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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

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

[Docket No. 04–052–2]

RIN 0579–AC48

Livestock Identification; Use of Alternative Numbering Systems

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with several changes, an interim rule that, among other things, amended the regulations to allow for the use of additional numbering systems for purposes of animal and premises identification. As amended by this document, the rule recognizes additional numbering systems for the identification of animals in interstate commerce and State/Tribe/Federal/industry cooperative disease control and eradication programs. Additionally, the rule amends the regulations to authorize the use of a numbering system to identify premises where animals are managed or held. These regulatory changes are necessary to allow the use, for official purposes, of the new numbering systems in the National Animal Identification System. Use of the new numbering systems is not required by this final rule.

EFFECTIVE DATE: July 18, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, NAIS Coordinator, Surveillance and Identification Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on November 8, 2004 (69 FR 64644–64651, Docket No. 04–052–1), we amended the regulations to recognize additional numbering systems for the identification of animals in interstate commerce and State/Federal/industry cooperative disease control and eradication programs. Additionally, the interim rule amended the regulations to authorize the use of a numbering system to identify premises where animals are managed or held. Specifically, the interim rule recognized the animal identification number (AIN) for the identification of individual animals, the group/lot identification number (GIN) for the identification of groups or lots of animals, and the premises identification number (PIN) for the identification of premises. These new numbering systems are key elements in the National Animal Identification System (NAIS). The changes we made to the regulations in the interim rule were necessary to allow the use of these new numbering systems for official purposes in disease control and eradication programs. The interim rule did not require use of the new numbering systems, however. Finally, the interim rule amended the regulations to prohibit the removal of official identification devices and to eliminate potential regulatory obstacles to the recognition of emerging technologies that could offer viable alternatives to existing animal identification devices and methods.

Comments on the interim rule were required to be received on or before January 7, 2005. We received 16 comments by that date. They were from beef, cattle, sheep, goat, and poultry producers; producers associations; and State governments. The comments are discussed below.

There were several comments pertaining to our definition of the AIN. Issues discussed included the need for a nationally unique AIN, the recognition of different types of AINs, a possible alternative to the AIN, and the need for having a sunset date for other types of identification numbers so that the AIN will be in effect nationally.

One commenter stated that the definition of the AIN contained in our November 2004 interim rule does not require that the number be ''nationally unique'' or indicate that there is a need to avoid duplication with existing numbers. It would be useful, according to this commenter, to include this requirement in the definition of AIN so that the rule is clear and specific throughout.

We agree with this comment and are changing the definition accordingly. Since the NAIS is a national system, it is important that each AIN be nationally unique and that duplication be avoided. This final rule amends the definition of *animal identification number* (*AIN*) to read as follows: ''A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.''

The same commenter, noting that the interim rule recognized three types of AINs (those beginning with an ''840'' country code, with the alpha characters ''USA'', and with a numeric code assigned to the manufacturer of the device), stated that it was appropriate to identify the three types of numbers as ''official numbering systems'' and that the latter two forms should be referred to using alternative terminology, *e.g.*, ''American ID'' for the ''USA'' number, in order to prevent confusion. The commenter expressed the concern that only the ''840'' number will be recognized in the NAIS.

We are not making any changes to the final rule in response to this comment. Because a uniform animal identification numbering system is needed to make the NAIS successful, we do intend that, in the future, only the ''840'' AIN will be recognized for official use, to the extent practical. The interim rule recognized the ''USA'' and manufacturer's code numbers in order to avoid placing an excessive burden on producers who were already using those numbering systems for identifying their animals. We view these numbering systems as transitional, however, and anticipate phasing them out as we progress toward full implementation of the NAIS. Additional information about this phasing-out process and timelines for the transition to APHIS' recognition of only the ''840'' AIN for official use

will be provided in future rulemaking or other documents.

