any other person, including another governmental entity;
- The laboratory is not accorded more favorable treatment than other laboratories in the same nation who have been accredited;
- The laboratory's testing results are accorded no greater weight by other

notice from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and from the Regulatory Flexibility Act, 5 U.S.C. 601–612.

[6] A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum *Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR Part 1508, Part 1509, and Part 1511 (Cribs and Pacifiers) as Required by the Consumer Product Safety Improvement Act of 2008, October 2008*, available on the CPSC Web site at *http://cpsc.gov/library/foia/foia09/brief/tpacp.pdf*.

[7] A laboratory may seek Commission acceptance of accreditation to test only full-size cribs, only non-full-size cribs, or only pacifiers, or some combination thereof. However, required manufacturer certifications may only be based on testing by a laboratory accredited to test the specific product in question.

governmental authorities than those of other accredited laboratories; and

• The laboratory does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the laboratory's conformity assessments.

The Commission will accept the accreditation of a governmental laboratory if it meets the baseline accreditation requirements of section I.A and meets the conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

II. How Does a Laboratory Apply for Acceptance of Its Accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at *http://www.cpsc.gov/businfo/labaccred.html.* The applicant provides basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement and firewalled laboratory training document(s), if relevant. Commission staff reviews that submission for accuracy and completeness. In the case of baseline third party laboratory accreditation and accreditation of governmental laboratories, when that review and any necessary discussions with the applicant are satisfactorily completed, the laboratory in question is added to the CPSC listing of accredited laboratories at *http://www.cpsc.gov/businfo/labaccred.html.* In the case of a firewalled laboratory seeking accredited status, when the review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration.[8] If the Commission accepts a staff recommendation to accredit a firewalled laboratory, that laboratory will then be added to the CPSC list of accredited laboratories. In each case, the Commission will electronically notify the laboratory of acceptance of its accreditation.

Subject to the limited provisions for acceptance of "retrospective" testing performed by other than accredited firewalled laboratories noted in Section III. below, once the Commission adds a laboratory to the list, the laboratory may then commence testing of children's products to support certification of compliance with the crib and/or pacifier regulations, as applicable, by the manufacturer or private labeler.

[8] A laboratory that may ultimately seek acceptance as a firewalled laboratory could initially request acceptance as a third party laboratory accredited for testing of children's products other than those of its owners.

III. Limited Acceptance of Children's Product Certifications Based on Third Party Laboratory Testing Prior to Commission Acceptance of Accreditation

The Commission will accept a certificate of compliance with the crib and/or pacifier requirements based on testing performed by an accredited third party or governmental laboratory on or after May 16, 2008 (90 days prior to August 14, 2008, the date on which CPSIA was enacted) and thus prior to the Commission's acceptance of the laboratory's accreditation if:

• The laboratory was ISO/IEC 17025 accredited by an ILAC–MRA member at the time of the test;

• The accreditation scope in effect for the laboratory at that time expressly included testing to 16 CFR part 1508, or part 1509, or part 1511, as applicable;

• The laboratory's accreditation application is accepted by the Commission under the procedures of this notice not later than December 26, 2008; and

• The laboratory's accreditation and inclusion of the crib and/or pacifier requirements in its scope remains in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for cribs and pacifiers.

Testing performed by a firewalled laboratory prior to Commission acceptance of its accreditation cannot be used as the basis for certification by a manufacturer or private labeler with a 10 percent or greater ownership interest in the laboratory pursuant to CPSA section 14(a)(3)(B)(ii) of compliance with the crib and/or pacifier regulations.

Dated: October 15, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E8–25096 Filed 10–21–08; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 21, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 16, 2008.

Sheila Carey,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR).

Frequency: Annually.

Affected Public: Federal Government; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Gov't.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 19,500.

Abstract: The Individuals with Disabilities Education Improvement Act, signed on December 3, 2004, became PL 108–446. In accordance with 20 U.S.C. 1416(b)(1), not later than one year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B and describe how the State will improve such implementation. This plan is called the Part B State Performance Plan (Part B—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State also shall report annually to the Secretary on the performance of the State under the State's performance plan. This report is called the Part B Annual Performance Report (Part B—APR). Information Collection 1820–0624 corresponds to 34 CFR 300.600–300.602.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3870. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–25134 Filed 10–21–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice of dates of submission of State revenue and expenditure reports for fiscal year (FY) 2008 and of revisions to those reports.

SUMMARY: The Secretary announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey (NPEFS)) for FY 2008. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census (Bureau of the Census) is the data collection agent for the National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2010 appropriated funds.

DATES: The date on which submissions will first be accepted is March 16, 2009. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 8, 2009.

Addresses and Submission Information: SEAs may mail ED Form 2447 to: Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800.

SEAs may submit data via the World Wide Web using the interactive survey form at *http://surveys.nces.ed.gov/ccdnpefs.* If the Web form is used, it includes a digital confirmation page where a pin number may be entered. A successful entry of the pin number serves as a signature by the authorizing official. A certification form also may be printed from the Web site, and signed by the authorizing official and mailed to the Governments Division of the Bureau of the Census, at the address listed in the previous paragraph. This signed form must be mailed within five business days of Web form data submission.

Alternatively, SEAs may hand deliver submissions by 4:00 p.m. (Eastern Time) to: Governments Division, Bureau of the Census, 4600 Silver Hill Road, Suitland, MD 20746.

If an SEA's submission is received by the Bureau of the Census after September 8, 2009, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.
2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Kennerly, Chief, Bureau of the Census, *Attention:* Governments Division, Washington, DC 20233–6800. Telephone: (301) 763–1559. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 502–7362.

SUPPLEMENTARY INFORMATION: Under the authority of section 153(a)(1)(I) of the Education Sciences Reform Act of 2002, 20 U.S.C. 9543, which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per-pupil expenditure (SPPE) for elementary and secondary education, as defined in the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7801(2)).

In addition to utilizing the SPPE data as general information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I, Part A of the ESEA, Impact Aid, and Indian Education programs. Other programs, such as the Educational Technology State Grants program (Title II, Part D of the ESEA), the Education for Homeless Children and Youth Program under Title VII of the McKinney-Vento Homeless Assistance Act, the Teacher

Quality State Grants program (Title II, Part A of the ESEA), and the Safe and Drug-Free Schools and Communities program (Title IV, Part A of the ESEA), make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I, Part A allocations.

In January 2009, the Bureau of the Census, acting as the data collection agent for NCES, will e-mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 16, 2009, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 16, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 8, 2009.

Having accurate and consistent information on time is critical to an efficient and fair allocation process and to the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 8, 2009, as the final date by which the NPEFS Web form or ED Form 2447 must be submitted. If an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 8, 2009, the data also may be too late to be included in the final NCES published dataset.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 20 U.S.C. 9543.

Dated: October 17, 2008.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. E8–25185 Filed 10–21–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information: Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.019A.

DATES: *Applications Available:* October 22, 2008.

Deadline for Transmittal of Applications: December 3, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Faculty Research Abroad Fellowship Program offers opportunities to faculty of Institutions of Higher Education (IHEs) to engage in research abroad in modern foreign languages and area studies.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 663.21(d)).

Absolute Priority: For FY 2009, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on Western Europe are not eligible.

Within this absolute priority, we give competitive preference to applications that address the following priority.

Competitive Preference Priority: For FY 2009, this priority is a competitive preference priority. Under 34 CFR 75.105 (c)(2)(i) and 34 CFR 663.21(d), we award an additional five (5) points to an application that meets this priority.

This priority is:

Projects that focus on any of the seventy-eight (78) languages deemed critical on the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs).

The LCTL list includes the following languages: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 663.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: The Administration has requested $13,372,000 for the International Education and Foreign Language Studies Overseas programs for FY 2009, of which we propose to allocate $1,395,000 for new awards for this program. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $25,000–$115,000.

Estimated Average Size of Fellowship Awards: $70,000.

Estimated Number of Fellowship Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2009. Faculty may request funding for a period of no less than three months and no more than twelve months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, faculty submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and faculty applicants can obtain an application package by contacting Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700; or by e-mail: *carla.white@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than two (2) pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, faculty applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, faculty applicants may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10 page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit only applies to the application narrative and bibliography. The page limit does not apply to the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; and the assurances and certification. However, faculty applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a faculty applicant's application if the faculty applicant exceeds the page limits.

3. *Submission Dates and Times:*

Applications Available: October 22, 2008.

Deadline for Transmittal of Applications: December 3, 2008.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays Faculty Research Abroad Fellowship Program, CFDA Number 84.019A, must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and the faculty applicant will be entering data online that will be saved into a database. Neither the IHE nor the faculty applicant may e-mail an electronic copy of a grant application to us.

Please note the following:

- The process for submitting applications electronically under the Fulbright-Hays Faculty Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *carla.white@ed.gov:* Name of university, and full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than 2 weeks prior to the application deadline date, in order to facilitate timely submission of their applications; (2) Faculty must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual faculty must complete and submit

reference forms for the faculty to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual faculty applications, reference forms, and other required forms, using e-Application. Unless an IHE applicant qualifies for an exception to the electronic submission requirement in accordance with the procedures in this section, all portions of the application must be submitted electronically.

• The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC, time on the application deadline date. The e-Application system will not accept an application for this program after 4:30:00 p.m., Washington, DC, time on the application deadline date. Therefore, we strongly recommend that both the IHE and the faculty applicant not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday Washington, DC, time. Please note that the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC, time for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• Faculty applicants will not receive additional point value because the faculty applicant submits his or her application in electronic format, nor will we penalize the IHE or faculty applicant if the IHE or the faculty applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents electronically, including the Application for Federal Assistance (SF 424), the Supplement to the SF 424, and all necessary assurances and certifications. Both IHEs and faculty applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or a faculty applicant uploads a file type other than the three file types specified above or submits a password protected file, we will not review that material.

• Both the IHE's and the faculty applicant's electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual faculty applicant electronically submits his or her application to the IHE, the faculty member will receive an automatic acknowledgment. In addition, the applicant IHE's project director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual faculty applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award Number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award Number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on the SF 424 and other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because the e-Application system is unavailable, we will grant the IHE an extension of one business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (Section VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the e-Application system is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement and may submit its application in paper format if the IHE is unable to submit an application through the e-Application system because—

• The IHE or a faculty applicant does not have access to the Internet; or

• The IHE or a faculty applicant does not have the capacity to upload large documents to the Department's e-Application system; and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevent the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Carla White, U.S. Department of Education, 1990 K Street, NW., Room 6000, Washington, DC 20006–8521. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the

Department at the applicable following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department—

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, and suffix letter, if any, of the competition under which the IHE is submitting its application; and

(2) The Application Control Center will mail a grant application receipt acknowledgment to the IHE. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* Faculty applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in seven discrete world area-based panels will review the faculty applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 663.21 and are listed in the following paragraphs. The maximum score for all of the criteria, including the competitive preference priority, is 105 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): In determining the quality of the research project proposed by the applicant, the Secretary considers (1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points); (2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points); (3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points); (4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points); (5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community (10 points); and (6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies (10 points).

Qualifications of the applicant (40 points): In determining the qualifications of the applicant, the Secretary considers (1) The overall strength of the applicant's academic record (teaching, research, contributions, professional association activities) (10 points); (2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization (10 points); (3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and (4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a faculty application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notice (GAN). We may notify the IHE informally, also.

If a faculty application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of its binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the electronic reporting International Resource Information System (IRIS) to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the objective of the Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program is to provide grants to institutions of higher education to fund faculty to maintain and improve their area studies and language skills by conducting research abroad for periods of 3-to-12 months.

The Department will use the following FRA measures to evaluate its success in meeting this objective.

Performance Measure 1: The average language competency score of Fulbright-Hays Faculty Research Abroad program recipients at the end of their period of

research minus their average language competency at the beginning of the period.

Performance Measure 2: Percentage of projects judged successful by program officers, based on information provided in annual performance reports.

Efficiency measure: Cost per fellow increasing language competency by at least one level in one (or all three) area.

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for institutions and fellows may be viewed at: *http://www.ieps-iris.org/iris/pdfs/FRA_fellow.pdf, http://www.ieps-iris.org/iris/pdfs/FRA_director.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6000, Washington, DC 20006–8521. Telephone: (202) 502–7631 or by e-mail: *carla.white@ed.gov.*

If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister//.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 17, 2008.

Cheryl A. Oldham,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E8–25184 Filed 10–21–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board Chair

AGENCY: U.S. Department of Energy.

ACTION: SES Performance Review Board Chair.

SUMMARY: This notice provides as the designation of Sarah J. Bonilla as the Performance Review Board Chair for the Department of Energy. This listing supersedes all previously published lists of the PRB Chair.

DATES: This appointment is effective as of September 22, 2008.

Sarah J. Bonilla,

Director, Office of Human Capital Management.

[FR Doc. E8–25157 Filed 10–21–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Biodiesel Surveys package to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by November 21, 2008. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Nathan_J._Frey@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–7345. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 586–6264.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–22M, "Monthly Survey of Biodiesel Production," and EIA–22S, "Supplement to the Monthly Survey of Biodiesel Production."
2. Energy Information Administration.
3. OMB Number 1905–NEW.
4. Three-year approval.
5. Mandatory.
6. The purpose of the survey is to collect information from biodiesel producers regarding the following: Plant location, capacity, and operating status; Biodiesel and co-product production; Inputs to production; Sales for end-use and resale; Sales revenue; and Biodiesel stocks.
7. Business or other for-profit.
8. 5,550 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the "**FOR FURTHER INFORMATION CONTACT**" section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, October 16, 2008.

Renee Miller,

Director, Forms Clearance and Information Quality Division, Energy Information Administration.

[FR Doc. E8–25156 Filed 10–21–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–27–001]

Duke Energy Kentucky, Inc.; Notice of Amendment To Petition for Rate Approval

October 15, 2008.

Take notice that on October 9, 2008, Duke Energy Kentucky, Inc. (DE-Kentucky) filed an amendment to its application for rate approval pursuant to section 284.123 and 284.224 of the Commission's regulations for service under its blanket certificate. DE-Kentucky proposes to revise the provisions of its Operating Statement to reflect a firm daily rate and to clarify the availability of firm service.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday 27, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25080 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12429–001]

Clark Canyon Hydro, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 16, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 12429–001.

c. *Date Filed:* August 1, 2006.

d. *Applicant:* Clark Canyon Hydro, LLC.

e. *Name of Project:* Clark Canyon Dam Hydroelectric Project.

f. *Location:* On the Beaverhead River, 18 air miles southwest of the Town of Dillon, Beaverhead County, Montana. The project would occupy 1.15 acres of federal land administered by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, or Dr. Vincent Lamarra, Ecosystems Research Institute, Inc., 975 South State Highway, Logan, UT 84321.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, *Dianne.rodman@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted and is now ready for environmental analysis.

l. The proposed project would use the existing Bureau of Reclamation's Clark Canyon Dam, and would consist of the following new facilities: (1) Steel lining of the existing 9-foot-diameter concrete outlet conduit with a bifurcation to the new powerhouse; (2) a 30- by 18-foot outlet gate structure constructed at the end of the existing outlet conduit, with an 84-inch-diameter flow-through valve and a 108-inch-diameter isolation valve; (3) a 9-foot-diameter steel penstock that would divide into an 8-foot-diameter penstock and a 6-foot-diameter steel penstock to direct flow to the turbine units; (4) a 30- by 50-foot concrete powerhouse, located at the toe of the dam adjacent to the spillway stilling basin, containing two vertical-type Francis turbines with a combined installed capacity of 4.75 megawatts; (5) a 300-foot-long access road leading to a 30- by 30-foot concrete parking and transformer pad adjacent to the powerhouse; (6) a 0.3-mile-long, 24.9-kilovolt overhead transmission line connecting the project to the local utility's existing transmission system at a proposed substation; and (7) appurtenant facilities. The average annual generation is estimated to be 16.5 gigawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file not later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

p. Procedural Schedule: The Commission staff proposes to issue a single Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA. The Commission will take into consideration all comments received on the EA before taking final action on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Milestone	Tentative date
Comments, recommendations, terms and conditions, and prescriptions due	December 15, 2008.
Reply comments due from applicant	January 29, 2009.
EA issuance	April 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25136 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 785–018]

Consumers Energy Company; Notice Soliciting Scoping Comments

October 15, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 785–018.

c. *Date filed:* April 4, 2008.

d. *Applicant:* Consumers Energy Company.

e. *Name of Project:* Calkins Bridge Hydroelectric Project.

f. *Location:* On the Kalamazoo River in Allegan County, Michigan. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* James R. Coddington, Consumers Energy Company, One Energy Plaza, Jackson, MI 49201, (517) 788–2455.

i. *FERC Contact:* Timothy Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov.*

j. *Deadline for filing scoping comments:* November 14, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. As licensed, the existing Calkins Bridge Project consists of a 42-foot-high, 1,330-foot-long dam, consisting of 1,100 feet of earth embankment and a 230-foot concrete integral powerhouse-spillway section, creating an 8.5-mile-long, 1,550-acre reservoir with a normal water surface elevation of 615.0 feet above mean sea level, a powerhouse containing three generating units with a total installed capacity of 2,550 kilowatts, and appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process*

The Commission staff intends to prepare a single environmental assessment (EA) for the Calkins Bridge Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information on the scoping document issued on October 15, 2008.

Copies of the scoping document outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the scoping document may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25089 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11480–010]

Haida Corporation; Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

October 15, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time.

b. *Project No.:* 11480–010.

c. *Date Filed:* July 23, 2008.

d. *Applicant:* Haida Corporation.

e. *Name of Project:* Upper Reynolds Creek Hydroelectric Project.

f. *Location:* On Reynolds Creek, near the town of Hydaburg, Copper River Meridian, Prince of Wales, in the Ketchikan Borough recording district, Alaska.

g. *Pursuant to:* Public Law 109–297, 120 STAT. 1471.

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005; (202) 408–5400.

i. *FERC Contact:* Diane M. Murray, Telephone: (202) 502–8838 and e-mail: *diane.murray@ferc.gov.*

j. *Deadline* for filing comments, motions to intervene, and protests: November 17, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–11480–010) on any comments.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee requests that the Commission grant a two-year extension of time from the existing deadlines to commence and complete project construction of the Reynolds Creek Hydroelectric Project. This will be the last 2-year extension of three authorized by Public Law No. 109–297. The requested new deadlines would be October 24, 2010, and October 24, 2012, to commence and complete construction, respectively.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25087 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13290–000]

Riverbank Energy Center, LLC; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

October 16, 2008.

On September 24, 2008, Riverbank Energy Center, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Wiscasset Pumped Storage Project to be located on the Back River in Lincoln County, Maine.

The proposed project would consist of: (1) The Back River as an upper reservoir; (2) an underground lower reservoir with an elevation of 1,800 feet below MSL and a storage capacity of 3,775 acre-feet; (3) four 13 foot diameter, 2,000 foot long, concrete and steel penstocks; (4) an underground powerhouse containing four pump/turbine units with a total installed capacity of 1,000 MW; (5) a 345 kV, 4,000 foot long transmission line and; (6) appurtenant facilities. The annual production would be 2,190 GWh which would be sold to a local utility.

Applicant Contact: William S. Helmer, Esq., 194 Washington Ave. Suite 315, Albany, New York 12210 (518) 689–3570.

FERC Contact: Steven Sachs (202) 502–8666.

Competing Application: This application competes with Project No.

13246–000 filed June 23, 2008. Competing applications must be filed on or before October 19, 2008.

Deadline for filing comments, motions to intervene: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13290) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25135 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–083]

Susquehanna Power Company and PECO Energy Power Company; Exelon Generation Company, LLC; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

October 15, 2008.

On September 30, 2008, Susquehanna Power Company and PECO Energy Power Company (transferor) and Exelon Generation Company, LLC (Transferee) filed an application, for transfer of license of the Conowingo Project, located on the Susquehanna River in Cecil and Hartford Counties, Maryland, and Lancaster and York Counties, Pennsylvania.