Another commenter recommended that we adopt a ''universal animal identification number (UAIN)'' in place of our AIN. While the UAIN could have the same format as the AIN, the former would be a permanent and unique database number for a single animal and would be linked with all physical device identifiers associated with the animal, including radio frequency identification devices (RFIDs), visual tags, retinal scans, DNA, brands, and unlimited alternate identifiers. The commenter stated that the UAIN could be used at the producer's option as the RFID number, or another ISO-compliant number could be used as an alternative. According to the commenter, the UAIN alternative would make it possible for both currently accepted and new identification technologies to be easily adopted without having to reengineer the official database over time. The UAIN would also allow easy retagging or reidentification, as retagging would link a new physical identifier to the original UAIN. There would be only one UAIN linked with one animal.

We are not making any changes in response to this comment. In the NAIS, the AIN will provide the same capabilities as would the commenter's recommended UAIN. The initial AIN assigned to an animal will be its lifetime number. Additionally, there is merit in having the animal's AIN attached to the animal for visual collection and subsequent recording for routine animal health tests, as well as health certificates. When a tag is lost and it is necessary to assign a new AIN to an animal, the pertinent NAIS databases will cross-reference the replacement AIN with the animal's original AIN. It is acknowledged that in some cases, the animal's original AIN may not be known, and thus cross-referencing of the two AINs will not be possible.

Another commenter suggested that, as soon as possible, a reasonable sunset date for identification numbers other than the ''840'' AIN should be established and communicated to industry. The commenter stated that the goal of the AIN implementation period should be to minimize labor for producers whose livestock are already identified and to increase the number of animals that can be easily recorded in the system, while at the same time transitioning all livestock to be identified using one uniform, standardized, and technology-neutral numbering system for the NAIS.

While we are not making any changes to the final rule as the result of this comment, which is beyond the scope of the present rulemaking, we do agree with the commenter. As noted above, we view the ''USA'' and manufacturer's code AINs as transitional and intend to phase them out as we progress toward full implementation of the NAIS, leaving the ''840'' AIN as the only one recognized for official use, to the extent practical. A date will be set for the sunset of the ''USA'' and manufacturer's code numbers, and advance notice will be provided to ensure a smooth transition to the ''840'' number for official use in disease control and eradication programs.

A commenter suggested that the definition of *group/lot identification number (GIN)* should be amended in the final rule to state that each animal reported in a group movement be required to have an individual animal group identification tag and that the number of head being moved in each group should be reported to the official database. In the absence of these requirements, according to the commenter, one has no way to prove that the animals were part of the group being moved once they are intentionally or accidentally commingled at a premises.

We are not making any changes to the final rule in response to this comment. Requiring an identification tag for each individual animal in a group would defeat the purpose and utility of group/lot identification. The intent behind the GIN is that the group of animals is referenced by a unique number so that each individual animal does not need to be tagged.

We did determine, however, that we needed to change the format of the GIN slightly. The November 2004 interim rule defined the GIN as consisting of a seven-character PIN and a six-digit representation of the date on which the group or lot of animals was assembled. That format made no provision for situations where more than one group of animals may be moved from a premises on the same day. Several of the species working groups that are working with APHIS on the NAIS—the sheep industry in particular—believed that the format needed to be revised in order to allow for the assignment of multiple GINs to multiple groups of animals moving from a premises on a single day. Therefore, the GIN has been revised by adding two digits. These two additional digits will provide for the identification of up to 99 groups/lots of animals moving from a premises on the same day. In this final rule, we are amending the definition of the GIN to reflect this change in format.

Other commenters discussed issues pertaining to the PIN. Concerns expressed by these commenters included the need for a nationally unique PIN, potential ambiguity about who will assign PINs, and the PIN format.

The same commenter who stated that we needed to specify that the AIN would be a ''nationally unique'' number offered a similar comment about the PIN. Noting that the definition contained in the November 2004 interim rule states that the PIN is a ''unique number,'' the commenter argued that the final rule should state that the PIN is a ''nationally unique number.''