Applicants seek Commission approval to transfer the license for the Conowingo Project from Susquehanna Power Company and PECO Energy Power Company to Exelon Generation Company, LLC.

Applicant Contact: Mr. H. Alfred Ryan, Assistant General Counsel, Exelon Business Services Company, 2301 Market Street, Philadelphia, PA 19101, phone (215) 841–6855.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene: November 17, 2008. Comments, motions to intervene, and notices of intent may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–405) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25088 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–3–000; PF08–19–000]

T.W. Phillips Pipeline Corporation; Notice of Application

October 16, 2008.

Take notice that on October 6, 2008, T.W. Phillips Pipeline Corporation (T.W. Phillips), 502 Keystone Dr., Suite 400, Warrendale, PA 15086, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations, for an order granting a certificate of public convenience and necessity to (1) Construct, own, operate, and maintain an eight-mile, six-inch diameter interstate pipeline facility located in Clearfield County, Pennsylvania (Bionol Project); (2) provide open access transportation pursuant to a blanket certificate issued under Subpart G of Part 284 of the Commission's regulations; and (3) perform certain routine construction activities pursuant to a blanket certificate issued under Subpart F of Part 157 of the Commission's regulations. T.W. Phillips states that the sole transportation customer of the Bionol Project will be Bionol Clearfield, LLC, who has a negotiated rate contract. T.W. Phillips also proposes a *pro forma* FERC Gas Tariff, including the proposed recourse rates, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Robert M. Hovanec, T.W. Phillips Pipeline Corporation, 502 Keystone Dr., Suite 400, Warrendale, PA 15086 at (724) 287–8620, or William R. Mapes, Jr., Duncan, Weinberg, Genzer & Pembroke P.C., 1615 M St., NW., Suite 800, Washington, DC at (202) 467–6370.

On May 5, 2008, the Commission staff granted T.W. Phillips' request to utilize the Pre-Filing Process and assigned Docket No. PF08–19–000 to staff activities involved with the Bionol Project. Now as of the filing of the October 6, 2008 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP09–3–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and

must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 6, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25137 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EG08–78–000, EG08–79–000, EG08–80–000, EG08–81–000, EG08–82–000, EG08–84–000, EG08–85–000, FC08–10–000, FC08–11–000]

Shiloh Wind Project 2, LLC, Naturener Glacier Wind Energy 1, LLC, Naturener Montana Wind Energy, LLC, Sherbino I Wind Farm LLC, Wapsipinicon Wind Project, LLC, Smoky Hills Wind Project II, LLC, Hardee Power Partners Limited, Pubnico Point, L.P., Mount Copper, L.P.; Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

October 15, 2008.

Take notice that during the month of September 2008, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25082 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL07–56–005; EL07–58–005

Public Service Commission of Maryland; Notice of Filing

October 15, 2008.

Take notice that on October 6, 2008, the Public Service Commission of Maryland filed its Confidentiality Certification, pursuant to section 18.17.4 of the Operating Agreement of the PJM Interconnection, L.L.C.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 29, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25083 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–38–000]

AES Energy Storage, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 15, 2008.

This is a supplemental notice in the above-referenced proceeding of AES Energy Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 5, 2008.

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

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

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

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25084 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–47–000]

Alberta Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 15, 2008.

This is a supplemental notice in the above-referenced proceeding of Alberta Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 5, 2008.

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

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

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

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25086 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–43–000]

Tenaska Washington Partners, L.P.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 15, 2008.

This is a supplemental notice in the above-referenced proceeding of Tenaska Washington Partners, L.P.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 5, 2008.

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

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

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25085 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–5–001]

Southern Natural Gas Company, Magnolia Enterprise Holdings, Inc.; Notice of Petition To Amend

October 15, 2008.

Take notice that on October 2, 2008, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563 and Magnolia Enterprise Holdings, Inc. (MEHI), Ten Peachtree Place, Location 1466, Atlanta, Georgia 30309, filed in Docket No. CP08–5–001, a joint petition to amend the lease transaction approved by Commission order issued July 17, 2008, in Docket No. CP08–5–000. It is stated that the amendment of the lease would provide for both parties to terminate the lease prior to the end of the primary term in the event certain economic factors change; include the East Brunswick meter station and Macon Milledgeville No. 3 meter station as part of the leased facilities; and include nonconforming language in the Atlanta Gas Light Company (AGLC) Exhibit B to its firm service agreement which provides for the termination of the package of capacity relating to the lease coinciding with the expiration of the lease, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676; or for TTY, contact (202) 502–8659.

Any initial questions regarding Southern's proposal in this petition should be directed to Patricia S. Francis, Senior Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, or call (205) 325–7696. Any initial questions regarding MEHI's proposal in this petition should be directed to Shannon Omia Pierce, Senior Regulatory Counsel, AGL Resources, Inc., Ten Peachtree Place, 15th Floor, Atlanta, Georgia 30309, or call (404) 584–3394.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit the original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: November 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25090 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–2–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

October 15, 2008.

Take notice that on October 7, 2008, Columbia Gulf Transmission Company (Columbia Gulf), 5151 San Felipe, Suite 2500, Houston, Texas, 77056 filed in docket number CP09–2–000, a prior notice request pursuant to sections 157.205 and 157.214 of the Commission's Regulations under the Natural Gas Act, and Columbia Gulf's blanket certificate issued in Docket No. CP83–496–000, for authorization to increase the horsepower on two compressor units: Unit 507 located at its Corinth Compressor Station in Alcorn

I. Amount of Pool Resources

Western will allocate up to 1 percent of the LAP long-term firm hydroelectric resource available as of October 1, 2009, as firm power. "Firm power" means firm capacity and associated energy allocated by Western that is subject to the terms and conditions specified in Western's long-term firm power electric service contract. The amount of resource that will become available October 1, 2009, is approximately 6.9 MW for the summer season and 6.1 MW for the winter season.

II. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking an allocation of firm power under the Post-2009 Resource Pool Allocation Procedures:

A. Qualified applicants must be preference entities as defined by section 9c of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. Qualified applicants must be located within the currently established LAP marketing area. (See Section III.C. below for a description of the LAP marketing area.)

C. Qualified applicants must not have a current firm electric service contract nor be a member of a parent entity that has a firm electric service contract with Western.

D. Qualified utility and nonutility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants that are municipalities, cooperatives, public utility districts, or public power districts must have attained utility status by October 1, 2006. "Utility status" means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. A qualified Native American applicant must be an "Indian Tribe," as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended and supplemented.

III. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of firm power under the Post-2009 Resource Pool Allocation Procedures:

A. Allocations of firm power will be made in amounts as determined solely by Western in exercising its discretion under Reclamation Law.

B. An allottee will have the right to purchase firm power only after executing an electric service contract with Western, and satisfying all conditions for firm electric service delivery in the contract.

C. Firm power allocated under these procedures will be available only to new qualified applicants in LAP's existing marketing area. This marketing area includes parts of Colorado, Kansas, Nebraska, and Wyoming. LAP's marketing area is specifically defined as the portion of Colorado east of the Continental Divide, Mountain Parks Rural Electric Association's service territory in Colorado west of the Continental Divide, the portion of Kansas located in the Missouri River Basin, the portion of Kansas west of the eastern borders of the counties intersected by the 100th Meridian, the portion of Nebraska west of the 101st Meridian, and Wyoming east of the Continental Divide.

D. An allocation made to an Indian Tribe will be based on actual load, or estimated load as developed by the Tribe. Western will evaluate and may adjust inconsistent estimates during the allocation process. Western is willing to assist tribes in developing load estimating methods.

E. Allocations made to eligible utility and nonutility applicants will be based on 2007 summer season and 2007–2008 winter season loads. Western will apply the Post-1989 Marketing Plan, Program criteria, and the Post-2004 Resource Pool criteria to these loads, except as modified herein.

F. Firm capacity and energy will be based upon each applicant's seasonal system load factor.

G. Any long-term firm electric service contract offered by Western to an applicant shall be executed by the applicant no later than June 1, 2009, unless otherwise agreed to in writing by Western.

H. The resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm power not under contract will be used as Western determines.

I. The minimum allocation shall be 100 kilowatts (kW).

J. The maximum allocation shall be 5,000 kW. Qualified Native American applicants are not subject to this limitation.

K. Contract rates of delivery shall be subject to adjustment in the future as provided for in the Program.

L. If Western encounters unanticipated obstacles to delivering firm electric service to an Indian Tribe, it retains the right to provide the economic benefit of the resource directly to the tribe.

IV. General Contract Principles

Western will apply the following general contract principles to all allottees receiving an allocation of firm power under the Post-2009 Resource Pool Allocation Procedures:

A. Western, at its discretion and sole determination, reserves the right to adjust the contract rate of delivery on 5 years' notice in response to changes in hydrology and river operations. Any such adjustments shall only take place after a public process.

B. Each allottee is ultimately responsible for making its own third-party delivery arrangements. Western may assist allottees in making third-party transmission arrangements for delivery of firm power.

C. Contracts entered into under the Post-2009 Resource Pool Allocation Procedures shall provide for Western to furnish firm electric service effective October 1, 2009, through September 30, 2024.

D. Contracts entered into as a result of these procedures shall incorporate Western's standard provisions for power sales contracts, to include integrated resource planning and general power contract provisions.

E. Contracts entered into will include provisions for a reduction of up to 1 percent of the current contracted rate of delivery effective October 1, 2014, in accordance with the Program.

V. Applications for Firm Power

This notice formally requests applications from qualified entities that desire to purchase firm power from the Rocky Mountain Customer Service Region. Applications for an allocation of firm power under these procedures must be submitted in writing to the Regional Manager, Rocky Mountain Customer Service Region. APD must be received at Western's Rocky Mountain Customer Service Region in accordance with the requirements listed herein. Western reserves the right to not consider applications submitted before publication of this notice or after the deadlines specified in the **DATES** section above. Applications are available upon request or may be accessed at *http://www.wapa.gov/rm/PMcontractRM/Post2009.html.*

A. Applicant Profile Data (APD)

APD content and format are outlined below. To be considered, each applicant must submit its APD to Western's Rocky Mountain Customer Service Region no later than 4 p.m., MST, on Friday, December 19, 2008. See the **DATES** and **ADDRESSES** sections above for specific information on submission and deadline

County, Mississippi from 17,282 hp to 19.500 hp, increasing the total compression at the Corinth Compressor Station from 49,982 to 52,200 hp; and Unit 709 located at its Inverness Compressor Stations Humphreys County, Mississippi from 17,282 hp to 19.500 hp, increasing the total compression at the Inverness Compressor Station from 45,832 to 48,050 hp. The cost associated with the engine exchange and the proposed up-rate is estimated to be $2,593,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Frederic J. George, Lead Counsel, Columbia Gulf Transmission Company, P.O. Box 1273, Charleston, West Virginia 25325–1273, at (304) 357–2359, fax (304) 357–3206 or by e-mail at *fgeorge@nisource.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25081 Filed 10–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2009 Resource Pool—Loveland Area Projects—Allocation Procedures and Call for Applications

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of allocation procedures and call for applications.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), is publishing this notice of allocation procedures and call for applications from preference entities interested in an allocation of Federal electric power. Subpart C of the Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, provides for establishing project-specific resource pools and allocating power from these pools to new preference customers and for other appropriate purposes as determined by Western. These allocation procedures and call for applications, in conjunction with the Loveland Area Projects (LAP) Final Post-1989 Marketing Plan (Post-1989 Marketing Plan), establish the framework for allocating power from the LAP resource pool.

DATES: An entity interested in applying for an allocation of electric power from Western must submit a written application (see Applicant Profile Data (APD) in Section V. A.) to Western's Rocky Mountain Customer Service Region at the address below. Western must receive the application by 4 p.m., MST, on Friday, December 19, 2008. Western reserves the right to not consider an application that is received after the prescribed date and time.

A single public information forum on the procedures and call for applications will be held on Thursday, November 13, 2008 MST; *see* address below.

ADDRESSES: Submit applications for an allocation of electric power from Western to James D. Keselburg, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986. Applications may be delivered by certified mail, commercial mail, e-mail, or fax 970–461–7204. If submitting the application by e-mail, send it to *POST2009LAP@wapa.gov* with an electronic signature. If an electronic signature is not available, fax the signature page to 970–461–7204, or mail it to the address above.

Information about the Post-2009 Resource Pool Allocation Procedures, including comments, letters, and other supporting documents made or kept by Western pertaining to these allocation procedures and call for applications, is available for public inspection and copying at the Rocky Mountain Customer Service Region office, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

A single public information forum (not to exceed 3 hours) on the allocation procedures and APD will be held on Thursday, November 13, 2008, at 9 a.m., MST, at the Ramada Plaza and Conference Center, 10 East 120th Avenue, Northglenn, CO 80233; telephone number 303–452–4100.

FOR FURTHER INFORMATION CONTACT: Susan Steshyn, Public Utilities Specialist, 970–461–7237, or Melanie Reed, Contracts and Energy Services Manager, 970–461–7229. Written requests for information should be sent to Rocky Mountain Customer Service Region, Western Area Power Administration, Attn: J6200, P.O. Box 3700, Loveland, CO 80539–3003.

SUPPLEMENTARY INFORMATION: Western published the Final Rule for the Program, 60 FR 54151, on October 20, 1995. The rule became effective on November 20, 1995. Subpart C-Power Marketing Initiative of the Program, Final Rule, 10 CFR part 905, provides for project-specific power resource pools and power allocations from these pools to eligible new preference customers and/or for other appropriate purposes as determined by Western. On June 25, 2007, Western published a Notice of Request for Letters of Interest in the **Federal Register** (72 FR 34679) regarding the resource pool. The comments, Western's responses, and the decision to allocate the Post-2009 resource pool to new preference customers, were published in the **Federal Register** (73 FR 38447) on July 7, 2008. Up to 1 percent of existing customers' allocations will be placed in a resource pool from which power allocations to new customers will be made. The Post-2009 Resource Pool Allocation Procedures for making these allocations address: (1) Amount of pool resources; (2) general eligibility criteria; (3) general allocation criteria, i.e., how Western plans to allocate pool resources to new customers as provided for in the Program; (4) general contract principles under which Western will sell the allocated power, and; (5) Applicant Profile Data, i.e., application information required from each applicant.

requirements. Applicants are encouraged to use the application form provided at the above referenced Web site, or the requested information should be submitted in the sequence listed. The applicant must provide all requested information or the most reasonable available estimate. The applicant should note any requested information that does not apply. Western is not responsible for errors in data, missing data, or missing pages. All APD should be answered as if prepared by the entity seeking an allocation of Federal power. The APD content and format follows:

BILLING CODE 6450-01-P

OMB Control No. 1910-5136

APPLICANT PROFILE DATA

1. Applicant Information. Please provide the following:

a. Applicant's (entity/organization requesting an allocation) name and address:

Applicant's Name:	
Address:	
City:	
State:	
Zip:	

b. Person(s) representing the applicant:

Contact Person (Name & Title):	
Address:	
City:	
State:	
Zip:	
Telephone:	
Fax:	
Email Address:	

c. Type of entity/organization:

- ☐ Federal Agency
- ☐ Irrigation District
- ☐ Municipal, Rural, or Industrial User
- ☐ Municipality
- ☐ Native American Tribe
- ☐ Public Utility District
- ☐ Rural Electric Cooperative
- ☐ State Agency
- ☐ Other, please specify:

d. Parent entity/organization of the applicant, if any:

e. Name of the applicant's member organizations, if any:
(Separated by commas)

f. Applicable law under which the applicant was established:

g. Applicant's geographic service area (if available, please submit a map of the service area and indicate the date prepared):

h. Describe whether the applicant owns and operates its own electric utility system.

i. Provide the date the applicant attained utility status, if applicable. 10 C.F.R. Part 905.35 defines utility status to mean "that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis for resale to retail consumers."

j. Describe the entity/organization that will interact with Western on contract and billing matters.

2. Service Requested:

a. Provide the amount of power the applicant is requesting to be served by Western (annual kWh).

3. Applicant's Loads:

a. Utility and non-utility applicants:

(i) If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agricultural):

	Customer Type and Number					
	Residential	Commercial	Industrial	Military	Ag	Other
Number of customers						
If not applicable, explain why:						

(ii) Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) for each calendar month experienced in 2007 summer season April – September, and 2007-2008 winter season October - March:

	2007-2008					
	April 2007	May 2007	June 2007	July 2007	August 2007	Sept 2007
Demand *(kilowatts)*						
Energy *(kilowatt-hours)*						
	Oct 2007	Nov 2007	Dec 2007	January 2008	February 2008	March 2008
Demand *(kilowatts)*						
Energy *(kilowatt-hours)*						

(iii) Provide the average annual load factor for calendar year 2007:

Calendar Year 2007 Average Annual Load Factor

(iv) **Provide the average monthly load factors for 2007 summer season April – September, and 2007-2008 winter season October - March:**

2007-2008 Average Monthly Load Factor						
	April 2007	May 2007	June 2007	July 2007	August 2007	September 2007
Load Factor						
	October 2007	November 2007	December 2007	January 2008	February 2008	March 2008
Load Factor						

(v) **Identify any factors or conditions in the next 5 years which may significantly change peak demands, load duration, or profile curves.**

b. Native American Tribe applicants only:

(i) **Indicate the utility or utilities currently serving your loads:**

(ii) **If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agricultural):**

Customer Type and Number						
	Residential	Commercial	Industrial	Military	Ag.	Other
Number of customers						
If not applicable, explain why:						

(iii) **Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) experienced in 2007 summer season April – September, and 2007-2008 winter season October - March. If the actual demand and energy data are not available or are difficult to obtain provide the estimated monthly demand:**

2007-2008						
	April 2007	May 2007	June 2007	July 2007	August 2007	September 2007
Demand *(kilowatts)*						
Energy *(kilowatt-hours)*						
	October 2007	November 2007	December 2007	January 2008	February 2008	March 2008
Demand *(kilowatts)*						
Energy *(kilowatt-hours)*						

(iv) **If the demand and energy data in 3.b(iii) above is estimated, provide a description of the method and basis for this estimation in the space provided below:**

(v) **Provide the actual average annual load factors for calendar year 2007. If the actual load factors are not available, provide the estimated load factors: Calendar Year 2007 Average Annual Load Factor**

(vi) **Provide the actual monthly load factors for 2007 summer season April – September, and 2007-2008 winter season October - March. If the actual load factors are not available, provide the estimated load factors.**

2007-2008 Average Monthly Load Factor						
	April 2007	May 2007	June 2007	July 2007	August 2007	September 2007
Load Factor						
	October 2007	November 2007	December 2007	January 2008	February 2008	March 2008
Load Factor						

(vii) **If the load factor data in 3.b.(v-vi) is estimated, provide a description of the method and basis for this estimation in the space provided below:**

(viii) **Identify any factors or conditions in the next 5 years which may significantly change peak demands, load duration, or profile curves:**

4. **Applicant's Resources. Please provide the following information:**

a. **A list of current power supplies if applicable, including the applicant's own generation, as well as purchases from others. For each supply, provide the resource name, capacity supplied, and the resource's location.**

Power supplies (resource name, capacity & location):

b. **For each power supplier, provide a description and status of the power supply contract (including the termination date):**

c. **For each power supplier, provide the type of power:**

☐ **Power supply is on a firm basis.**

☐ **Power supply is not on a firm basis. Please explain:**

5. Transmission:

a. Points of delivery. Provide the requested point(s) of delivery on Western's transmission system (or a third party's transmission system), the voltage of service required, and the capacity desired, if applicable.

b. Transmission arrangements. Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery. Include a brief description of the applicant's transmission and distribution system including major interconnections. Provide a single-line drawing of applicant's system, if one is available.

c. Provide a brief explanation of the applicant's ability to receive and use, or receive and distribute Federal power as of [date].

6. Other Information. The applicant may provide any other information pertinent to receiving an allocation.

7. Signature: Western requires the signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for an allocation.

By signing below, I certify the information which I have provided is true and correct to the best of my information, knowledge and belief.

Signature Title

BILLING CODE 6450-01-C

Recordkeeping Requirements: If Western accepts an application and the applicant receives an allocation of Federal power, the applicant must keep all APD for a period of 3 years after signing a contract for Federal power. There is no record keeping requirement for unsuccessful applicants.