We agree with this comment as well. As with the AIN, it is important to avoid duplication with the PIN. We are amending the definition of *premises identification number (PIN)* in this final rule to indicate that it is a nationally unique number.

We are also making some additional modifications to the definition of *premises identification number (PIN)* in this final rule for the sake of comprehensiveness, clarity, and flexibility. While the definition in the interim rule refers to PINs being assigned by State or Federal animal health authorities, the definition in this final rule provides for Tribal authorities to do so as well. Secondly, whereas the PIN is currently defined, in part, as a nationally unique number representing a geographically distinct location from other livestock production units, the definition in this final rule refers to a geographically distinct location from other premises. This change, complemented by a new definition of *premises* as a location where livestock or poultry are held or kept that we are adding to § 71.1, makes the definition of the PIN more inclusive than the one in the interim rule. Finally, the definition of the PIN in the interim rule also stated, among other things, that the number is associated with an address or legal land description. In this final rule, the definition indicates that the PIN is associated with an address, geospatial coordinates, and/or other location descriptors which provide a verifiably unique location. The new definition provides greater flexibility by allowing for additional means of determining specific locations that will be associated with PINs.

The same commenter also expressed concern about the potential for confusion regarding who assigns PINs to premises. The commenter noted that the interim rule indicated that the PIN can be assigned by a State or Federal animal health official and that the assignment of the number is based on the judgment of either the State or Federal animal health official that the premises is a geographically distinct location from

other livestock production units. According to the commenter, this provision appears to open up possibilities for jurisdictional conflict and could result in producers receiving conflicting information. The commenter argued that the PINs should be assigned to premises by the authorized animal health official, who, in most cases, would be the designated State animal health official.

We are not making any changes to the final rule as a result of this comment. While it is a State or Tribe's responsibility to maintain the system to register premises within its geographic area and to be the direct contact for producers registering their premises, the NAIS, as a State-Tribal-Federal cooperative program, necessitates cooperative efforts for the interpretation of premises definitions to ensure consistent interpretation nationwide. The definition of *premises identification number (PIN)* contained in the interim rule reflected the cooperative nature of this enterprise, a point we are further reinforcing by adding the reference to Tribal authorities to the definition in the final rule.

Another commenter expressed some concerns about the format of the PIN, as defined in our November 2004 interim rule. The interim rule recognized a new PIN format for official use: A seven-character alphanumeric code, with the right-most character being a check digit. This commenter suggested that adding an alphanumeric checksum character to a six-character code could increase the number of transcription errors because a seventh character could exceed the normal range of short-term memory. The commenter's preferred solution would have the numbers of digits in PINs vary according to the primary function of a particular premises. Commercial poultry producers' premises would have five-digit PINs assigned to them. There would be six-digit PINs assigned to swine producers, seven-digit PINs to beef producers, eight-digit PINs to dairy producers, and nine-digit PINs to other producers. Such a system, according to the commenter, would reserve the shorter PINs for those sections of agriculture that will be the primary users of the numbering system, support the implementation of species-specific identification tags, make tattoos easier to read, decrease transcription errors, and allow for the recording of numbers into electronic ID systems.

We do not support this recommendation. The PIN is intended to identify a geographical location where livestock or poultry are managed or held rather than the species present at the premises. The agricultural activity at a given premises may change over time due to changes in ownership or other factors. The PIN, as defined in the rulemaking, allows for that possibility. Under the commenter's proposal, on the other hand, a change in the primary species produced at a premises would necessarily result in that premises having to be assigned a new PIN.

One commenter asserted that while the definition of *official eartag* contained in the interim rule indicated that the official eartag must ''provide unique identification for individual animals,'' it did not specify how this was to be done.

We do not agree with this comment. The definition of *official eartag* in the interim rule specified numbering systems that may be used on the eartags for the identification of individual animals in the NAIS.