B. Western's Consideration of Applications

1. Upon receipt, Western will review APD and verify that each applicant meets the general eligibility criteria set forth in Section II.

a. Western will request, in writing, additional information from any applicant whose APD is deficient. The applicant shall have 15 calendar days from the date on Western's letter of request to provide, in writing, the needed information.

b. If Western determines that an applicant does not meet the general eligibility criteria, Western will send a letter explaining why the applicant did not qualify.

c. If an applicant meets the general eligibility criteria, Western will determine the amount of firm power to be allocated pursuant to the general allocation criteria set forth in Section III. Western will send a draft contract to an applicant for review, which identifies the terms and conditions of the offer and the amount of firm power allocated to the applicant.

2. Western reserves the right to determine the amount of firm power to allocate to an applicant, as justified by an applicant's APD.

VI. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) to collect the APD under control number 1910–5136.

VII. Review Under the National Environmental Policy Act

Western completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register**, 60 FR 53181, October 12, 1995. Western will comply with any additional NEPA requirements for this resource pool.

Dated: October 15, 2008.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–25155 Filed 10–21–08; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0752, FRL–8732–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Requirements for Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements, and Part B Permit Application and Modification Requirements (Renewal), EPA ICR Number 1361.13, OMB Control Number 2050–0073

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on February 28, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 22, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2008–0752, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2008–0752. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Shiva Garg, Office of Solid Waste, Mail Code 5302W, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–8459; fax number: (703) 308–8433; e-mail address: *garg.shiva@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0752, which is available for online viewing at *www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are business or other for-profit, as well as State, Local, or Tribal governments.

Title: Information Requirements for Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements, and Part B Permit Application and Modification Requirements (Renewal).

ICR numbers: EPA ICR No. 1361.13, OMB Control No. 2050–0073.

ICR status: This ICR is currently scheduled to expire on February 28, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA regulates the burning of hazardous waste in boilers, incinerators, and industrial furnaces (BIFs) under 40 CFR parts 63, 264, 265, 266 and 270. This ICR describes the paperwork requirements that apply to the owners and operators of BIFs. This includes the requirements under the comparable/syngas fuel specification at 40 CFR

261.38; the general facility requirements at 40 CFR parts 264 and 265, subparts B through H; the requirements applicable to BIF units at 40 CFR part 266; and the RCRA Part B permit application and modification requirements at 40 CFR part 270. Examples of paperwork collected under these requirements include one-time notices, certifications, waste analysis data, inspection and monitoring records, plans reports, RCRA Part B permit applications and modifications. The responses to the collection of information are mandatory. EPA needs this information for the proper implementation, compliance tracking, and fulfillment of the congressionally delegated mandate under RCRA to protect public health and the environment. EPA, however, has taken steps to minimize the burden imposed on the facilities, and ensures the confidentiality of the provided information by complying with Section 3007(b) of RCRA, Privacy Act of 1974 and OMB Circular #108. Based on information from the EPA Regions, we estimated at last renewal of this ICR that 91 BIF facilities are subject to the RCRA hazardous waste program. Of these, we estimate that 32 BIFs are currently under interim status and the remaining 59 are in permitted status. This renewal takes into account the current universe of the BIF facilities, and the current regulations applicable to them based on the amendments made to date.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,626 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 91.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 22.

Estimated total annual burden hours: 238,997 hours.

Estimated total annual costs: $33,665,000, includes $7,855,000 annualized capital/startup cost, $9,880,000 annual O&M costs and $15,930,000 annual labor costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: October 6, 2008.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. E8–25165 Filed 10–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0427; FRL–8733–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP Emissions for Polyether Polyol Production (Renewal), EPA ICR Number 1811.06, OMB Control Number 2060–0415

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before November 21, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0427, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

The EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0427, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains

copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to: *www.regulations.gov.*

Title: NESHAP Emissions for Polyether Polyol Production (Renewal)

ICR Numbers: EPA ICR Number 1811.06, OMB Control Number 2060–0415.

ICR Status: This ICR is scheduled to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emissions Standards for Hazardous Air Pollutants for Polyether Polyols Production, (40 CFR part 63 subpart PPP) was proposed on June 1, 1999 and published January 30, 2002. These regulations apply to new and existing facilities that engage in the manufacture of polyether polyols (which also include polyether mono-ols) and emit hazardous air pollutants (HAP).

Owners or operators of polyether polyols production facilities to which this regulation is applicable must choose one of the compliance options described in the rule or install and monitor a specific control system that reduces HAP emissions to the compliance level. Compliance is assumed through initial performance testing or design analysis, as appropriate, and ongoing compliance is demonstrated through parametric monitoring. The respondents are also subject to sections of 40 CFR part 63 subpart A.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 72 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of facilities that manufacture polyether polyols.

Estimated Number of Respondents: 82.

Frequency of Response: Initially, and semi-annually.

Estimated Total Annual Hour Burden: 13,042.

Estimated Total Annual Cost: $1,243,954, which includes $1,040,942 in annual labor costs, $203,012 in annualized capital costs, and $0 for O&M costs.

Changes in the Estimates: The decrease in burden is due to an Agency correction in the number of responses from 190 to 180 per year.

Dated: October 16, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–25182 Filed 10–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8732–7]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) and the Small Community Advisory Subcommittee (SCAS) will meet on November 5–7, 2008 in Boston, Massachusetts. The Committee and Subcommittee meetings will be held in the EPA Region 1 Office on the eleventh floor Conference Center. The focus areas of the meeting will be: energy efficiency and the challenges of local governments to meet these growing demands; climate change; sustainable water infrastructure; regulatory issues; small communities issues; watersheds and coastlines; military issues; product stewardship; and green buildings.

This is an open meeting and all interested persons are invited to attend. The Committee will hear comments from the public between 12:30 p.m. and 1 p.m. on Thursday, November 6, 2008. Each individual or organization wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *Eargle.Frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis, and the total period for comments may be extended, if the number of requests for appearances require it.

ADDRESSES: The LGAC meeting will be held at EPA's Region 1 Office, located at 1 Congress Street, Boston, MA on November 5–7, 2008 in the Eleventh Floor Conference Center.

The Committee's and Subcommittee meeting minutes and summary notes will be available after the meeting online at *http://www.epa.gov/ocir* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, DFO for the Local Government Advisory Committee (LGAC), at (202) 564–3115 or e-mail at *Eargle.Frances@epa.gov.*

Information on Services for those with Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *Eargle.Frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 8, 2008.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. E8–25171 Filed 10–21–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

October 16, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information

collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 21, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your comments to Nicholas A. Fraser, Office of Management and Budget (e-mail address: *nfraser@omb.eop.gov*), and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the emails the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below or, if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by email contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information contact Jerry Cowden via e=mail at PRA@fcc.gov or at 202–418–0447. To view or obtain a copy of an information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to view (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0204.

Title: Special Eligibility Showings for Authorizations in the Public Safety Pool (47 CFR 90.20(a)(2)(v) and 90.20(a)(2)(xi)).

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and businesses.

Number of Respondents and Responses: 220 respondents; 220 responses.

Estimated Time per Response: 0.686 hour (range of 3 minutes to 45 minutes).

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 151 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: The information collection in 47 CFR 90.20(a)(2)(v) affects individuals, and there is a system of records that covers it (FCC/WTB–1, Wireless Services Licensing Records).

Nature and Extent of Confidentiality: Requests to withhold information submitted to the Commission from public inspection will be treated in accordance with section 0.459 of the Commission's rules.

Needs and Uses: The Commission collects this information to ensure that certain non-governmental applicants applying for the use of frequencies in the Public Safety Pool meet the eligibility criteria set forth in the Commission's rules. The collection is being revised to consolidate under one OMB control number two information collections that were previously under separate OMB control numbers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–25188 Filed 10–21–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Approved by the Office of Management and Budget (OMB)

October 15, 2008.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, via the Internet at *PRA@fcc.gov* or on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.

OMB Approval Date: October 8, 2008.

Expiration Date: October 31, 2011.

Title: Multi-Channel Video Programming Distributors Annual Employment Report.

Form Number: FCC Form 395–A.

Number of Respondents/Responses: 2,500.

Estimated Time per Response: 1 hour.

Total Annual Burden: 2,500 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 634 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Whether the Form is confidential will be determined in a pending Commission rulemaking. Although the Form has received OMB approval, the requirement to file the Form, which has been suspended since January 2001, remains suspended until the Commission decides the issue of confidentiality.

Needs and Uses: FCC Form 395–A, "The Multi-Channel Video Programming Distributor Annual Employment Report," is a data collection device used by the Commission to assess industry employment trends and provide reports to Congress. By the Report, multichannel video programming distributors ("MVPDs") identify employees by gender and race/ethnicity in sixteen specified job categories. FCC Form 395–A contains a grid which collects data on full and part-time employees combined and requests a list of employees by job title, indicating the job category. MVPDs, including cable operators, with six or more full-time

employees (but Satellite Master Antenna Television ("SMATV") operators only if they also serve 50 or more subscribers) must complete Form 395–A in its entirety and file it by September 30 each year. MVPDs with five or fewer full-time employees are not required to file but, if they do, they need to complete and file only Sections I, II and V of the FCC Form 395–A, but not the portions requiring workforce information, and thereafter need not file again unless their employment increases to more than five full-time employees.

In *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98–204, Third Report and Order and Fourth Notice of Proposed Rulemaking, 69 FR 34950, June 23, 2004, 19 FCC Rcd 9773 (2004) ("2004 Order"), the Commission considered issues relating to the Annual Employment Report forms, including Form 395–A. In the 3rd R&O, the Commission adopted revised rules requiring broadcasters and multichannel video programming distributors (MVPDs) to file annual employment reports, which cable and other MVPDs will use to file annual employment reports. The intent of the 3rd R&O was to update rules for MVPDs to file Form 395–A consistent with new rules adopted in the 2nd R&O. The intent of the Fourth Notice of Proposed Rulemaking, which remains pending, is to provide time for cable and other MVPDs and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. Upon the effective date of the rulemaking deciding the confidentiality issue, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on the next due date thereafter.

In its 2004 Order, the Commission stated that Form 395–A conformed to the racial and employment categories contained in the then-existing Form EEO–1 Employer Information Report issued by the Equal Employment Opportunity Commission ("EEOC"), 2004 Order, at 9977–78. The Order noted that the EEOC had proposed to revise its EEO–1 form to incorporate new racial and employment categories approved by OMB. It also noted that, when the revised EEO–1 form was released, the Commission would review its Form 395–A to see what changes were needed to comply with the new OMB standards, and whether it could conform Form 395–A to those standards consistent with Section 634 of the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. 554; *see* 2004 Order at 9978. With the EEOC's release of the EEO–1 incorporating revised racial and employment categories, the Bureau sought public comment ("Media Bureau Seeks Comment on Possible Changes to FCC Forms 395–A and 395–B," Public Notice DA 08–752, released April 11, 2008; 73 FR 21346, April 21, 2008) (the "Public Notice") on whether to incorporate the EEOC's revised categories and whether such changes would be consistent with Section 634 of the Act. The public comment period ended on June 6, 2008, and the Commission completed its review of all the comments and reply comments. The Commission did not receive any comments opposing the incorporation of the EEOC's revised categories in the FCC's annual employment reports.

The Commission concluded that the proposed changes to FCC Form 395–A are consistent with the racial and job category data required by Section 634 of the Act because the revisions simply reflect different terminology for the same categories and more detailed sub-categories. 47 U.S.C. 554.

OMB Control Number: 3060–0390.

OMB Approval Date: October 8, 2008.

Expiration Date: October 31, 2011.

Title: Broadcast Station Annual Employment Report.

Form Number: FCC Form 395–B.

Number of Respondents/Responses: 14,000.

Estimated Time per Response: 1 hour.

Total Annual Burden: 14,000 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 334 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Whether the Form is confidential will be determined in a pending Commission rulemaking. Although the Form has received OMB approval, the requirement to file the Form, which has been suspended since January 2001, remains suspended until the Commission decides the issue of confidentiality.

Needs and Uses: FCC Form 395–B, "The Broadcast Station Annual Employment Report," is a data collection device used by the Commission to assess industry employment trends and provide reports to Congress. By the Report, broadcast licensees and permittees identify employees by gender and race/ethnicity in ten specified job categories. FCC Form 395–B contains two grids, which collect information of full and part-time employees, respectively, and requests lists of employees by job title, indicating the job category of the position. The Report, which is a data collection device used to compile statistics on the broadcast workforce, identifies each staff member by gender and race/ethnicity. Broadcast licensees or permittees with five or more full-time employees are required to file Form 395–B on or before September 30th of each year. Although licensees or permittees with fewer than five full-time employees are not required to file, if they do, they need to complete and file only Sections I, II and IV of the FCC Form 395–B, but not the portions requiring workforce information, and thereafter need not file again unless their employment increases to five or more full-time employees.

In *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, Third Report and Order and Fourth Notice of Proposed Rulemaking, 69 FR 34950, June 23, 2004, 19 FCC Rcd 9773 (2004) ("2004 Order"), the Commission considered issues relating to the Annual Employment Report forms, including Form 395–B. In the 3rd R&O, the Commission adopted revised rules requiring broadcasters and multichannel video programming distributors (MVPDs) to file annual employment reports. Radio and television broadcasters will use Form 395–B to file annual employment reports. The intent of the 3rd R&O is to reinstate and update requirements for broadcasters and MVPDs to file annual employment reports. The intent of the Fourth Notice of Proposed Rulemaking, which remains pending, was to provide time for MVPDs, broadcast licensees, and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. With the effective date of the rulemaking deciding the confidentiality issue, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on the first due date thereafter.

In its 2004 Order, the Commission stated that Form 395–B conformed to the racial and employment categories contained in the then-existing Form EEO–1 Employer Information Report issued by the Equal Employment Opportunity Commission ("EEOC"). 2004 Order, at 9977–78. The Order noted that the EEOC had proposed to revise its EEO–1 form to incorporate new racial and employment categories approved by OMB. It also noted that, when the revised EEO–1 form was released, the Commission would review

its Form 395-B to determine what changes were needed to comply with the new OMB standards, and whether it could conform Form 395–B to those standards consistent with Section 334 of the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. 334; *see* 2004 Order at 9978.

With the EEOC's release of the EEO–1 incorporating revised racial and employment categories, the FCC's Media Bureau sought public comment ("Media Bureau Seeks Comment on Possible Changes to FCC Forms 395–A and 395–B," Public Notice DA 08–752, released April 11, 2008; 73 FR 21346, April 21, 2008) ("Public Notice") on whether to incorporate the EEOC's revised categories and whether such changes would be consistent with Section 334 of the Act. The public comment period ended on June 6, 2008, and the Commission completed its review of all the comments and reply comments. The Commission did not receive any comments opposing the incorporation of the EEOC's revised categories in the FCC's annual employment reports.

The Commission concluded that the proposed changes to FCC Form 395–B are consistent with Section 334 of the Act, which allows the FCC to make non-substantive technical or clerical revisions to annual employment reports in order to reflect changes in, *inter alia*, terminology. Because these changes do not subtract any information requested on the form, but rather seek more detail on race identification and official/manager occupations, with minor changes in terminology, we concluded that they are consistent with Section 334. 47 U.S.C. 334.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–25189 Filed 10–21–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 17, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 21, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B. Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0511.

Title: ARMIS Access Report.

Report No.: FCC Report 43–04.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 76 respondents; 76 responses.

Estimated Time per Response: 153 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 161, 219(b) and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 11,628 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Ordinarily, questions of a sensitive nature are not involved in the ARMIS 43–04 Access Report. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise on special circumstances only. In such circumstances, the Commission instructs the respondent on the appropriate procedures to follow to safeguard sensitive data. Respondents may request confidential treatment of their documents under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Federal Communications Commission is submitting this information collection (IC) to the OMB as an extension during this comment period to obtain the full three-year clearance from them. The Commission is reporting a −918 burden hour reduction (adjustment). This adjustment is due to fewer respondents (from 82 to 76 from the last time this information collection was submitted to the OMB). Therefore, the total annual burden hours are now estimated at 11,628 hours.

The Automated Reporting Management Information System (ARMIS), Report 43–04, Access Report provides jurisdictional separations and access charge data by Part 36 category of the Commission's rules and regulations. The ARMIS Report 43–04 monitors revenue requirements, joint cost allocations, jurisdictional separations and access charges.

Note: The Commission in its Memorandum Opinion and Order, WC Docket Nos. 07–21 and 05–342, 23 FCC Rcd 7302, released April 24, 2008, granted AT&T's petition for forbearance, finding conditionally that AT&T, as a price cap carrier generally not subject to rate-of-return regulation, has demonstrated that forbearance from enforcing the Cost Assignment Rules satisfies the

standard for forbearance under section 10 of the Act. Specially, the Commission concluded that there is no current need to apply the Cost Assignment Rules to AT&T. In addition, the Commission stated that LECs similarly situated to AT&T are free to seek comparable forbearance relief. Among other things, AT&T asked for forbearance from four of the Commission's reporting requirements, including the Access Report (ARMIS 43–04.) As a condition of this forbearance, the Commission required AT&T to file a compliance plan, which must include, among other things, a description of its imputation methodology. AT&T must demonstrate that its access charge imputation methodologies remain consistent with section 272(e)(3) of the Communications rules and the Section 272 *Sunset Order.* In particular, AT&T's compliance plan must describe how it will account for imputed tariff rates given the grant of the requested forbearance from section 32.5280(b) and (c) of the Commission's rules. The Commission required that AT&T describe in detail how it will continue to fulfill its statutory and regulatory obligations, including section 254(k), and the conditions of this Order. The relief granted in this Order will not become effective unless and until AT&T's plan is approved. The compliance plan must also include AT&T's first annual certification that it will comply with its obligations under section 254(k) in the absence of the Cost Assignment Rules and will provide any requested cost accounting information necessary to prove such compliance. Also, the Commission required AT&T to include a proposal for how it will maintain its accounting procedures and data in a manner that will allow it to provide useable information on a timely basis if requested by the Commission to comply with any of the conditions of this relief and its commitment to the Commission. Finally, the plan must include an explanation of the transition process that AT&T will undertake, including an expected schedule, to discontinue compliance with Cost Assignment Rules and replace them with the procedures outlined in its compliance plan upon approval of the plan. The Commission delegated to the Chief of the Wireline Competition Bureau (Bureau) to prescribe the administrative requirements of the filing and to approve the plan when the Bureau is satisfied that AT&T will implement a method of preserving the integrity of its accounting system in the absence of the Cost Assignment Rules. Upon approval, the Bureau will release a public notice notifying the public of approval of the plan.

In the Commission's Memorandum Opinion and Order and Notice of Proposed Rulemaking WC Docket No. 08–190, *et al.,* FCC 08–203, released September 6, 2008, it noted that in this proceeding parties have raised the issue of the overlap between the ARMIS requirements at issue in this proceeding and certain cost assignment relief previously granted to AT&T. Because the Commission found that the reasoning of the *AT&T Cost Assignment Forbearance Order* applies to Verizon and Qwest, it took the opportunity, on its own motion, to extend to them the conditional forbearance granted in the *AT&T Cost Assignment Forbearance Order,* subject to approval of their compliance plan.

The Commission uses an indexed revenue threshold to determine which carriers are required to file the ARMIS reports. The current revenue threshold between Class A carriers and Class B carriers is $138 million and the revenue threshold between larger Class A carriers and mid-sized carriers is $8.181 billion.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–25191 Filed 10–21–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010099–048.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk A/S; ANL Container Line Pty Ltd.; American President Lines, Ltd.; APL Co. Pte. Ltd.; APL Ltd.; Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; COSCO Container Lines Co. Ltd; Crowley Maritime Corporation; Delmas SAS; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Snüd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Line Ltd.; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; Safmarine Container Line N.V.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; K & L Gates LLP; 1601 K Street, NW.; Washington, DC 20006–1600.

Synopsis: The amendment makes changes regarding staff compensation and updates filing counsel's law firm's name.

Agreement No.: 011346–018.

Title: Israel Trade Conference Agreement.

Parties: A.P. Moller-Maersk A/S and Zim Integrated Shipping Services, Ltd.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005–3602.

Synopsis: The amendment adds Maersk Line Limited, acting as a single party in conjunction with A.P. Moller-Maersk A/S.

Agreement No.: 201197.

Title: SSA Terminal (Oakland) Cooperative Working Agreement.

Parties: NYK Terminal (Oakland), Inc.; NYK Line (North America), Inc.; SSA Terminals, LLC; SSA Terminals (Oakland), LLC; and Yusen Terminals, Inc.

Filing Party: Robert T. Basseches, Esq.; Goodwin Procter LLP; 901 New York Avenue; Washington, DC 20001.

Synopsis: The agreement would authorize the parties to establish SSA Terminals (Oakland) LLC and to discuss and agree on matters relating to marine terminal operations and services at the Port of Oakland.

Dated: October 16, 2008.

By order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E8–25095 Filed 10–21–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their

views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 4, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Spiro P. Argiris, Burr Ridge, Illinois, as an individual, and as part of a group with Theodore P. Argiris, Cathy Argiris, both of Palos Park, Illinois, and Carpetcrafters, Inc., Alsip, Illinois; to acquire control of Community Holdings Corporation, Palos Hills, Illinois, and thereby indirectly control Family Bank and Trust Company, Palos Hills, Illinois.

Board of Governors of the Federal Reserve System, October 17, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–25120 Filed 10–21–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Title XVII of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on September 28, 1979, by the Secretary of Health, Education and Welfare, the Assistant Secretary for Health has delegated to the Deputy Assistant Secretary for Women's Health all of the authorities under Title XVII of the Public Health Service Act, as amended, pertaining to the mission of the Office on Women's Health, OSOPHS. The delegation excludes the authorities to issue regulations and to submit reports to the President. The delegation includes, but is not limited to, the authorities under sections 1702(a)(1), (2), (3), and (4), sections 1703(a)(1), (2), (3), and (4), and sections 1704(1) and (2).

In addition, I have affirmed and ratified any actions taken by the Deputy Assistant Secretary for Women's Health which in effect involve the exercise of the authorities delegated herein prior to the effective date of the delegation.

Redelegation

This authority may not be redelegated.

Prior Delegations

All previous delegations and redelegations under Title XVII of the Public Health Service Act shall continue in effect, provided they are consistent with this delegation.

Effective Date

This delegation became effective on the date stated below.

Dated: October 16, 2008.

Joxel Garcia,

Assistant Secretary for Health.

[FR Doc. E8–25181 Filed 10–21–08; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 11 a.m.–5 p.m., November 6, 2008.

Place: Audio Conference Call via FTS Conferencing. The USA toll free dial in number is 1–866–659–0537 with a pass code of 9933701.

Status: Open to the public, but without a public comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, most recently, August 3, 2007, and will expire on August 3, 2009.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the conference call includes: SEC Petition Status Updates; Status of Board Recommendation on Connecticut Aircraft Nuclear Engine Laboratory (CANEL) SEC Petition; Blockson Chemical SEC Petition (Work Group Update); Updates from the Subcommittee on Dose Reconstruction and Work Groups; Board Response to Congressional Letter from Senator Charles Schumer, Senator Hillary Clinton, and Representative Louise Slaughter; New GAO Evaluation; Update on Board Technical Support Contractor Activities; Update on Selection of the Board's Contractor; Future Plans.

The agenda is subject to change as priorities dictate. Because there is not a public comment period, written comments may be submitted. Any written comments received will be included in the official record of the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore M. Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Rd., NE., Mailstop: E–20, Atlanta, GA 30333, Telephone 513–533–6800, Toll Free 1–800–CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–25109 Filed 10–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Public Health Informatics, (BSC, NCPHI)

In accordance with section 10(a)2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC)

announces the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.–5 p.m., November 20, 2008.

Place: CDC, Global Communications Center, Building 19, Rooms 245–246, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee shall advise the Secretary, HHS, and the Director, CDC, concerning strategies and goals for the programs and research within the national centers; shall conduct peer-review of scientific programs; and monitor the overall strategic direction and focus of the national centers.

The board, after conducting its periodic reviews, shall submit a written description of the results of the review and its recommendations to the Director, CDC. The board shall perform second-level peer review of applications for grants-in-aid for research and research training activities, cooperative agreements, and research contract proposals relating to the broad areas within the national centers.

Matters to be Discussed: The agenda will include detailed discussions on the following issues: BioSense Strategic Planning, Open Source Models, and Organizational Issues for NCPHI.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Scott J.N. McNabb, Ph.D., M.S., Designated Federal Officer, NCPHI, CDC, 1600 Clifton Road, NE., Mailstop E78, Atlanta, Georgia, 30333, Telephone: (404) 409–3898.

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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–25131 Filed 10–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

CDC/Health Resources and Services Administration (HRSA) Advisory Committee on HIV and STD Prevention and Treatment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned committee:

Times and Dates: 8 a.m.–5 p.m., November 17, 2008. 8 a.m.–3 p.m., November 18, 2008.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, Maryland 20852, Telephone: (301) 822–9200, Fax: (301) 822–9201.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs.

Matters to be Discussed: Agenda items include issues pertaining to (1) HRSA Bureau of Primary Health Care focusing on Community Health Centers; (2) CDC's revised HIV incidence and prevalence estimates; (3) Key expert clinical data—Domestic and the President's Emergency Plan for AIDS Relief; and (4) Presentation on interface between mental health services and HIV/STD issues, including risk issues and comprehensive and synergistic care. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Traci Sears, Committee Management Specialist, CDC, Strategic Business Unit, 1600 Clifton Road, NE., Mailstop E–77, Atlanta, Georgia 30333, Telephone: (404) 498–2732, Fax: (404) 498–2708.

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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–25129 Filed 10–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee, Advisory Committee to the Director, Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the aforementioned subcommittee meeting.

Name: Ethics Subcommittee, Advisory Committee to the Director (ACD), CDC.

Times and Dates: 1 p.m.–5 p.m., November 13, 2008. 8 a.m.–3 p.m., November 14, 2008.

Place: Centers for Disease Control and Prevention, Thomas R. Harkin Global Communication Center, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. To accommodate public participation in the meeting, a conference telephone line will be available. The public is welcome to participate during the public comment periods by calling (866) 919–3560 and entering code 4168828. The public comment periods are tentatively scheduled for 4:30 p.m.–4:45 p.m. on November 13 and from 2:30 p.m.–2:45 p.m. on November 14, 2008.

Purpose: The Ethics Subcommittee will provide guidance to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matters To Be Discussed: Agenda items will include the following topics: CDC's Healthiest Nation Initiative, priorities of the Advisory Committee to the Director, ethical guidance for ventilator distribution, ethical guidance for use of traveler restrictions, ethical guidance for public health emergency preparedness and response, survey of CDC staff about principles of ethical public health practice, development of a web-based course on public health ethics, and the CDC–Tuskegee University Public Health Ethics Fellowship.

For Further Information Contact: For security reasons, members of the public interested in attending the meeting should contact Drue Barrett, PhD, Designated Federal Officer, Ethics Subcommittee, CDC, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone (404) 639–4690. E-mail: *dbarrett@cdc.gov.* The deadline for notification of attendance is November 7, 2008.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–25126 Filed 10–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health (ICSH)

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Meeting of the aforementioned committee:

Time and Date: 9 a.m.–4:30 p.m., December 8, 2008.

Place: Hilton Washington Embassy Row, Ambassador Room, 2015 Massachusetts Avenue, NW., Washington, DC 20036, Telephone: (202) 939–4124.

Status: Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpretator, or have other special needs, please notify the contact person by 4:30 E.S.T. on December 1, 2008.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the (a) coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

Matters to be Discussed: The agenda will focus on "Nicotine Addiction." Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Monica L. Swann, Management and Program Analyst, Office on Smoking and Health, Centers for Disease Control and Prevention, 4770 Buford Highway, M/S K50, Atlanta, GA 30341, (770) 488–5278. 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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. E8–25122 Filed 10–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–137]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human 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:* Extension of a currently approved collection; *Title of Information Collection:* Internal Revenue Service (IRS)/Social Security Administration (SSA)/Centers for Medicare and Medicaid Services (CMS) Data Match and Supporting Regulations in 42 CFR 411.20–491.206 *Use:* Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits; it refers to those situations where Medicare assumes a secondary payer role to certain types of private insurance for covered services provided to a Medicare beneficiary.

Congress sought to reduce the losses to the Medicare program by requiring in 42 U.S.C. 1395y(b)(5) that the Internal Revenue Service (IRS), the Social Security Administration (SSA), and CMS perform an annual data match (the IRS/SSA/CMS Data Match, or "Data Match" for short). CMS uses the information obtained through Data Match to contact employers concerning possible application of the MSP provisions by requesting information about specifically identified employees (either a Medicare beneficiary or the working spouse of a Medicare beneficiary). This statutory data match and employer information collection activity enhances CMS's ability to identify both past and present MSP situations. *Form Number:* CMS–R–137 (OMB# 0938–0763); *Frequency:* Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions, Farms, State, Local or Tribal Governments; *Number of Respondents:* 326,597; *Total Annual Responses:* 326,597; *Total Annual Hours:* 1,900,795.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site 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 *December 22, 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: *October 10, 2008.*

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–25201 Filed 10–21–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Arkansas State Plan Amendment (SPA) 07–024

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 9, 2008, at the CMS Dallas Regional Office, 1301 Young Street, Suite 833, Room 1196, Dallas, Texas 75202, to reconsider CMS' decision to disapprove Arkansas SPA 07–024.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by November 6, 2008.

FOR FURTHER INFORMATION CONTACT: Benjamin Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–3169.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider CMS' decision to disapprove Arkansas SPA 07–024 which was submitted on

January 18, 2008, and disapproved on August 19, 2008.

Under this SPA, the State would increase the dispensing fee from $5.51 to $8.68 for brand name prescription drugs. The dispensing fee for generic drugs would increase to $11.68, an increase from $5.51 for drugs with a maximum allowable cost (MAC) limit and from $7.51 for drugs without a MAC limit. The dispensing fee for generic drugs would be further increased to $12.68 if there is a 2.3 percent increase in the proportion of total claims dispensed as generic drugs. CMS was unable to approve this SPA because it does not comply with section 1902(a)(30)(A) of the Social Security Act (the Act) and the longstanding requirements of Federal regulations (previously codified at 42 CFR 447.331 and at 42 CFR 447.332), which specify that the State must have a reasonable dispensing fee.

Section 1902(a)(30)(A) of the Act requires that States have methods and procedures to assure that payment rates are consistent with efficiency, economy, and quality of care. Section 1902(a)(30)(A) and longstanding requirements of Federal regulations (previously codified at 42 CFR 447.331 and 42 CFR 447.332) provide that payments for drugs are to be based on the ingredient cost of the drug and a reasonable dispensing fee.

In support of its proposal, the State submitted survey findings dated February 2, 2007, performed by MENTORx that show the median dispensing cost is $9.25 for all pharmacies with a spread of $4.44 between the 20th percentile value ($7.45) and the 80th percentile value ($11.89). The study looked at the difference in dispensing costs between independent and chain pharmacies, but not between brand and generic drugs.

The hearing will involve the following issues:

- The MENTORx survey failed to present supporting evidence for the State's determination of separate dispensing fees for brand and generic prescriptions and the State has failed to provide us with sufficient evidence to demonstrate that the separate dispensing fee for brand name and generic prescription drugs is reasonable.
- MENTORx recommended the 80th percentile ($11.89) be used as the dispensing fee for all prescriptions. While the State did not follow this recommendation, it did not adequately explain why it chose the dispensing fee for brand name drugs based on the 40th percentile value ($8.68) and the initial dispensing fee for generics based slightly below the 80th percentile value ($11.89). The State's current dispensing fee of $5.51 is one of the highest in the Nation among State Medicaid programs. The proposed dispensing fee for generic drugs would be the highest in the Nation among State Medicaid programs and would be the largest variance in dispensing fees between brand and generic drugs. Accordingly, the State failed to adequately explain why a dispensing fee slightly below the 80th percentile value would not result in most pharmacies being overpaid to dispense generic drugs. Therefore, CMS did not believe that the State demonstrated why this is reasonable.
- Despite the fact that the generic dispensing fee was set at the maximum cost in the survey, the State did not adequately explain why it would further increase the generic fee above the 80th percentile to $12.68. While the State claimed that increasing the dispensing fee would be budget neutral based on a 2.3 percent increase in the proportion of total claims dispensed as generic drugs, it did not explain why a further incentive from the current $2 differential to a $4 differential was reasonable.
- In response to our formal concerns, the State indicated that data do not exist to differentiate dispensing cost of brand versus generic drugs. The State indicated that the intent of the proposed dispensing fee is to encourage the use of less costly generics, and thus avoid the higher ingredient reimbursement of a brand. However, the State failed to consider the ingredient cost of drugs as well as the cost of dispensing, to ensure that both are being paid appropriately. To increase the dispensing fee without considering the ingredient cost payment so that it accurately estimates acquisition cost results in an overall payment that is inconsistent with the requirement of the statute that payments be consistent with efficiency and economy.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Arkansas announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Breck Hopkins, Chief Counsel, Arkansas Department of Human Services, P.O. Box 1437, Slot S–260, Little Rock, AR 72203–1437.

Dear Mr. Hopkins: I am responding to your request for reconsideration of the decision to disapprove the Arkansas State plan amendment (SPA) 07–024, which was submitted on January 18, 2008, and disapproved on August 19, 2008.

Under this SPA, the State proposed to increase the dispensing fee from $5.51 to $8.68 for brand name prescription drugs. The dispensing fee for generic drugs would increase to $11.68, an increase from $5.51 for drugs with a maximum allowable cost (MAC) limit and from $7.51 for drugs without a MAC limit. The dispensing fee for generic drugs would be further increased to $12.68 if there is a 2.3 percent increase in the proportion of total claims dispensed as generic drugs. I was unable to approve this SPA because it does not comply with section 1902(a)(30)(A) of the Social Security Act (the Act) and the longstanding requirements of Federal regulations (previously codified at 42 CFR 447.331 and at 42 CFR 447.332), which specify that the State must have a reasonable dispensing fee.

Section 1902(a)(30)(A) of the Act requires that States have methods and procedures to assure that payment rates are consistent with efficiency, economy, and quality of care. Section 1902(a)(30)(A) and longstanding requirements of Federal regulations (previously codified at 42 CFR 447.331 and 42 CFR 447.332) provide that payments for drugs are to be based on the ingredient cost of the drug and a reasonable dispensing fee.

In support of its proposal, the State submitted survey findings dated February 2, 2007, performed by MENTORx that show the median dispensing cost is $9.25 for all pharmacies with a spread of $4.44 between the 20th percentile value ($7.45) and the 80th percentile value ($11.89). The study looked at the difference in dispensing costs between independent and chain pharmacies, but not between brand and generic drugs.

The hearing will involve the following issues:

- The MENTORx survey failed to present supporting evidence for the State's determination of separate dispensing fees for brand and generic prescriptions and the State has failed to provide us with sufficient evidence to demonstrate that the separate dispensing fee for brand name and generic prescription drugs is reasonable.
- MENTORx recommended the 80th percentile ($11.89) be used as the dispensing

fee for all prescriptions. While the State did not follow this recommendation, it did not adequately explain why it chose the dispensing fee for brand name drugs based on the 40th percentile value ($8.68) and the initial dispensing fee for generics based slightly below the 80th percentile value ($11.89). The State's current dispensing fee of $5.51 is one of the highest in the Nation among State Medicaid programs. The proposed dispensing fee for generic drugs would be the highest in the Nation among State Medicaid programs and would be the largest variance in dispensing fees between brand and generic drugs. Accordingly, the State failed to adequately explain why a dispensing fee slightly below the 80th percentile value would not result in most pharmacies being overpaid to dispense generic drugs. Therefore, we do not believe that the State has demonstrated why this is reasonable.

- Despite the fact that the generic dispensing fee was set at the maximum cost in the survey, the State did not adequately explain why it would further increase the generic fee above the 80th percentile to $12.68. While the State claimed that increasing the dispensing fee would be budget neutral based on a 2.3 percent increase in the proportion of total claims dispensed as generic drugs, it did not explain why a further incentive from the current $2 differential to a $4 differential was reasonable.
- In response to our formal concerns, the State indicated that data do not exist to differentiate dispensing cost of brand versus generic drugs. The State indicated that the intent of the proposed dispensing fee is to encourage the use of less costly generics, and thus avoid the higher ingredient reimbursement of a brand. However, the State failed to consider the ingredient cost of drugs as well as the cost of dispensing, to ensure that both are being paid appropriately. To increase the dispensing fee without considering the ingredient cost payment so that it accurately estimates acquisition cost results in an overall payment that is inconsistent with the requirement of the statute that payments be consistent with efficiency and economy.

I am scheduling a hearing on your request for reconsideration to be held on December 9, 2008, at the CMS Dallas Regional Office, 1301 Young Street, Suite 833, Room 1196, Dallas, Texas 75202, in order to reconsider the decision to disapprove SPA 07–024. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–3169. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,
Kerry Weems,
Acting Administrator.

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: October 16, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–25196 Filed 10–22–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level from a State Program Funded Under Part A of Title IV of the Social Security Act.

OMB No.: 0970–0004.

Description: The Department of Health and Human Services is required to collect these data under section 1124 of Title I of the Elementary and Secondary Education Act, as amended by Public Law 103–382. The data are used by the U.S. Department of Education for allocation of funds for programs to aid disadvantaged elementary and secondary students. Respondents include various components of State Human Service agencies.

Respondents: The 52 respondents include the 50 States, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Statistical Report on Children in Foster Homes and Children Receiving Payments in Excess of the Poverty Level From a State Program Funded Under Part A of Title IV of the Social Security Act	52	1	264.35	13,746.20

Estimated Total Annual Burden Hours: 13,746.20.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Date: October 15, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–25038 Filed 10–21–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–539, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–539, Application to Extend/Change Nonimmigrant Status; OMB Control No. 1615–0003.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 22, 2008, at 73 FR 29774, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 21, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0003 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–539. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used to apply for an extension of stay or for a change to another nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 260,967 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 195,725 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: October 17, 2008.

Stephen Tarragon,

Management Analyst, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–25119 Filed 10–21–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Declaration of Owner for Merchandise Obtained (Other Than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0093.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Owner for Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before December 22, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and

Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of Owner for Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent.

OMB Number: 1651–0093.

Form Number: CBP Forms-3347 and 3347A.

Abstract: CBP Forms-3347 and 3347A allow an agent to submit, subsequent to making the entry, the declaration of the importer of record that is required by statute. These forms also permit a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 5,700.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 570.

Dated: October 14, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–25110 Filed 10–21–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; U.S./Central American Free Trade Agreement (CAFTA)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0125.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S./Central American Free Trade Agreement (CAFTA). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before December 22, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: CAFTA.

OMB Number: 1651–0125.

Form Number: N/A.

Abstract: The collection of data for CAFTA is used to ascertain if claims filed with CBP are eligible for duty refunds.

Current Actions: There are no changes to this information collection. This submission is being made to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 2,500.

Estimated Total Annual Responses: 10,000.

Annual Number of Responses per Respondent: 4.

Estimated Time Per Response: 24 minutes.

Estimated Total Annual Burden Hours: 4,000.

Dated: October 14, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–25112 Filed 10–21–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Documents Required Aboard Private Aircraft

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0058.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before December 22, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments

will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1651–0058.

Form Number: N/A.

Abstract: The documents required by CBP regulations for private aircraft arriving from foreign countries pertain only to baggage declarations, and if applicable, to Overflight authorizations. CBP also requires that the pilots present documents required by FAA to be on the plane.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 150,000.

Estimated Number of Annual Responses: 150,000.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 2,490.

Dated: October 14, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–25113 Filed 10–21–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; NAFTA Regulations and Certificate of Origin

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0098.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before December 22, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651–0098.