The same commenter also argued that while the official eartag requirements seem appropriate for the future, they may not be entirely so at present. The definition of *official eartag* provided in the interim rule stated that an official eartag must bear the U.S. shield. As the commenter pointed out, many animals currently carry tags that meet all the interim rule's requirements for an official eartag with the exception of having the U.S. shield printed on the tag. In addition, many such tags have been manufactured and are ready to be used in cooperative agreements to begin the implementation of the NAIS. By requiring animals carrying these tags, with verifiably unique numbers, to be retagged in order for their eartags to be recognized as official, APHIS would place a significant burden on producers and delay implementation of the program, according to the commenter. The implementation of the NAIS would be facilitated and industry would benefit if the requirement for printing the U.S. shield on official eartags were set at some future specific date and if tags currently in use that meet all other criteria continue to be recognized as official eartags until that date.

We recognize that we would be placing a significant burden on producers if we required them to retag their animals in order that the eartags used meet the U.S. shield requirement. Therefore, we are going to allow producers employing the transitional ''USA'' and manufacturer's code numbers, as well as PIN-based numbers, to continue to use eartags that meet all the other specifications but do not have the U.S. shield imprinted upon them. In this final rule, we have amended the definition of *official eartag* to require the U.S. shield only for eartags using ''840'' AINs.

Another commenter stressed the importance of having official identification devices be ''tamper evident'' and having provisions in the regulations stating that the removal of such devices prior to slaughter would be subject to penalties. The commenter also stated that minimum retention rates for such devices should be established in partnership with the livestock industry, and manufacturer compliance with those rates should be required for participation in the NAIS.

We are not making any changes to the final rule in response to these comments. The definition of *official eartag* in the November 2004 interim rule states that an official eartag ''must be tamper resistant and have a high rate of retention in the animal.'' The commenter did not indicate how ''tamper evident'' differs from ''tamper resistant.'' The species working groups recommend specific technologies and performance requirements, including minimum retention rates, for those technologies. Based on those recommendations, APHIS has developed an evaluation process for device manufacturers seeking to have their devices approved for use in the NAIS. This process includes the evaluation of minimum retention rates for the identification devices used in the NAIS. The interim rule did add prohibitions on removing identification devices prior to slaughter to parts 71 and 93, though penalties were not specified. Generally, our regulations do not include descriptions of the penalties provided for by the Animal Health Protection Act and other statutes.

Another commenter cautioned against relying completely on official tags as the sole or primary physical identifier of animals in the NAIS. Physical identifiers, the commenter noted, are not necessarily permanent. Tags of all types are lost, damaged, malfunction, or become unreadable. The commenter recommended that, in place of existing tag requirements, we adopt for use in the NAIS a Device Animal Identification Number—Radio Frequency Identification (DAIN–RF) tag. The DAIN–RF tag would be required to be attached to each animal or subdermally implanted in each animal, as determined by each species group, and would have to meet ISO standards so that each identification number would be unique. The DAIN–RF tag would be unofficial and would not bear the U.S. shield. The tag would be required to display the encoded ISO number on the outside. The use of these tags in the NAIS would not require manufacturers to change their normal manufacturing processes or to establish a unique color

for official identification. The commenter also argued that DAIN–RF tags used for beef production should not be limited to a one-time use, since reusable tags have been employed to identify animals in the beef industry for over 10 years. The use of reusable tags reduces the costs of animal identification.

We are not making any changes to the final rule in response to this comment. The commenter is certainly correct in saying that tags get lost; however, while some tag loss is expected, the requirement contained in the interim rule's definition of *official eartag* that such tags have high retention rates will provide adequate protection. Additional methods to validate identification when tags are lost will be considered as technology becomes practical and affordable, but to require identification that is absolutely permanent for all animals is not practical today. One-time use of official identification devices has been an important factor in maintaining the integrity of animal identification for many years, and we feel strongly this practice should continue. Additionally, the species working groups support the use of official tags.