Form Number: CBP Forms 434 and 446.

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada and to facilitate conditions of fair competition within the free trade area. CBP uses these forms to verify eligibility for preferential tariff treatment under NAFTA.

Current Actions: There are no changes to this information collection. This submission is being made to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 120,050.

Estimated Total Annual Responses: 120,050.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 30,037.

Dated: October 14, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–25115 Filed 10–21–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–FA–13]

Announcement of Funding Awards for Fiscal Year 2008; Alaska Native/Native Hawaiian Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2008 Alaska Native/ Native Hawaiian Institutions Assisting Communities (AN/NHIAC) Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to assist Alaska Native/Native Hawaiian institutions of higher education to expand their role and effectiveness in addressing communities in their localities, including neighborhood revitalization, housing and economic development, principally for low- and moderate-income, consistent with the purpose of Title I of the Housing and Community Development Act of 1974, as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing- or- speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service at 800–877–8339 or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Alaska Native/Native Hawaiian Institutions Assisting Communities Program was approved by Congress under the Consolidated Appropriations Act, 2008 (Pub. L. 110–161) and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy

Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The AN/NHIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.515.

On May 12, 2008 (FR Vol. 73, No. 92), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $3 million appropriated in FY 08. Each eligible campus was permitted to apply individually for $800,000, the maximum amount that can be awarded for a period of 36 months.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*, the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: October 14, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR ALASKA NATIVE/NATIVE HAWAIIAN INSTITUTIONS ASSISTING COMMUNITIES GRANT PROGRAM

Recipient	City/State/Zip Code	Award
University of Alaska, Fairbanks/Interior Aleutians, Clara Johnson, P.O. Box 757880	Fairbanks, AK 99775–7880	$799,965
University of Hawaii-Kauai Community College, Charles Ramsey, 2530 Dole Street, Sakamaki D 200.	Honolulu, HI 96822	794,728
University of Hawaii, Wendell Perry, 2530 Dole Street, Sakamaki D 200	Honolulu, HI 96822	799,907
University of Hawaii/Hawaii Community College, Douglas Dykstra, 2530 Dole Street, Sakamaki D 200.	Honolulu, HI 96822	605,400

[FR Doc. E8–25065 Filed 10–21–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–FA–22A]

Announcement of Funding Awards for Fiscal Year 2008; Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year (FY) 2008 Doctoral Dissertation Research Grant (DDRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral candidates complete dissertations on topics that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing-or speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than "800" TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The DDRG Program was created as a means of expanding the number of researchers conducting research on subjects of interest to HUD. Doctoral candidates can receive grants of up to $25,000 to complete work on their dissertations. Grants are awarded for a two-year period.

The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Catalog of Federal Domestic Assistance number for this program is 14.517. On May 12, 2008 (Vol. 73, No. 92), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $300,000 in FY 2008 funds for the DDRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*, the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: October 14, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR DOCTORAL DISSERTATION RESEARCH GRANT PROGRAM

Recipient	City/State/Zip Code	Award
Loyola University Chicago, Ms. Caroline Kappers, Department of Sociology, 6525 North Sheridan Road, Student: Meghan A. Burke.	Chicago, IL 60626	$18,744

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR DOCTORAL DISSERTATION RESEARCH GRANT PROGRAM—Continued

Recipient	City/State/Zip Code	Award
New York University, Dr. Ingrid Gould Ellen, Wagner Graduate School, 665 Broadway, Suite 801, Student: Martha Galvez.	New York, NY 10012	25,000
The University of Chicago, Ms. Gilda Reyes, Department of Sociology, 5801 South Ellis Avenue, Student: Danielle Wallace.	Chicago, IL 60637	25,000
The University of Tennessee, Ms. Kay Cogley, Children's Mental Health Services, 1534 White Avenue, Student: Courtney Cronley.	Knoxville, TN 37996–1529	25,000
Georgia State University Research Foundation, Inc., Dr. Charles Jaret, Department of Sociology, PO Box 3999, Student: Barbara Combs.	Atlanta, GA 30302–3999	12,635
New York University, Dr. Ingrid Gould Ellen, Wagner Graduate School, 665 Broadway, Suite 801, Student: Rachel Meltzer.	New York, NY 10012	24,012
The Regents of the University of California, Ms. Christine Luppino, Sponsored Projects Office, 2150 Shattuck Avenue, Suite 313, Student: Amanda Lehning.	Berkeley, CA 94704–5940	25,000
The Trustees of Columbia University in the City of New York, Ms. Patricia Valencia, Department of Urban Planning, Mail Code 2205, Room 254 Engineering Terrace, 1210 Amsterdam Avenue, Student: Constantine Kontokosta.	New York, NY 10027	24,585
Southern New Hampshire University, Dr. Yoel Camayd-Freixas, SCED, 2500 North River Road, Student: Richard Koenig.	Manchester, NH 03106–1045	25,000
The Board of Trustees of the University of Illinois, Dr. Mark Mattaini, JACSW, 809 South Marshfield Avenue, 502 MB, M/C 551, Student: Julia Wesley.	Chicago, IL 60612–7205	25,000
University of North Carolina at Chapel Hill, Mr. Hamilton Brown, Office of Sponsored Research, 104 Airport Drive, Suite 2200, Student: Jonathan Spader.	Chapel Hill, NC 27599–1350	25,000
University of Pennsylvania, Ms. Pamela Caudill, Social Policy and Practice, Office of Research Services, 3451 Walnut Street, Student: Kristie Thomas.	Philadelphia, PA 19104–6205	25,000
University of Oregon, Ms. Kelly Miles, Office of Research Services and Administration, 5219 University of Oregon, Student: Timothy Haney.	Eugene, OR 97403–5219	20,024

[FR Doc. E8–25046 Filed 10–21–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–FA–22]

Announcement of Funding Awards for Fiscal Year 2008; Early Doctoral Student Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year (FY) 2008 Early Doctoral Student Research Grant (EDSRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral students cultivate their research skills through the preparation of research manuscripts that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing-or speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than "800" TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The EDSRG Program provides funds to eligible doctoral students to cultivate their research skills through preparation of research manuscripts that focus on policy-relevant housing and urban development issues. Students, who are in the early stages of their doctoral studies, have 12 months to complete a major research study. The maximum amount to be awarded to a doctoral student is $15,000.

The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Catalog of Federal Domestic Assistance number for this program is 14.517. On May 12, 2008, (Vol. 73, No. 92) HUD published a Notice of Funding Availability (NOFA) announcing the availability of $100,000 in FY 2008 funds for the EDSRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: October 14, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR EARLY DOCTORAL STUDENT RESEARCH GRANT PROGRAM

Recipient	City/State/Zip Code	Award
Colorado Seminary, Ms. Crystal Streit, 2199 S. University Boulevard, Student: Laurie Walker.	Denver CO 80208	$14,999

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR EARLY DOCTORAL STUDENT RESEARCH GRANT PROGRAM—Continued

Recipient	City/State/Zip Code	Award
University of Illinois at Chicago, Mr. Luis Vargas, 809 S. Marshfield Avenue, Student: Leonor Vanik.	Chicago IL 60612	14,981
University of Illinois at Chicago, Mr. Luis Vargas, 809 S. Marshfield Avenue, Student: Andrew J. Greenlee.	Chicago IL 60612	10,299
Northern Illinois University, Division of Public Administration, Ms. Dara Little, Student: Adrienne Halloway.	DeKalb IL 60115	14,721
The Regents of the University of Michigan, Ms. Gayle Jackson, 3003 S. State Street, Student: Robert Walsh.	Ann Arbor, MI 48109	15,000
University of Washington, Lynne Chronister, 4333 Brooklyn Avenue, NE, Student: Eric Waithaka.	Seattle, WA 98195	15,000
Portland State University, Pauline Jivanjee, PhD, University Center Building, Suite 400, 527 SW Hall, PO Box 751, Student: Cindy Marchand-Cecil.	Portland, OR 97207	15,000

[FR Doc. E8–25059 Filed 10–21–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–FA–05]

Announcement of Funding Awards for Fiscal Year 2008; Hispanic-Serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2008 Hispanic-Serving Institutions Assisting Communities Program (HSIAC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Hispanic-Serving Institutions of Higher Education to expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing and economic development, principally for persons of low- and moderate-income consistent with the purposes of Title I of the Housing and Community Development Act of 1974 as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than "800" TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The Hispanic-Serving Institutions Assisting Communities Program was approved by Congress under the Consolidated Appropriations Act, 2008 (Pub. L. 110–161) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HSIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.514.

On May 12, 2008 (FR Vol. 73, No. 92), HUD published a Notice of Funding Availability approximately $6 million in Fiscal Year 2008 for the HSIAC Program.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*, the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: October 14, 2008

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR HISPANIC-SERVING INSTITUTIONS ASSISTING COMMUNITIES GRANT PROGRAM

Recipient	City/State/Zip Code	Award
Imperial Valley College, Ms. Efrain Silva, 380 E Aten Road	Imperial, CA 92251	$600,000
Southwestern College, Ms. Cynthia Nagura, 900 Otay Lakes Road	Chula Vista, CA 91910	600,000
The Regents of the University of New Mexico, Ms. Patricia Gonzales, 115 Civic Plaza Drive.	Taos, NM 87571	600,000
Research Foundation of CUNY on behalf of Lehman College, Mr. Keville Frederickson, 250 Bedford Park Blvd. West, Shuster Hall 303.	Bronx, NY 10468	600,000
University of Puerto Rico at Carolina, Dr. Carlos Sariol, PO Box 4800	Carolina, PR 00984–4800	598,895
Texas A&M University—Kingsville, Dr. Tadeo Reyna, 700 University Boulevard, MSC 201.	Kingsville, TX 78363	600,000

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR HISPANIC-SERVING INSTITUTIONS ASSISTING COMMUNITIES GRANT PROGRAM—Continued

Recipient	City/State/Zip Code	Award
The University of Texas—Pan American, Mr. Michael Uhrbrock, 1201 W. University Drive.	Edinburg, TX 78539–2999	599,990
The University of Texas at Brownsville and TSC, Mr. John Sossi, Office of Sponsored Programs, 80 Fort Brown.	Brownsville, TX 78520	598,401
St. Mary's University, Mr. Steve Nivin, 1 Camino Santa Maria	San Antonio, TX 78228	596,794
Yakima Valley Community College, Mr. Bryce Humpherys, PO Box 22520	Yakima, WA 98907	600,000

[FR Doc. E8–25067 Filed 10–21–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–FA–20]

Announcement of Funding Awards for Fiscal Year 2008; Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2008 Historically Black Colleges and Universities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Historically Black Colleges and Universities (HBCUs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of Title I of the Housing and Development Act of 1974, as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Program was approved by Congress under the Consolidated Appropriations Act, 2008 (Pub. L. 110–161) and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HBCU Program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.520.

On May 12, 2008, (FR Vol. 73 No. 92) HUD published a Notice of Funding Availability (NOFA) announcing the availability of approximately $9 million for funding grants under this program. The maximum amount an applicant could be awarded this year is $700,000 for a three-year (36 months) grant performance period. Thirty-one applications were received from HBCUs in response to this program NOFA.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*, the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: October 14, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR HISTORICALLY BLACK COLLEGES AND UNIVERSITIES GRANT PROGRAM

Recipient	City/State/ZipCode	Award
Stillman College, Dr. Eddie Thomas, PO Box 1430, 3600 Stillman Boulevard	Tuscaloosa, AL 35401	$700,00
Alabama A&M University, Mr. Joseph Lee, PO Box 411, 4900 Meridian Street	Normal, AL 35762	700,000
Miles College, Mr. Frank Topping, 305 Brown Building, 5500 Myron Massey Boulevard.	Fairfield, AL 35064	700,000
University of Arkansas at Pine Bluff, Mr. Henry Golatt, 1200 North University Drive, Slot 4943.	Pine Bluff, AR 71601	700,000
Howard University, Dr. Rodney D. Green, 2400 Sixth Street, NW	Washington, DC 20059	700,000
Savannah State University, Ms. Shirley Geiger, 3219 College Street	Savannah, GA 31404	700,000
Southern University and A&M College, Dr. Alma Thorton, PO Box 12596	Baton Rouge, LA 70813	700,000
Winston-Salem State University, Ms. Valerie Howard, 601 South Martin Luther King, Jr. Drive.	Winston-Salem, NC 27110	700,000
North Carolina Agricultural and Technical State University, Dr. Mushbau A. Shofoluwe, 1601 E Market Street.	Greensboro, NC 27411	698,531
North Carolina Central University, Dr. Rebecca M. Winders, 1801 Fayetteville Street.	Durham, NC 27707	695,077

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR HISTORICALLY BLACK COLLEGES AND UNIVERSITIES GRANT PROGRAM—Continued

Recipient	City/State/ZipCode	Award
Voorhees College, Mr. Willie Owens, PO Box 678, 422 Beech Avenue	Demark, SC 29042–2602	700,000
West Virginia State University Research and Development Corporation, Ms. A. Jenny Fertig, 201 ACEOP Administration Building, PO Box 1000.	Institute, WV 25112–1000	700,000
Virginia University of Lynchburg, Dr. Doris Crawford, 2058 Garfield Avenue	Lynchburg, VA 24501–6417	600,000

[FR Doc. E8–25061 Filed 10–21–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–FA–16]

Announcement of Funding Awards for Fiscal Year 2008; Tribal Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2008 Tribal Colleges and Universities Program (TCUP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to enable Tribal Colleges and Universities (TCU) to build, expand, renovate, and equip their own facilities, and expand the role of the TCUs into the community through the provision of needed services such as health programs, job training, and economic development activities.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455 (Telephone number, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Tribal Colleges and Universities Program was approved by Congress under the Consolidated Appropriations Act, 2008 (Pub. L. 110–161) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Tribal Colleges and Universities Program assist tribal colleges and universities to build, expand, renovate, and equip their own facilities, and expand the role of the TCUs into the community through the provision of needed services such as health programs, job training, and economic development activities.

The Catalog of Federal Domestic Assistance number for this program is 14.519.

On May 12, 2008 (FR Vol. 73, No. 92) HUD published a Notice of Funding Availability (NOFA) announcing the availability of $5 million in Fiscal Year (FY) 2008 for funding the Tribal Colleges and Universities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD funded seven applications.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org,* the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: October 14, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

APPENDIX A—FISCAL YEAR 2008 FUNDING AWARDS FOR TRIBAL COLLEGES AND UNIVERSITIES GRANT PROGRAM

Recipient	City/State/Zip Code	Award
Tohono O'odham Community College, Ms. Olivia Vanegas-Funcheon, Mile Post 115.5 North HWY 86, P.O. Box 3129.	Sells, AZ 85634–3129	$750,000
Bay Mills Community College, Michael Parish, 12214 W. Lakeshore Drive	Brimley, MI 49774	504,800
Salish Kootenai College, Dr. Joseph McDonald, 58138 U.S. Highway 93	Pablo, MT 59855	750,000
United Tribes Technical College, Mr. Russell Swagger, 3315 University Drive	Bismarck, ND 58504	745,200
Institute of American Indians Art, Laurie Logan Brayshaw, 83 Avan Nu Po Road	Santa Fe, NM 87508	750,000
Northwest Indian College, Mr. Dave Oreiro, 2522 Kwina Road	Bellingham WA 98226	750,000
College of Menominee Nation, Ms. Jill Martin, P.O. Box 1179	Keshena, WI 54135	750,000

[FR Doc. E8–25064 Filed 10–21–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Gaming Compact Amendment.

SUMMARY: This notice publishes the Approval of the Tribal-State Compact for Class III Gaming Amendments

between the State of Washington and the Snoqualmie Tribe.

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

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State compact Amendment for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment extends the six month conditional waiting period to twelve months, increases the gaming stations, incorporates the agreement to transfer gaming stations and allows the Tribe to operate one more gaming facility on its Indian lands. This Amendment is hereby approved.

Dated: October 14, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.

[FR Doc. E8–25197 Filed 10–22–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

No Child Left Behind Act of 2001

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent to form a negotiated rulemaking committee; request for nominations for tribal representatives for No Child Left Behind Negotiated Rulemaking Committee membership.

SUMMARY: The Secretary of the Interior is announcing the Department's intent to form a negotiated rulemaking committee to develop recommendations for proposed regulations regarding Bureau of Indian Education (BIE)-funded school facilities under the No Child Left Behind Act of 2001. As required by the No Child Left Behind Act, the Secretary will select representatives of Indian tribes for the committee from among individuals nominated by tribes whose students attend BIE-funded schools either operated by the bureau or by the tribe through a contract or grant. To the maximum extent possible, the proportional representation of tribes on the committee will reflect the proportionate share of students from tribes served by the BIE-funded school system. In addition, the Secretary will consider the balance of representation with regard to geographical location, size, and type of school and facility, as well as the interests of parents, teachers, administrators, and school board members, in selecting tribal committee representatives.

As required in the NCLB Act, the committee shall prepare and submit to the Secretary of the Interior a report or reports setting out:

- A method for creating a catalog of school facilities;
- The school replacement and new construction needs of the interested parties, and a formula for the equitable distribution of funds to address those needs;
- The major and minor renovation needs of the interested parties, and a formula for the equitable distribution of funds to address such needs; and
- Facilities standards for home-living (dormitory) situations.

DATES: Nominations from tribes for membership in the negotiated rulemaking committee and comments on the establishment of this committee, including additional interests other than those identified in this notice, must be postmarked or faxed no later than December 8, 2008.

ADDRESSES: Send nominations and comments to the Designated Federal Official, at the following address: Michele F. Singer, Director, Office of Regulatory Management, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104. Or fax to (505) 563–3811.

FOR FURTHER INFORMATION CONTACT: Michele F. Singer, Designated Federal Official. Telephone: (505) 563–3805. Fax: (505) 563–3811.

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of the No Child Left Behind Negotiated Rulemaking Committee is to serve as an advisory committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to provide recommendations to the Secretary of the Interior for proposed report(s) under the No Child Left Behind Act (Pub. L. 107–110, codified at 25 U.S.C. 2001 *et seq.*). The objectives of the committee are to represent the interests that will be significantly affected by the final report or regulations, to negotiate in good faith, and to reach consensus, where possible, on recommendations to the Secretary for the report or proposed regulations.

The NCLB directs the Secretary to conduct a negotiated rulemaking pursuant to the NRA. The NRA requires an agency head to give consideration to seven factors when determining whether a negotiate rulemaking is appropriate, specifically, whether:

(1) There is a need for a rule;

(2) There are a limited number of identifiable interests that will be significantly affected by the rule;

(3) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

(A) Can adequately represent the interests identified under paragraph (2); and

(B) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(6) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

Upon reviewing the analysis of these seven considerations set out in the convening report, the Secretary, through the authority delegated to George Skibine, Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs, has determined that a negotiated rulemaking is appropriate.

II. Background

In the fall of 2006, the Department sought assistance with this effort from the U.S. Institute for Environmental Conflict Resolution (U.S. Institute), an

independent impartial government entity with expertise in the alternative dispute resolution process. The U.S. Institute's statutory authority is the Environmental Policy and Conflict Resolution Act of 1998 (Pub. L. 105–156, codified at 20 U.S.C. 5601 *et seq.*). (For more information on the U.S. Institute, please visit *http://www.ecr.gov.*) The U.S. Institute conducted a convening assessment and contracted with an independent, impartial convening team, the Consensus Building Institute (CBI), to carry out interviews and prepare a draft convening report. Pursuant to the mandates of the No Child Left Behind Act, the topics covered in CBI's interviews were: Methods used to catalog school facilities, formulas for prioritizing and funding school replacement construction and new construction, and formulas for prioritizing and funding school renovation and repair. To understand the range of perspectives on or interests in these topics, the convening team conducted confidential interviews with tribal officials or their designees, representatives of BIE-operated or tribally controlled schools, and others with an interest in BIE-funded school facilities construction. The team also conducted two focus group sessions at the July 2007 BIE's first National Partnership Conference, organized by the National Indian School Board Association. Altogether, the team spoke with 198 individuals, representing some 99 different schools. In its final report, CBI provided recommendations to assign committee seats according to the Congressional mandate for proportionality using student enrollment figures from 2006 and also suggested that seats be allocated to other tribes and tribal entities to maximize representation. The Final Convening Report prepared by CBI was released on March 5, 2008, and can be accessed at *http://ecr.gov/pdf/BIA_FinalConvRpt200803.pdf*;

The No Child Left Behind Act requires the Secretary to establish a negotiated rulemaking committee to issue reports to the Secretary relating to several specific areas of Indian education (see 25 U.S.C. 2018). In addition, the Act requires the Secretary to:

- Form the negotiated rulemaking committee under the NRA and FACA to negotiate and develop recommendations for certain reports and proposed regulations;
- Convene regional meetings, prior to establishing the negotiated rulemaking committee, to consult with personnel of the BIE, educators at BIE-funded schools, and tribal officials, parents, teachers, administrators, and school board members of tribes to provide guidance to the Secretary;
- Reflect the unique government-to-government relationship between Indian tribes and the United States in accordance with Executive Order 13175 dated November 6, 2000, in establishing a negotiated rulemaking committee;
- Ensure that the membership of the committee includes only representatives of the Federal Government and of tribes served by BIE-funded schools;
- Select the tribal representatives for the committee from among individuals nominated by the tribes; and
- Ensure, to the maximum extent possible, that the tribal membership on the committee reflects the proportionate share of students from tribes served by the BIE-funded school system. (To access the recommended tribal representative membership on the committee reflected by the proportionate share from tribes served by the BIE-funded school system, please refer to the Final Convening Report prepared by CBI at *http://ecr.gov/pdf/BIA_FinalConvRpt200803.pdf.*)

III. The Concept of Negotiated Rulemaking

The negotiated rulemaking process is fundamentally different from the usual process for proposed regulations. Most proposed regulations are drafted by a Federal agency without public participation and are then published for public comment. Affected parties submit comments supporting their positions during the public comment period without communicating with other affected parties. Under the negotiated rulemaking process, an advisory committee of representatives of the interests that will be significantly affected by the final rule negotiates the provisions of the proposed regulations with the agency. Negotiated rulemaking allows the Federal agency and the affected interests represented on the committee to discuss possible approaches to various issues and to negotiate the content of the regulations before proposed regulations are published. It also allows the affected parties to share information, knowledge, expertise, and technical abilities and to resolve their concerns about the regulations before publication.

The key principles of negotiated rulemaking are that agreement is by consensus of all the interests and that no one interest or group controls or dominates the process. The NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee agrees to define such term to mean a general but not unanimous concurrence or agrees upon another specified definition. The agency head, to the maximum extent possible consistent with the agency's legal obligations, uses the consensus of the advisory committee as the basis for proposed regulations.

IV. Facilitation

Experience of various Federal agencies in negotiated rulemaking has demonstrated that using a trained neutral to facilitate the process will assist all parties during negotiations to identify their real interest, evaluate their positions, communicate effectively, find common ground, and reach consensus where possible. The Secretary is using the facilitation of CBI (contractor) through the U.S. Institute for Environmental Conflict Resolution to assist with convening and facilitating the first committee meeting. With the approval of the committee, the contractor will facilitate the subsequent committee meetings and provide other services as outlined in the NRA.

The facilitation team will be available to assist tribes or groups of tribes in selecting nominees who can meet the nomination criteria and represent the interests of multiple tribes and schools. For such assistance, Tribes may contact Sarah Palmer, Senior Program, Manager, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, AZ 85701, Direct Telephone: (520) 901–8556 E-mail: *palmer@ecr.gov.* Web site: *www.ecr.gov.*

V. The No Child Left Behind Negotiated Rulemaking Committee

As required by the Act, the No Child Left Behind Negotiated Rulemaking Committee will be formed and will operate under the NRA and FACA.

A. Purpose of the Committee

As required in the NCLB Act, the committee shall prepare and submit to the Secretary of the Interior a report or reports setting out:

- A method for creating a catalog of school facilities that takes into consideration 25 U.S.C. 2005(a)(5)(A)(i)(I)–(V);
- The school replacement and new construction needs of the interested parties, and a formula for the equitable distribution of funds to address those needs, based on the requirements of 25 U.S.C. 2005(a)(5)(A)(ii);
- The major and minor renovation needs of the interested parties, and a formula for the equitable distribution of funds to address such needs, based on

the requirements of 25 U.S.C. 2005(a)(5)(A)(iii); and

• Facilities standards for home-living (dormitory) situations, based on the requirements of 25 U.S.C. 2002(a)(1).

B. Committee Member Responsibilities

The Committee is expected to meet approximately five times. The meetings will be held at various locations across Indian country, and will last two to three days each. Committee members will also be expected to participate in at least one of several regional consultations. The Committee's work is expected to occur over the course of 12–18 months.

Committee members will not receive pay for their membership, but will be compensated for travel and *per diem* expenses while performing official committee business, consistent with the provisions of 5 U.S.C. 568(c) and Federal travel regulations. The neutral convener will have resources available to fund travel and/or expenses for additional caucusing efforts. Alternate members will not be permitted to represent those individuals appointed by the Secretary without prior written agreement with the Department. An appointed committee member may be removed and replaced if that committee member fails to attend two consecutive meetings or fails to attend a total of three committee meetings. The resulting vacancy would be filled in the same manner as the original appointment was made.

Because of the scope and complexity of the tasks at hand, committee members must be able to invest considerable time and effort in the negotiated rulemaking process. Committee members must be able to attend committee meetings, work on committee work groups, consult with their constituencies between committee meetings, and negotiate in good faith toward a consensus on issues before the committee. Because of the complexity of the issues under consideration, as well as the need for continuity, the Secretary reserves the right to replace any member who is unable to fully participate in the committee's meetings.

C. Composition of the Committee

The Secretary is seeking nominations for tribal representatives, consistent with the provisions of 25 U.S.C. 2018, to serve on the committee who have a demonstrated ability to communicate well with groups about interests they will represent.

Tribal committee membership must:

• Meet the Act's requirements for proportionate representation of tribes served by BIE-funded schools;

• Be selected from among individuals nominated by tribes who have students attending BIE-funded schools either operated by the bureau or by the tribe through a contract or grant;

• Mirror the proportionate share of students from the tribes served by the BIE-funded school system; and

• Reflect the interests identified in comments submitted to the Department in response to the **Federal Register** notices at 72 FR 59556 and 72 FR 72391, or other interests identified in response to this notice.

The Act requires the Secretary to ensure that the various interests affected by the proposed report, reports or rules be represented on the negotiated rulemaking committee. In making membership decisions, the Secretary shall consider whether the interest represented by a nominee will be affected significantly by the final products of the committee, which may include report(s) and/or proposed regulations, whether that interest is already adequately represented by tribal nominees, and whether the potential addition would adequately represent that interest.

If nominations received in response to this notice do not adequately meet the statutory requirements for tribal committee membership, or do not represent the interests that will be significantly affected by the regulations, the Secretary may add representatives of his own choosing. The Secretary's decisions regarding the addition of representatives will be based on: meeting the requirements of the Act; achieving a balanced committee; and assessing whether an interest will be affected significantly by the final rule, whether that interest is already adequately represented by tribal nominees, and whether the potential addition would adequately represent that interest.

D. Administrative and Technical Support

The BIA Office of Facilities Management and Construction (OFMC) will provide technical support for the committee. A Project Management Officer (PMO) will arrange meeting sites and accommodations, ensure adequate logistical support (equipment, personnel, etc.) at committee meetings, provide committee members with all relevant information, distribute written materials, ensure timely reimbursement of authorized expenses for committee members, maintain records of the committee's work, and support the committee as otherwise required. OFMC personnel will provide technical support on various school construction and related issues as needed.

E. Training and Organization

At the first meeting of the No Child Left Behind Negotiated Rulemaking Committee, a neutral facilitator will provide training on negotiated rulemaking, interest-based negotiations, consensus-building, and team-building. In addition, at the first meeting, committee members will make organizational decisions concerning protocols, scheduling, and facilitation of the committee. All committee members must attend the first meeting and all subsequent meetings.

F. Interests Identified Through Consultation

Under Section 562 of the NRA, "interest" is defined as follows: "'interest' means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner." Through interviews with BIE personnel, educators at Bureau schools, and tribal officials, parents, teachers, administrators, and school board members of tribes served by BIE-funded schools, and through written comments, the interests detailed in Section VI were identified.

There may be other interests not yet identified that will be significantly affected by the final report, reports, or regulations. The Department is accepting comments until the date listed in the **DATES** section of this notice, identifying other interests that may be significantly affected by the final products of the committee, which may include report(s) and/or proposed regulations.

VI. Request for Nominations

Under the requirements stated in the **Background** section, the Secretary invites tribes whose students attend BIE-funded schools either operated by the Bureau or by the tribe through a contract or grant, to nominate tribal representatives to serve on the committee and tribal alternates to serve when the representative is unavailable. With the use of the proportionate share of students, some tribes similar in affiliation or geography are grouped together for one seat. There will be a need for nominating tribes to either agree to nominate and thus share a representative across tribal-jurisdictions or each at least have the opportunity to nominate a member for that particular seat. Each nomination is expected to include a nomination for a representative and an alternate who can fulfill the obligations of membership

should the representative be unable to attend. Because committee membership should reflect the diversity of tribal interests, representatives of tribal and tribally operated schools should nominate representatives and alternates who will:

- Have knowledge of school facilities and their repair, renovation, and construction (this may include knowledge and skills of construction project management, school facilities operation and management, construction cost estimation, education program space needs, budgeting and appropriation, engineering);
- Have relevant experience as past or present superintendents, principals, facility managers, teachers, or school board members or possess direct experience with school construction projects;
- Be able to coordinate, to the extent possible, with other tribes and schools who may not be represented on the committee;
- Be able to represent the tribe(s) with the authority to embody tribal views, communicate with tribal constituents, and have a clear means to reach agreement on behalf of the tribe(s);
- Be able to negotiate effectively on behalf of the tribe(s) represented;
- Be able to commit the time and effort required to attend and prepare for meetings; and
- Be able to collaborate among diverse parties in a consensus-seeking process.

In addition, in order for tribes and schools with too few students to be represented under the proportional membership computation, the Secretary invites nominations from the following parties who would be affected by the final products of the committee may include report(s) and/or proposed regulations:

- Tribes served by BIE-funded schools not represented by the tribes allocated seats according to share of student enrollment, (please refer to the Final Convening Report prepared by CBI, p.38 at *http://ecr.gov/pdf/BIA_FinalConvRpt200803.pdf*);
- Tribes who will help to increase the geographic diversity of representation on the committee;
- Representatives who will help to increase the diversity of types of schools represented (*e.g.*, off-reservation boarding schools, dorms, and schools serving multiple tribes);
- Representatives who might be nominated by multiple tribes or regional tribal associations and have ability to coordinate and represent a coalition or group of like-minded tribes and schools; and
- Representatives of regional or national Indian education organizations. Nominees of these interests, like the proportionate-share nominees, must meet the criteria of this section.

VII. Submitting Nominations

The Secretary will consider only nominations for tribal committee representatives nominated through the process identified in this **Federal Register** notice. Nominations received in any other manner or for Federal representatives will not be considered. Only the Secretary may appoint Federal employees to the committee.

Nominations must include the following information about each tribal committee member nominee:

(1) The nominee's name, tribal affiliation, job title, major job duties, employer, business address, business telephone and fax numbers (and business e-mail address, if applicable);

(2) The tribal interest(s) to be represented by the nominee (see section V of this notice) and whether the nominee will represent other interest(s) related to this rulemaking, as the tribe may designate;

(3) A resume reflecting the nominee's qualifications and experience in Indian education (including being a parent of a student attending a BIE-funded school) and experience in any phase of school facility construction (including master planning, project planning, design, construction, and facility management), to adequately represent the interest(s) identified in (2) above; and

(4) A brief description of how they will represent tribal views, communicate with tribal constituents, and have a clear means to reach agreement on behalf of the tribe(s) they are representing. Additionally, a statement whether the nominee is only representing one tribe's views or whether the expectation is that the nominee represents a group of tribes.

To be considered, nominations must be received by the close of business on the date listed in the **DATES** section, at the location indicated in the **ADDRESSES** section. Nominations and comments received will be available for inspection at the address listed above from 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Dated: October 14, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.

[FR Doc. E8–25190 Filed 10–21–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14912–B; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Northway Natives, Incorporated. The lands are in the vicinity of Northway, Alaska, and are located in:

Copper River Meridian, Alaska

T. 14 N., R. 20 E.,
Secs. 3, 10, 14, and 15;
Secs. 23, 24, and 25.
Containing approximately 4,480 acres.
T. 16 N., R. 17 E.,
Sec. 4, excluding Veteran Native Allotment Application F–93244–A;
Secs. 5 and 9;
Sec. 15.
Containing approximately 2,276 acres.
Aggregating approximately 6,756 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until November 21, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a

week, to contact the Bureau of Land Management.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–25132 Filed 10–21–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–47658, CA–670–5101 ER B204)

Notice of Availability of Final Environmental Impact Report/ Environmental Impact Statement and Proposed Land Use Plan Amendment for the Proposed Sunrise Powerlink Project

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM), together with the California Public Utilities Commission (CPUC), has prepared a Final Environmental Impact Report/ Environmental Impact Statement (FEIR/ EIS) and Proposed Land Use Plan Amendment for the Sunrise Powerlink Project proposed by San Diego Gas & Electric Company (SDG&E).

DATES: The FEIR/EIS and Proposed Land Use Plan Amendment will be available for review until November 17, 2008 which is 30 calendar days from the date that the Environmental Protection Agency (EPA) published the Notice of Availability in the **Federal Register**, October 17, 2008 [73 FR 61859]. BLM planning regulations (43 CFR 1610.5–2) state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice in the **Federal Register**. Instructions for filing protests with the BLM are included in the **SUPPLEMENTARY INFORMATION** section of this notice and in the Executive Summary of the FEIR/EIS.

ADDRESSES: A copy of the FEIR/EIS/ Proposed Plan Amendment will be available electronically at the following Web site: *http://www.cpuc.ca.gov/ Environment/info/aspen/sunrise/ sunrise.htm.*

Copies of the document will be available for public inspection at the following locations:

- Bureau of Land Management, California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, CA 95825.
- Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243.
- Bureau of Land Management, California Desert District, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553.
- Bureau of Land Management, Palm Springs South Coast Field Office, 690 West Garnet Avenue, North Palm Springs, CA 92258–1260.
- Bureau of Land Management, South Coast Project Office, c/o Cleveland National Forest, 10845 Rancho Bernardo Drive, Suite 200, San Diego, CA 92127–2107.
- A list of public library repositories is also available on the project Web site at *http://www.cpuc.ca.gov/ Environment/info/aspen/sunrise/ sunrise.htm.*

Electronic (on CD–ROM) or paper copies of the FEIR/EIS may be obtained by contacting the BLM, 1661 South 4th Street, El Centro, CA, (760) 337–4421; or the CPUC's consultants: Aspen Environmental Group, 235 Montgomery Street #935, San Francisco, CA 94104, reachable by phone or fax at (866) 711–3106 or by e-mail at *sunrise@aspeneg.com.*

FOR FURTHER INFORMATION CONTACT: Information concerning the Final EIS/ Proposed Plan Amendment may be obtained from Lynda Kastoll, Project Manager for the BLM, at (760) 337–4421, or e-mail at *lkastoll@ca.blm.gov.* Information concerning the EIR process may be obtained from Billie Blanchard, Project Manager for the CPUC, at (415) 703–2068, or on the CPUC Internet Web site at *http://www.cpuc.ca.gov/ Environment/info/aspen/sunrise/ sunrise.htm.*

SUPPLEMENTARY INFORMATION: SDG&E proposes to construct a new 91-mile, 500-kilovolt (kV) electric transmission line from Imperial Valley Substation (in Imperial County, near the City of El Centro) to a new Central East Substation (in central San Diego County, southwest of the intersection of County Highways S22 and S2) and a new 59-mile 230–kV line that includes both overhead and underground segments from the new Central East Substation to SDG&E's existing Peñasquitos Substation (in the City of San Diego). Portions of the proposed 500–kV line transmission line would traverse approximately 35 miles of Federal lands managed by the BLM within the California Desert Conservation Area in Imperial County, and approximately one mile in San Diego County. The remainder of the proposed project would cross lands owned by various entities including the State of California, local governments, and private parties.

The proposed transmission lines would utilize structures ranging in height from 120 to 170 feet, spaced approximately 700 to 1,600 feet apart, and would occupy rights-of-way of approximately 60 to 300 feet in width (subject to local conditions and restrictions).

Two public scoping periods followed the CPUC's publication of the Notice of Preparation of an EIR/EIS on September 15, 2006, and the BLM's publication of the Notice of Intent in the **Federal Register** on August 31, 2006. Consultation with agencies and tribal governments also continued after the formal scoping ended. In addition, notices regarding alternatives to be evaluated in the EIR/EIS were mailed to interested parties in March and May of 2007.

In January 2008, a Draft Environmental Impact Report/ Environmental Impact Statement (DEIR/ EIS) was issued jointly by the CPUC and BLM. The DEIR/EIS provided information about the environmental setting and impacts of the Proposed Project and 27 alternatives, as well as connected actions and future foreseeable projects. The Environmental Protection Agency published a Notice of Availability for the DEIR/EIS/Plan Amendment on January 11, 2008, initiating a 90-day comment period. Copies of the document were sent to affected Tribes as well as Federal, State and local government agencies. The document was posted on the CPUC Web site and a link was provided on the BLM Web site. News releases were published in local newspapers announcing the availability of the document, and approximately 14,000 notices were mailed to known interested parties. In late January 2008, nine informational workshops were held throughout San Diego and Imperial counties. In February and May 2008, CPUC conducted seven public participation hearings to receive comments on the DEIR/EIS and any other issues of concern related to the SDG&E application.

In July 2008, a Recirculated DEIR/ Supplemental DEIS was issued by the CPUC and BLM that included three components: (1) New and revised analysis of the La Rumorosa Wind Project in Mexico and associated transmission/substation upgrades in the

U.S.; (2) description and analysis of several transmission line route revisions; (3) revision of components of the Environmentally Superior Alternatives for northern and southern transmission line routes. A 45-day public comment period on the Recirculated/Supplemental Draft ended on August 25, 2008.

The proposed project, as well as other transmission alternatives, would require an amendment to one of the following BLM land use plans: the *California Desert Conservation Area Plan* (as amended) and the *Eastern San Diego County Planning Unit Management Framework Plan* because the route alignments would deviate from BLM designated utility corridors in several areas.

Based on a careful review of the resource data in the FEIR/EIS, full consideration of all public comments received, and a determination of which alternative best meets the agency project objectives, the BLM's Agency Preferred Alternative is the Final Environmentally Superior Southern Route (SWPL) Alternative. This alternative is described in the FEIR/EIS at Section ES.2.4 and depicted on Figure ES–4, including the BCD/BCD South Option Reroute, except and unless easements can be secured by SDG&E for the Interstate 8 Alternative between McCain Valley Road and the eastern end of the Modified Route D Alternative in place of the BCD/BCD South Option Reroute. In either configuration (the Interstate 8/ Modified Route D or the Interstate 8/ BCD/BCD South), the BLM's Agency Preferred alternative would achieve all three CPUC and BLM project objectives and most SDG&E project objectives.

The Interstate 8 Alternative west of McCain Valley Road is shorter in length, located in a less remote area, and would result in fewer significant, unmitigable impacts to biological resources, recreation, and visual resources than would the BCD/BCD South Option Reroute. Because SDG&E may not be able to secure easements for the Interstate 8 Alternative between McCain Valley Road and the eastern end of the Modified Route D Alternative, BLM proposes to amend the existing land use plan for Eastern San Diego County to provide a one-time exception to the plan requirement that new gas, electric, and water transmission facilities and cables for interstate communication be allowed only within designated corridors. The proposed plan amendment would apply to the public lands along the BCD/BCD South Option Reroute portion of the Final Environmentally Superior Southern Route (SWPL) Alternative. As described in DEIR/EIS Section A.6.2, the BLM's decision regarding the approval of any route and plan amendment would be made in a Record of Decision to be issued in late 2008 or early 2009.