The same commenter also recommended that we add a definition of *AIN manager* to the final rule. The commenter stated that *AIN manager* should be defined as a representative of a company that receives allocations from the USDA of UAINs (as defined by this commenter and referred to earlier in this document) to be used as permanent database identification for the animal. AIN managers would be data service providers, data trustees, or others who participate in linking an ISO RFID device on the animal and subsequent alternate identification devices to the UAIN in a database.

We are not making any changes to the final rule in response to this comment. The comment goes beyond the scope of this rulemaking, the primary intent of which is to allow for the use of new numbering systems for the identification of animals and premises for official purposes in disease control and eradication programs. In the NAIS User Guide, a document that was made available to the public in November 2006 and that represents the most up-to-date information about the program, we defined an *AIN device manager*, in part, as an ''entity that represents an AIN device manufacturer for the distribution of AIN devices.'' Additional description of the roles and responsibilities of the AIN device manager is provided in that definition and elsewhere in the NAIS User Guide. We will follow the recommendations of the NAIS Draft Program Standards, which were updated and released in February 2007 as the ''Program Standards and Technical Reference'' document, for the allocation of AINs to AIN device manufacturers and the distribution of AIN devices through AIN device managers and resellers.

The same commenter also recommended that we adopt a new definition of *officially identified*. Based on this commenter's recommendation, which was discussed earlier in this document, that we adopt the UAIN as the official means of identification for individual animals in the NAIS, the suggested new definition of *officially identified* would read as follows: ''An animal that is uniquely and officially identified with a tamper-proof database identifier allocated to data service providers or data trustees by USDA and known as a UAIN. An officially identified animal is one that has been reported to the official database for purposes of NAIS tracing. The UAIN will be linked to the physical identifiers associated with an animal.''

We are not making any changes to the final rule as a result of this comment. As noted earlier, the AIN will serve as an animal's lifetime identification number and will provide the same capabilities as the UAIN that the commenter recommends. Having the AIN printed on an animal's official tag will aid in the administration of animal health programs.

The same commenter also suggested that we needed to add certain definitions to the regulations in order to avoid ambiguity. While the regulations provide specific definitions of *commingling* for swine and sheep, no such definition is provided for cattle. The commenter recommended that the regulations should state that, for cattle, *commingling* means that an animal was not prohibited from coming in contact with another animal. The commenter also stated that the definition for a unit of animals varies among species, resulting in potential ambiguity in the establishment of group identification, and that production systems can be interpreted to have variable meanings within and across species.

We will take these suggestions into consideration, though they appear to go beyond the scope of the present rulemaking, which is primarily concerned with allowing for the use of alternative numbering systems for identifying animals and premises. The GIN standards contained in this rule pertain to the numbering system. In the NAIS User Guide, published on the NAIS Web site on November 22, 2006, we defined the term *commingle* as referring ''to events where animals are mixed or brought together with animals from other farms, ranches, or other production systems.'' This definition was applicable to all species.

A number of commenters stated that the voluntary Scrapie Flock Certification Program, which has worked effectively for small producers, should be continued in its current form rather than being replaced by a new identification system. (Numbering systems that are accepted for official use in this program are described in 9 CFR 79.2, which also contains a list of approved means of identification.) One of these commenters stressed the importance of producers with small goat herds being allowed to continue to use microchip implants as a means of animal identification. Implants, according to this commenter, are more reliable than eartags or tattoos, which are less likely to be permanent and are more vulnerable to tampering.

We agree with these comments, but note that they do not necessitate any changes to the final rule. Producers with small goat herds will still be able to use microchip implants, since the definition of *official identification device or method* contained in the interim rule is sufficiently flexible to allow for the use of such devices.

One commenter suggested that when the NAIS is fully implemented, health certificates for cattle should be eliminated. The commenter stated that the health certificates would be a duplication of the tracking function of the NAIS and would no longer be necessary. This comment does not appear to be relevant to the current rulemaking.

Finally, in addition to the changes discussed above, we are adding a definition of *animal identification number (AIN)* to § 79.1 and revising the existing definition of *official eartag* in that section so that it matches the one described earlier in this document. These changes will ensure that the definitions in part 79 are consistent with the definitions found elsewhere in our regulations pertaining to the interstate movement of animals.