As noted above, instructions for filing a protest with the Director of the BLM regarding the proposed land use plan amendment may be found at 43 CFR 1610.5. Protests are specific to the proposed land use plan amendment. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular mail or overnight delivery service postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–208–5010, and e-mails to *Brenda_Hudgens-Williams@blm.gov*. All protests, including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to the following address: Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035. Overnight Delivery Service: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A copy of the FEIR/EIS has been sent to affected Tribes as well as Federal, State and local government agencies and interested parties.

Thomas Pogacnik,

Acting Deputy State Director, Natural Resources (CA–930), Bureau of Land Manager.

[FR Doc. E8–25154 Filed 10–21–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–915–09–L14200000–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

Indian Meridian, Oklahoma

T. 27 N., R. 19 E., approved June 19, 2008, for Group 164 OK; of the dependent resurvey of the south boundary and subdivisional lines and subdivision of section 35.

T. 16 N., R. 24 E., approved June 27, 2008, for Group 161 OK; of the dependent resurvey of the south boundary and subdivisional lines and subdivision of section 34.

T. 16 N., R. 12 W., approved January 16, 2008, for Group 155 OK; of the dependent resurvey of the subdivisional lines, and the 1873 meanders of the North Fork of the Canadian River in section 15 and subdivision of section 15.

Supplemental Plat, in 8 sheets, for T. 10 N., R. 26 E., Indian Meridian, OK., of Indian claims along the Arkansas River.

New Mexico Principal Meridian, New Mexico

T. 19 N., R. 12 E., approved July 28, 2008, for Group 1068 NM; of the dependent resurvey of the south boundary and subdivisional lines, Homestead Entry Survey No. 295 and subdivision of section 35.

T. 17 S., R. 25 E., approved August 22, 2008, for Group 1074 NM; of the dependent resurvey of the subdivisional lines, subdivision of section 3, and corrective resurvey of the metes and bounds survey in section 3.

T. 17 N., R. 19 W., approved July 2, 2008, for Group 1070 NM; dependent resurvey of the Fourth Standard Parallel and portions of the Navajo Indian Reservation, and the corrective resurvey of the West boundary of the reservation and subdivision of sections 32 and 34.

T. 8 N., R. 14 W., approved August 12, 2008, for Group 1080 NM; of the subdivision of section 14.

T. 11 S., R. 26 E., approved July 28, 2008, for Group 918 NM; of the dependent survey of the west and south

boundaries and subdivisional lines, and the subdivision of section 33.

T. 12 S., R. 26 E., approved July 28, 2008, for Group 918 NM; of the corrective resurvey of the north boundary and subdivisional lines, the dependent resurvey of the north boundary and subdivisional lines, and subdivision of sections 5 and 17.

Cebolleta Grant; approved August 21, 2008, for Group 1069 NM; of the dependent resurvey of the west boundary and the metes-and-bounds survey of the Mt. Taylor Ranch Tracts 1 and 2.

If a protest against a survey, as shown on any of the above plats, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of a protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: October 15, 2008.

Robert A. Casias,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. E8–25127 Filed 10–21–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–110–07–1220–PM–24–1A]

Notice of Proposed Supplementary Rules for Motorized Dispersed Camping at the Sand Spring and Dry Lake Bed Sites Managed by the Kanab Field Office, Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Supplementary Rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules for motorized camping at two undeveloped sites within the Moquith Mountain Wilderness Study Area (WSA). The proposed supplementary rules would help protect public health, and maintain Wilderness Study Area values and public land recreation opportunities in the area.

DATES: Comments on the proposed supplementary rules must be received or postmarked by November 21, 2008 to be assured consideration. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Mail or hand deliver all comments concerning the proposed supplementary rule to the Bureau of Land Management, 318 North First East, Kanab, Utah 84741 or e-mail comments to *Mail_UT-Kanab@ut.blm.gov*

FOR FURTHER INFORMATION CONTACT: Documents associated with the development of these supplementary rules, including but not limited to environmental and other analyses, can be viewed by contacting Tom Christensen, Outdoor Recreation Planner, BLM Kanab Field Office, 318 North First East, Kanab, Utah 84741, or telephone 435–644–4600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

This notice and a map depicting the area included under this requirement are available for public review at the Kanab Field Office. The area covered by this requirement is also shown on a map on the Kanab Field Office's Web site at *http://www.blm.gov/ut/st/en/fo/kanab.html.*

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing. The BLM need not consider (a) comments that BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than those listed above (see **ADDRESSES**). You may also access and comment on the proposed supplementary rules at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Kanab Field Office, 318 North First East, Kanab, Utah 84741, during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. Background

The BLM established the 14,830-acre Moquith Mountain WSA in 1980 upon determining that the public lands that now comprise the WSA contain wilderness characteristics of naturalness, outstanding opportunities for solitude, and primitive and unconfined recreation values. The Wilderness Act (16 U.S.C. 1131–1136) and section 603 of the Federal Land Policy and Management Act (43 U.S.C. 1782) provided the authority for establishing the WSA. The BLM Kanab Field Office in Kane County, Utah manages the WSA.

The following supplementary rules are proposed to implement the Vermilion Management Framework Plan (MFP) Amendment and associated Decision Record (August 2000) with respect to motorized dispersed camping at two sites within the WSA. These sites, which are known as Sand Spring and the dry lake bed, are located on the periphery of the Coral Pink Sand Dunes. The northern portion of the Coral Pink Sand Dunes (approximately 1,500 acres) is part of the Moquith Mountain WSA. The remaining 2,000 acres of the Dunes are within Coral Pink Sand Dunes State Park. No distinctive land form features separate BLM and State Park lands.

Recreation facilities in the Coral Pink Sand Dunes State Park consist of a 22-unit developed campground (with water, rest room, and shower facilities), a day-use area, parking lot, interpretive board walk, utility facilities and an office. The BLM administers the nine-unit Ponderosa Grove Campground at the northern end of the sand dunes. Facilities at Ponderosa Grove include picnic tables, grills, and fire rings, vault toilets, and limited vehicle parking. At times during the year, especially on holiday weekends, these developed

campgrounds are not sufficient to meet camping needs.

For this reason, the MFP Amendment provides for alternative, undeveloped camping areas at Sand Spring and up to four acres of the dry lake bed, and includes some rules to prevent harm to visitors or resources. This type of recreation is known as dispersed camping. The MFP Amendment also provides for cooperation with the State Park in the management of the WSA. The BLM has shared management of the dunes portion of the WSA with the State Park since 2002, under the terms of an Assistance Agreement. The BLM contributes funding in exchange for enhanced staffing and patrols provided by State Park personnel. At present, no supplementary rules are in effect for Sand Spring or the dry lake bed.

III. Discussion of Proposed Supplementary Rules

As noted in the Vermilion MFP Amendment, the BLM has allowed dispersed motorized and non-motorized camping at Sand Spring and the dry lake bed for several years, and has been monitoring camping activities at the two sites. Recently BLM has observed increasing hazards to visitors and to natural resources due to fires and improper disposal of garbage, ashes, and wastewater (also known as gray water) from sinks, baths or laundry machines.

A. Proposed Fire Rules

At Sand Spring, the BLM has observed damage to vegetation and adjacent fencing caused by fires, as well as safety and sanitation hazards resulting from trash left in fire rings. Since these impacts are nearly always associated with campers situated beside the main dunes access route, the BLM has determined that a prohibition on all ground fires within a 500-foot radius of the designated motorized entry path to the sand dunes within the Moquith Mountain WSA is necessary in order to safeguard public safety and to prevent damage to the wilderness characteristics of the WSA.

At the dry lake bed, the BLM has observed that the camping areas can become tightly confined. In these circumstances, open fires and fires in fire rings put visitors' safety at risk, and can adversely impact the wilderness characteristics of the Moquith Mountain WSA. The BLM has determined that, while an outright prohibition on ground fires is unwarranted at the dry lake bed, requiring fire pans at that location would help contain fire, and facilitate the collection and removal of ashes. Safety hazards and impacts to the ground and vegetation would thus be reduced.

The BLM does not propose to require any specific type of fire pan in these supplementary rules. However, BLM recommends the use of a metal tray with rigid sides, at least 3 inches high, and a stand that elevates the fire pan above the ground.

B. Proposed Disposal Rules

Recently the BLM has observed unsanitary conditions at both Sand Spring and the dry lake bed, as a result of the disposal of garbage, ashes, and gray water. Visitors' health, safety, and recreational experience are at risk, as is the naturalness character of the WSA.

Existing regulations at 43 CFR 8365.1 through 8365.1–7 address the use and occupancy of all public lands, including the undeveloped campsites at Sand Spring and the dry lake bed. One of these regulations provides that no person shall dispose of "sewage or petroleum products or dump refuse or waste other than wash water from any trailer or other vehicle except in places or receptacles provided for that purpose." 43 CFR 8365.1–1(b)(3). Since Sand Spring and the dry bed are undeveloped sites without designated disposal places or receptacles, the BLM construes this existing regulation as a prohibition against disposal of water from toilets at those locations. The existing regulation thus mitigates some, but not all, of the unsanitary conditions that have been observed at Sand Spring and the dry lake bed.

In order to further improve conditions, the proposed supplementary rules would prohibit the disposal of garbage, ashes and gray water, and the digging of holes for the purpose of such disposal. The objectives of such supplementary rules would be to safeguard public health and safety, restore a high-quality recreational experience for all visitors, and minimize the human imprint on the WSA.

If these proposed supplementary rules become effective, the BLM will include information about them on signs at or leading to major camping areas in the WSA.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rules would not have an annual effect of $100 million or more on the economy. They are not intended to affect commercial activity, but impose rules of conduct on recreational visitors for health protection reasons in a limited area of public lands. The supplementary rules would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal Governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor do they raise novel legal or policy issues. They merely strive to protect human health, safety, and the environment.

Clarity of the Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you may have on the clarity of the proposed supplementary rules to one of the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

As documented in Environmental Assessment No. UT–110–08–012 ("Supplementary Rules for Dry Lakebed and Sand Spring at Coral Pink Sand Dunes"), and an associated Finding of No Significant Impact and Decision Record, the proposed supplementary

rules do not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, the BLM has determined under the RFA that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). The proposed supplementary rules merely contain rules of conduct for recreational use of certain public lands. The proposed supplementary rules would not affect business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

The proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal Governments in the aggregate, or the private sector, of more than $100 million per year; nor would they have a significant or unique effect on small governments. Theses proposed supplementary rules do not require anything of State, local, or tribal Governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules are not a Government action capable of interfering with constitutionally protected property rights. The proposed supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the BLM has determined that these proposed supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules 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. The proposed supplementary rules apply on a limited area of land in only one State, Utah. Therefore, the BLM has determined that the proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that the proposed supplementary rules would not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. The supplementary rules contain rules of conduct for recreational use of certain public lands to protect human health and the environment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these proposed supplementary rules do not include policies that have tribal implications. The proposed supplementary rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. The supplementary rules would not have an adverse effect on energy supplies, production, or consumption. They only address motorized dispersed camping at two sites on BLM-administered public lands, and have no connection with energy policy.

Author

The principal author of the proposed supplementary rules is Tom Christensen, Outdoor Recreation Planner, Kanab Field Office, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authority for supplementary rules at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the Utah State Director, Bureau of Land Management, proposes to issue these supplementary rules for public lands managed by the BLM in Utah, to read as follows:

Supplementary Rules for Dispersed Camping at the Sand Spring and Dry Lake Bed Sites Managed by the Kanab Field Office, Kane County, UT

Definitions

Gray water: Wastewater from a sink, bath or laundry machine.

Motorized dispersed camping: The erecting of a tent or other shelter, with the parking of a motor vehicle, motor home or trailer, on public lands away from developed recreation facilities, for the apparent purpose of overnight occupancy while engaged in recreational activities such as hiking, hunting, fishing, bicycling, sightseeing, off-road vehicle activities, or other generally recognized forms of recreation.

Supplementary Rules

1. These supplementary rules apply, except as specifically exempted, to all motorized dispersed camping in and adjacent to Sand Spring and the dry lake bed campsites within the Moquith Mountain Wilderness Study Area (WSA). These campsites are comprised of public lands administered by the Bureau of Land Management near Kanab, Utah inclusive of the following sections: T. 43 S., R. 7 W., Section 17 and 18; and T. 43 S., R. 8 W., Section 14.

2. These supplementary rules are in effect on a year-round basis and will remain in effect until modified by the authorized officer.

3. Ground fires are prohibited at Sand Spring within a 500-foot radius of the designated motorized entry path to the sand dunes within the Moquith Mountain WSA.

4. Ground fires that are not contained within a fire pan are prohibited at the dry lake bed.

5. Disposal of garbage, ashes or gray water is prohibited at Sand Spring and the dry lake bed. The digging of holes for the purpose of disposal of garbage,

ashes or gray water at Sand Spring and the dry lake bed is also prohibited.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000, imprisoned no more than 12 months, or both, in accordance with 43 U.S.C. 1733(a) and 43 CFR 8360.0–7. Such violations may also be subject to the enhanced penalties provided by 18 U.S.C 3571 and 3581. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Utah law.

Jeff Rawson,

Acting State Director.

[FR Doc. E8–25153 Filed 10–21–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–OMM–0026]

MMS Information Collection Activity: 1010–00570, Pollution Prevention and Control, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (1010–0057).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR Part 250, Subpart C, Pollution Prevention and Control and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATE: Submit written comments by November 21, 2008.

ADDRESSES: You should submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0057), either by fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*).

Please also send a copy to MMS by either of the following methods:

- *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–0026 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. Submit comments to *regulations.gov* by November 21, 2008. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference, Information Collection 1010–0057, in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.*, and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to manage the mineral resources of the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-use and easement, and pipeline right-of-way. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." Section 1334(a)(8) requires that regulations prescribed by the Secretary include provisions "for compliance with the National Ambient Air Quality Standards [NAAQS] pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State." Section 1843(b) calls for "regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use."

Regulations implementing these responsibilities are under 30 CFR Part 250, Subpart C. Responses are mandatory. No questions of a sensitive nature are asked. The MMS protects information considered proprietary according to 30 CFR 250.197, Data and information to be made available to the public or for limited inspection, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

The MMS OCS Regions collect information required under part 250, subpart C, to ensure that:

- There is no threat of serious, irreparable, or immediate damage to the marine environment and to identify potential hazards to commercial fishing caused by OCS oil and gas exploration, development, and production activities;
- The operator records the location of items lost overboard to aid in recovery during site clearance activities on the lease;
- Operations are conducted according to all applicable regulations, permit conditions and requirements, and conducted in a safe and workmanlike manner;
- OCS oil and gas operations minimize air pollution of the OCS and adjacent onshore areas and comply with the required emission levels;
- A data baseline is established for the meteorological conditions in frontier areas of the OCS to determine that offshore facilities and operational practices can withstand the expected environmental forces in an area;
- Discharge or disposal of drill cuttings, sand, and other well solids, including those containing naturally occurring radioactive materials (NORM), are properly handled for the protection of OCS workers and the environment; and
- Facilities are inspected daily for the prevention of pollution, and problems observed are corrected.

For the Gulf of Mexico OCS Region (GOMR), this ICR also addresses the following non-routine information collection:

• The Environmental Protection Agency (EPA) promulgated National Ambient Air Quality Standards (NAAQS) for ozone, fine (i.e., < 2.5 micron) particulate matter ($PM_{2.5}$), and regulations for regional haze. Air quality related information will be needed to address any new or outstanding NAAQS and regional haze regulations. In preparation for usage by States and regional planning organizations, affected respondents are being required to collect and report air pollutant emissions data for OCS activities in the GOMR for the 2008 calendar year. This data will be used in future regional air quality modeling in support of revisions to State Implementation Plans and other air quality regulations. OCS lessees and operators are being required to collect these emissions data during the period of 1/1/08 to 12/31/08 and report the data to MMS in 2009.

Frequency: On occasion, daily.

Estimated Number and Description of Respondents: Approximately 130 potential Federal oil, gas, and sulphur lessees and/or operators and 17 states.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual hour burden for this information collection is a total of 198,866 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Pollution Prevention				
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM.	Burden covered under 1010–0141 (30 CFR Part 250, Subpart D).		0
300(c)	Mark items that could snag or damage fishing devices.	0.5	130 lessees	65
300(d)	Report and record items lost overboard	1 hr ea × 2 = 2	130 lessees	260
Subtotal			260	325
Inspection of Facilities				
301(a)	Inspect drilling/production facilities for pollution; maintain inspection/repair records 2 years.	¼ hr/day × 365 days = 91.25.	1,000 manned facilities	91,250
	1/12 hr every 3rd day (365/3 = 122) = 10.17 hrs.	3,000 unmanned facilities.	30,510.	
Subtotal			4,000	121,760
Facilities described in new or revised EP or DPP				
303(a) thru (d), (i), (j); 304(a), (f).	Submit, modify, or revise Exploration Plans and Development and Production Plans; submit information required under 30 CFR Part 250, Subpart B.	Burden covered under 1010–0151 (30 CFR Part 250, Subpart B).		0
303(k); 304(a), (g)	Collect and report air quality emissions related data (such as facility, equipment, fuel usage, and other activity information) during the calendar year 2008 for input into State and regional planning organizations modeling.	4 hrs per month × 12 months = 48.	1,585 platforms	76,080
303(l); 304(h)	Collect and submit meteorological data (not routinely collected—minimal burden).	1	1	1
Subtotal			1,586	76,081
Existing Facilities				
304(a), (f)	Affected State may submit request to MMS for basic emission data from existing facilities to update State's emission inventory.	4	5 requests	20
304(e)(2)	Submit compliance schedule for application of best available control technology (BACT).	40	10 schedules	400
304(e)(2)	Apply for suspension of operations	Burden covered under 1010–0114 (30 CFR Part 250, Subpart A).		0

Citation 30 CFR 250 Subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State.	15	10 submissions	150
Subtotal			25	570
General				
300–304	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	2	65 requests	130
Subtotal			65	130
Total Burden			5,936	198,866

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 28, 2008, we published a **Federal Register** notice (73 FR 30625) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 21, 2008.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: August 1, 2008.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E8–25047 Filed 10–21–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Continuation of Visitor Services

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

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

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
LAMEOO4–88	Lake Mead Ferry Service	Lake Mead National.
OLYMOO3–82	Forever NPC Resorts, LLC	Olympic National Park.
STLIOO3–89	ARAMARK	Statue of Liberty National Monument.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202 513–7156.

Dated: September 19, 2008.

Katherine H. Stevenson,

Assistant Director, Business Services.

[FR Doc. E8–24989 Filed 10–21–08; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Extension of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

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

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202–513–7156.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on September 20, 2008. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Conc ID No.	Concessioner name	Park
LAR0001–92	Colville Tribal Enterprise Corporation	Lake Roosevelt National Recreation Area.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202–513–7156.

Dated: September 19, 2008.

Katherine H, Stevenson,

Assistant Director, Business Services.

[FR Doc. E8–24988 Filed 10–21–08; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

Pursuant to Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 15, 2008, a proposed consent decree ("Consent Decree") in *United States and State of Maine* v. *J. K. Wright, Inc. and J Kenton Wright,* Civil Action No. 07-cv-116–B-W, was lodged with the United States District Court for the District of Maine.

In this action the United States and the State of Maine sought reimbursement of past response costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), incurred at the Hows Corner Superfund Site in Plymouth, Maine ("Site"). The United States filed its complaint pursuant to section 107 of CERCLA against the Defendants on August 8, 2007. The proposed Consent Decree resolves the claims asserted in the complaint. Pursuant to the proposed Consent Decree Defendants agree to pay $28,220 to the United States and $5,780 to the State of Maine, in reimbursement of past response costs at the Site.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Maine* v. *J. K. Wright, Inc. and J Kenton Wright,* Civil Action No. 07–cv–116–B–W, D.J. Ref. 90–11–3–1733/8.

The Consent Decree may be examined at the Office of the United States Attorney, 99 Franklin Street, 2nd Floor Bangor, ME 04401, and at U.S. EPA Region 1, One Congress Street, Suite 1100, Boston, MA 02114. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html* . A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–25069 Filed 10–21–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Advanced Media Workflow Association, Inc.

Notice is hereby given that, on September 11, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act") Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Harmonic Inc., Santa Clara, CA, MAGIX AG, Berlin, Germany; Red Bee Media Limited, London, United Kingdom, SeaChange International, Acton, MA; and Sun Microsystems, Santa Clara, CA, have been added as parties to this venture. Also, JW Hannay Co., Ltd., Glasgow, United Kingdom, has withdrawn as a party to venture.

No other changes have been made in either the membership or planned

activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 27, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 31, 2008 (73 FR 44773).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–24286 Filed 10–21–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,719]

3M Precision Optics, Inc., Cincinnati, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated September 18, 2008, the petitioners requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on September 3, 2008. The Notice of Determination was published in the **Federal Register** on September 18, 2008 (73 FR 54174).

The initial investigation resulted in a negative determination based on the finding that imports of optical systems for projection televisions and projectors did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioners provided additional information pertaining to the customers of the subject firm and alleged that imports of projection televisions and projectors increased.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–25072 Filed 10–21–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,910]

Magna Services of America, Inc., Magna Aftermarket, Inc., a Subsidiary of Magna International, Greenville, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application postmarked September 26, 2008, the petitioners requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on September 3, 2008. The Notice of Determination was published in the **Federal Register** on September 18, 2008 (73 FR 54174).

The initial investigation resulted in a negative determination based on the finding that imports of outdoor home speakers and lights did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioners provided additional information pertaining to the foreign facilities of the subject firm and alleged a shift in production of outdoor home speakers and lights by the subject firm to Canada.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of October 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–25071 Filed 10–21–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 3, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 3, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S.

Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of October 2008.

Erin FitzGerald,

Director, Division of Trade Adjustment Assistance.

APPENDIX

TAA PETITIONS INSTITUTED BETWEEN 10/6/08 AND 10/10/08

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
64165	Adrian Fabricators, Inc. (Comp)	Adrian, MI	10/06/08	10/01/08
64166	Best Foam (Wkrs)	Sherman, MS	10/06/08	10/02/08
64167	Sanmina-SCI USA, Inc. (State)	Costa Mesa, CA	10/06/08	10/02/08
64168	Dynamic Cooking Systems, Inc. (Comp)	Huntington Beach, CA	10/06/08	09/26/08
64169	Fisher and Paykel Appliances, Inc. (Comp)	Huntington Beach, CA	10/06/08	10/02/08
64170	Pretty Products, LLC (Comp)	Mt. Pleasant, TN	10/06/08	09/30/08
64171	Wheeling Brake Band Friction Mfg. (Wkrs)	Glen Dale, WV	10/06/08	10/03/08
64172	Zippo Manufacturing Company (Comp)	Bradford, PA	10/06/08	10/03/08
64173	Ellen Tracy (Wkrs)	New York, NY	10/06/08	10/01/08
64174	Loewenstein/Brown Jordan International (Wkrs)	Greensboro, NC	10/07/08	06/06/08
64175	Hanley Wood, LLC (Comp)	Chicago, IL	10/07/08	10/06/08
64176	Leggett and Platt (Comp)	Cerritos, CA	10/07/08	10/06/08
64177	Louis Hornick & Company, Inc. (Wkrs)	Haverstraw, NY	10/07/08	09/26/08
64178	Elbeco Incorporated/City Shirt Company (Comp)	Frackville, PA	10/07/08	10/06/08
64179	Elbeco Incorporated/Galion Manufacturing Co. (Comp)	Galion, OH	10/07/08	10/06/08
64180	Conestoga Wood Specialties Corp (Wkrs)	Beavertown, PA	10/07/08	09/26/08
64181	Autoliv (Comp)	Columbia City, IN	10/07/08	06/06/08
64182	Fairmont Dairy LLC (Comp)	Belleville, PA	10/08/08	09/25/08
64183	Prairie Wood Products (State)	Prairie City, OR	10/08/08	10/01/08
64184	Protient, Inc. (State)	Norfolk, NE	10/08/08	10/07/08
64185	PL Subsidiary, Inc. (Comp)	Charlotte, NC	10/08/08	10/07/08
64186	American Polymer, Inc. (Wkrs)	Oxford, MA	10/08/08	10/06/08
64187	Coupled Products LLC (Comp)	Columbia City, IN	10/08/08	10/07/08
64188	Winston Furniture (State)	Haleyville, AL	10/08/08	10/06/08
64189	Dura Automotive (Wkrs)	Lawrenceburg, TN	10/08/08	09/16/08
64190	Hafner USA (State)	New York, NY	10/08/08	10/03/08
64191	Bill Sills Sportswear, Inc. (Comp)	Huntingdon, TN	10/09/08	10/06/08
64192	Freudenberg-NOK (Comp)	Scottsburg, IN	10/09/08	10/08/08
64193	American Velvet Company (State)	Stonington, CT	10/09/08	10/08/08
64194	Formica Corporation (IUCWA)	Evendale, OH	10/09/08	10/08/08
64195	Enefco (State)	Auburn, ME	10/09/08	10/08/08
64196	Martinrea Heavy Stamping (Wkrs)	Shelbyville, KY	10/09/08	10/08/08
64197	Avid Medical Products (Comp)	Santa Ana, CA	10/10/08	10/09/08
64198	Cranston Print Works Company (Comp)	Webster, MA	10/10/08	10/09/08
64199	Cable Consultants, Inc. (Wkrs)	Corvallis, OR	10/10/08	09/29/08
64200	Bridgestone Firestone Diversified Products (Comp)	Noblesville, IN	10/10/08	10/09/08
64201	Order Acquisition (Comp)	Santa Clara, CA	10/10/08	10/09/08
64202	Barco, Inc. (Wkrs)	Xenia, OH	10/10/08	10/09/08
64203	Gates Rubber Company (State)	Siloam Springs, AR	10/10/08	10/09/08
64204	CMA Actuation Products (Wkrs)	Philipsburg, PA	10/10/08	10/09/08
64205	The Ohio Heart and Vascular Center (Wkrs)	Cincinnati, OH	10/10/08	10/08/08
64206	Hutchinson FTS, Inc. (State)	Reading, MI	10/10/08	10/09/08
64207	Delphi Electronics and Safety (Wkrs)	Vandalia, OH	10/10/08	09/24/08
64208	Anchor Glass Container (UAW)	Zanesville, OH	10/10/08	09/25/08
64209	Federal Screw Works (State)	Big Rapids, MI	10/10/08	10/09/08

[FR Doc. E8–25070 Filed 10–21–08; 8:45 am]
BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282–LR and 50–306–LR; ASLBP No. 08–871–01–LR]

Atomic Safety and Licensing Board; Northern States Power Co. (Formerly Nuclear Management Company, LLC.) (Prairie Island Nuclear Generating Plant, Units 1 and 2); Notice and Order (Scheduling Oral Argument)

October 16, 2008.

Before Administrative Judges: William J. Froehlich, Chairman; Dr. Gary S. Arnold; Dr. Thomas J. Hirons

Oral argument will be heard on standing and contention admissibility issues presented in the hearing request received on August 18, 2008, from the Prairie Island Indian Community (Petitioner).[1] This proceeding arises from an application filed on April 11, 2008, by Nuclear Management Company, LLC (NMC)[2] for renewal of Facility Operating License Nos. DPR–42 and DPR–60 for an additional 20 years of operation at the Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP).[3] PINGP is located near the City of Red Wing, Minnesota, on the west bank of the Mississippi River.

The participants are advised of the following information regarding the scheduling of the oral argument:

Date: Wednesday, October 29, 2008.

Time: 9 a.m. Central Time (CT).

Location: Dakota County Judicial Center—Courtroom 2E, 1560 Highway 55, Hastings, MN 55033.

The format of oral argument, including the allocation of time to the various participants, will be determined at the outset of the session. Generally, the Board asks that the Parties refrain from simply rehashing the content of their pleadings. Rather, the Board wishes to further explore with the Parties the positions they took in their written submissions. The oral argument will serve principally to assist the Board in the discharge of its decisional responsibilities regarding the admissibility of the Petitioner's proffered contentions. At the same time, however, it should provide counsel with a valuable opportunity to clarify for the Board those issues to be addressed.

The Board has identified 12 specific issues it wishes the Parties to address at oral argument. Counsel should arrive fully prepared to discuss each topic that is a matter of concern to his or her client(s). While the following list does not purport to include all issues that may arise, it should help to guide the Parties in their preparation.

(1) Does the NRC Staff still challenge Mr. Mahowald's representation, in light of the Petitioner's September 19, 2008, Reply at footnote 1 and Mahowald Declaration II?

(2) As to Contention 1, what does the Petitioner allege to be lacking from Applicant's Environmental Report (ER)? Provide citations to any cases, regulations, or statutes which spell out the requirements.

(3) As to Contention 2, Applicant, Petitioner, and Staff should be prepared to argue whether and to what extent the MACCS2 code is applicable to the severe accident mitigation analysis (SAMA) or the license extension. Applicant should be prepared to address "user inputs" to the code. The Board wishes to explore the extent to which the calculation that converts level of contamination to decontamination cost is controlled by user input.

(4) As to Contention 3, Applicant, Petitioner, and Staff should be prepared to discuss the level of detail with which Applicant must analyze impacts on endangered species in the ER. Parties should provide legal support for their positions.

(5) As to Contention 4, Applicant, Petitioner, and Staff should be prepared to address whether any "special circumstances" exist that would make the NRC's category 1 finding inapplicable. Petitioner should discuss the necessity to request a waiver in this case.

(6) As to Contention 5, Applicant should be prepared to discuss the demographics analysis in the ER and whether the Indian Community was specifically included. All Parties should be prepared to identify any requirements for addressing environmental justice in the ER that Applicant has not met.

(7) As to Contention 6, Applicant, Petitioner, and Staff should be prepared to address whether or not the "coatings issues" are addressed as part of the Current Licensing Basis (CLB). Petitioner should be prepared to address any plant specific data relied upon to support this contention.

(8) As to Contention 7, Applicant should be prepared to explain how the surveillance capsules are used. Applicant should also be prepared to address the current vessel surveillance plan and the proposed enhancements. If the proposed changes are significant, when would interested parties have a chance to review them? Petitioner's contention alleges that vessel internals are subject to embrittlement, that embrittlement could cause internals to fail during a loss-of-coolant accident, and that such a failure could lead to an uncoolable core geometry. Petitioner should be able to articulate the facts or expert opinion within the original contention supporting each one of these links.

(9) As to Contention 8, Petitioner should be prepared to address whether the "stress corrosion cracking" issue is addressed as part of the CLB. All Parties should be prepared to address the generic question: If an issue is subject to an Aging Management Plan (AMP) during the current license period, is it required to be addressed by an AMP as a part of relicensing?

(10) As to Contention 9, Petitioner should be prepared to identify what piping system(s) it is referring to and what safety-related function(s) those systems play. The Applicant should be prepared to explain the extent to which the Prairie Island facility has buried piping, what types of systems utilize these buried pipes, and which pipes, if any, are within the scope of license renewal.

(11) As to Contention 10, Petitioner will be asked if it has withdrawn this contention based on the statements in its Reply of September 19 at page 24.

(12) The oral argument will conclude with summary statements by the Parties on the pending motion to strike filed by Applicant on September 29, 2008, the NRC Staff's Response of October 9, 2008, and the Petitioner's Answer filed on October 10, 2008.

As an informational matter, the participants are advised that current planning calls for the proceeding to be made available for live viewing via the following Internet Web streaming feed: Prairie Island Oral Argument.

Please be advised that this Web stream will be available for viewing for 90 days after or until Tuesday, January 27, 2009.

It is so *ordered.*

[1] In response to a June 17, 2008, notice of opportunity for hearing published in the **Federal Register** (73 FR 34335), Petitioner timely filed a request for hearing and a petition to intervene in accordance with 10 CFR 2.309.

[2] The NRC has approved the transfer of operating authority over Prairie Island Nuclear Generating Station, Units 1 and 2, from Nuclear Management Company, LLC (NMC) to Northern States Power Company (Northern States). *See* Order Approving Transfer of License and Conforming Amendment (September 15, 2008), at 3 (ADAMS Accession No. ML082521182).

[3] The operating licenses for PINGP, Units 1 and 2, expire on August 9, 2013, and October 29, 2014, respectively. The April 11, 2008, application for renewal was supplemented by a letter dated May 16, 2008.

For the Atomic Safety and Licensing Board.

Rockville, Maryland, October 16, 2008.

William J. Froehlich,

Chairman, Administrative Judge.

[FR Doc. E8–25148 Filed 10–21–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–528]

Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Unit 1; Temporary Exemption

1.0 Background

The Arizona Public Service Company (APS, the licensee) is the holder of the Renewed Facility Operating License No. NPF–41 which authorizes operation of the Palo Verde Nuclear Generating Station (PVNGS), Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Maricopa County, Arizona.

2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.12, "Specific exemptions," APS has, by letter dated March 8, 2008, and supplemented by letter dated September 10, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML080790524 and ML082620212, respectively), requested a temporary exemption from 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," and Appendix K to 10 CFR 50, "ECCS Evaluation Models," (Appendix K). The regulation in 10 CFR 50.46 contains acceptance criteria for the emergency core cooling system (ECCS) for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K to 10 CFR Part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. The temporary exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46, and Appendix K is needed to irradiate lead fuel assemblies (LFAs) comprised of different cladding alloys at PVNGS, Unit 1. The scope of the staff's review of this temporary exemption request is limited to the current burnup limits; i.e., 60 gigawatt days per metric ton unit (GWD/MTU). Extending the burnup of these LFAs will require further NRC staff review.

The temporary exemption requested by the licensee would allow up to eight LFAs manufactured by AREVA NP consisting of fuel rods with M5 cladding material to be inserted into the PVNGS, Unit 1 reactor core in non-limiting locations during operating Cycles 15, 16, and 17. The use of M5 LFAs will allow APS to evaluate cladding for future fuel assemblies that need to be of a more robust design than the current fuel assemblies to allow for possible higher duty or extended burnup.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This temporary exemption would allow the licensee the use of M5 LFAs to evaluate cladding for future fuel assemblies that may need to be of a more robust design than the current fuel assemblies to allow for possible higher duty or extended burnup. The regulations specify standards and acceptance criteria only for fuel rod clads with Zircaloy or ZIRLO™. Thus, a temporary exemption is required to use fuel rods clad with an advanced alloy that is not Zircaloy or ZIRLO™. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed temporary exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

In regard to the fuel mechanical design, the PVNGS, Unit 1 temporary exemption request relates solely to the specific types of cladding material specified in the regulations. No new or altered design limits for purposes of 10 CFR 50, Appendix A, General Design Criterion 10, "Reactor Design," need to be applied or are required for this program. Also, the NRC staff's review was limited to the exemption request and does not address the core physics, core thermal hydraulics, fuel thermal-mechanical design, or the safety analysis aspects of the LFAs associated with the Updated Safety Analysis Report nor their placement in a non-limiting core location. APS has notified the staff of their intent to evaluate the LFAs as a change to the plant in accordance with 10 CFR 50.59. Furthermore, APS has provided information related to their planned evaluation of the LFAs as part of their exemption request (letter dated March 8, 2008) and in response to RAIs (letter dated September 10, 2008).

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. The staff's review and approval of topical report BAW–10227P–A, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," dated February 4, 2000 (ADAMS Accession Nos. ML003681479 and ML003681490), addressed all of the important aspects of M5 with respect to ECCS performance requirements: (1) Applicability of 10 CFR 50.46(b) fuel acceptance criteria, (2) M5 material properties including fuel rod ballooning and rupture strains, and (3) steam oxidation kinetics and applicability of Baker-Just weight gain correlation. A subsequent NRC-approved topical report, BAW–10240P–A, "Incorporation of M5 Properties in Framatome ANP Approved Methods," May 5, 2004 (ADAMS Accession No. ML041260560), further addressed M5 material properties with respect to loss-of-coolant accident (LOCA) applications.

Based on an ongoing LOCA research program at Argonne National Laboratory (ANL) and Research Information Letter 0801, titled, "Technical Basis for Revision of Embrittlement Criteria in 10 CFR 50.46," dated May 30, 2008 (ADAMS Accession No. ML0813502251), cladding corrosion (and associated hydrogen pickup) has a significant impact on post-quench ductility. Pre-test characterization of irradiated M5 fuel cladding segments at ANL provide further evidence of

favorable corrosion and hydrogen pickup characteristics of M5 as compared with standard Zircaloy-4. Hence, the M5 fuel rods would be less susceptible to the detrimental effects of hydrogen uptake during normal operation and their impact on post-quench ductility. Furthermore, ANL post-quench ductility tests on un-irradiated and irradiated M5 cladding segments demonstrate that the 10 CFR 50.46(b) fuel criteria (i.e., 2200 degrees Fahrenheit and 17 percent equivalent cladding reacted) remain conservative up to current burnup limits.

Information provided in the previously approved M5 topical reports, as well as recent ANL LOCA research, demonstrate that the acceptance criteria within 10 CFR 50.46 remain valid for M5 alloy and meet the underlying purpose of the rule—maintain a degree of post-quench ductility in the fuel cladding material.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy release, hydrogen generation, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the LFA cladding for determining acceptable fuel performance. Metal-water reaction tests performed by AREVA (topical report BAW–10227–P–A) demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, application of Appendix K, Paragraph I.A.5 is not necessary for the licensee to achieve its underlying purpose in these circumstances.

In addition, APS states that the eight LFAs will be placed in non-limiting core locations (e.g., lower power assembly locations), which provide further margin to ECCS performance requirements and ensure that the behavior of the LFAs is bounded by the safety analyses performed for the standard fuel rods. Based upon results of metal-water reaction testing and mechanical testing, which ensure the applicability of 10 CFR 50.46 acceptance criteria and 10 CFR 50 Appendix K methods and the placement of LFAs in non-limiting locations, the staff finds it acceptable to grant a temporary exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 for the use of eight AREVA LFAs within PVNGS, Unit 1.

Based on the above, no new accident precursors are created by allowing the use of LFAs with M5 cladding material in PVNGS, Unit 1 reactor core during operating Cycles 15, 16, and 17, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed temporary exemption would allow the use of up to eight LFAs with advanced cladding materials. This change to the plant core configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this temporary exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for ECCS performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to these advanced cladding alloys, even though the evaluations discussed above show that the intent of the regulations are met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved with the use of these advanced cladding alloys, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting of an exemption from 10 CFR 50.46 and Appendix K exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the temporary exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants APS temporary exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50, to allow the use of fuel rods clad with an advanced alloy that is not Zircaloy or ZIRLO™ to be inserted into the PVNGS, Unit 1 reactor core in non-limiting locations during operating Cycles 15, 16, and 17.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this temporary exemption will not have a significant effect on the quality of the human environment (73 FR 57386, October 2, 2008).

This temporary exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of October 2008.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The proposed amendment would revise Technical Specification (TS) 3.4.10, "Pressurizer Safety Valves," TS 3.4.11, "Pressurizer Power Operated Relief Valves (PORVs)," and TS 3.4.12, "Cold Overpressure Mitigation System (COMS)," to adopt the NRC-approved Technical Specification Task Force (TSTF) travelers TSTF–247–A and TSTF–352–A. In the **Federal Register** (FR) notice of consideration published on March 25, 2008 (73 FR 15791), the NRC staff identified the proposed changes to TSs 3.4.10 and 3.4.11 to modify the completion times for default conditions in both TSs and to allow separate condition entry for PORV block valves in TS 3.4.11, but did not identify the proposed change to TS 3.4.12 to extend the completion time for Condition G. This notice is to identify this proposed change to TS 3.4.12.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10