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

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

List of Subjects

9 CFR Part 71

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

9 CFR Part 77

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

9 CFR Part 78

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

9 CFR Part 79

Animal diseases, Quarantine, Sheep, Transportation.

9 CFR Part 80

Animal diseases, Livestock, Transportation.

■ Accordingly, we are amending 9 CFR parts 71, 77, 78, 79, and 80 as follows:

PART 71—GENERAL PROVISIONS

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

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

■ 2. Section 71.1 is amended by revising the definitions of *animal identification number (AIN), group/lot identification number (GIN), official eartag,* and *premises identification number (PIN)* and by adding a definition of *premises* to read as follows:

§ 71.1 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Group/lot identification number (GIN). The identification number used to uniquely identify a ''unit of animals'' of the same species that is managed together as one group throughout the preharvest production chain. The GIN consists of a seven-character premises identification number (PIN), as defined in this section, a six-digit representation of the date on which the group or lot of animals was assembled (MM/DD/YY), and two additional digits, ranging from 01 to 99, for the numbering of different groups or lots of animals assembled on the same premises on the same day. When more than one group of animals is assembled, the groups will be designated consecutively as 01, 02, 03, etc.

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag which contains or displays an AIN with an 840 prefix must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System.

(2) Animal identification number (AIN).

(3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

Premises. A location where livestock or poultry are housed or kept.

Premises identification number (PIN). A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN). The premises identification number may consist of:

(1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

(2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

PART 77—TUBERCULOSIS

■ 3. The authority citation for part 77 continues to read as follows:

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

■ 4. Section 77.2 is amended by revising the definitions of *animal identification number (AIN), official eartag,* and *premises identification number (PIN)* to read as follows:

§ 77.2 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag which contains or displays an AIN with an 840 prefix must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System.

(2) Animal identification number (AIN).

(3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

Premises identification number (PIN). A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or other location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. The premises identification number may consist of:

(1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

(2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

PART 78—BRUCELLOSIS

■ 5. The authority citation for part 78 continues to read as follows:

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

■ 6. Section 78.1 is amended by revising the definitions of *animal identification number (AIN)* and *official eartag* to read as follows:

§ 78.1 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag which contains or displays an AIN with an 840 prefix must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(a) National Uniform Eartagging System.

(b) Animal identification number (AIN).

(c) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in § 71.1 of this chapter, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(d) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

PART 79—SCRAPIE IN SHEEP AND GOATS

■ 7. The authority citation for part 79 continues to read as follows:

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

■ 8. Section 79.1 is amended as follows:

■ a. In the definition of *premises identification*, by removing the words ''number, as'' and adding the words ''number (PIN), as'' in their place.

■ b. By revising the definitions of *official eartag* and *premises identification number (PIN)* and adding a definition of *animal identification number (AIN)* to read as set forth below.

§ 79.1 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag which contains or displays an AIN with an 840 prefix must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System.

(2) Animal identification number (AIN).

(3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

Premises identification number (PIN). A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or other location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. The premises identification number may consist of:

(1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

(2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

PART 80—JOHNE'S DISEASE IN DOMESTIC ANIMALS

■ 9. The authority citation for part 80 continues to read as follows:

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

■ 10. Section 80.1 is amended by revising the definitions of *animal identification number (AIN), official eartag,* and *premises identification number (PIN)* to read as follows:

§ 80.1 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits,

with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag which contains or displays an AIN with an 840 prefix must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System.

(2) Animal identification number (AIN).

(3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

Premises identification number (PIN). A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or other location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. The premises identification number may consist of:

(1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

(2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

Done in Washington, DC, this 12th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13932 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27154; Directorate Identifier 2006–NM–139–AD; Amendment 39–15127; AD 2007–14–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A310 and A300–600 series airplanes. This AD requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating new and revised certification maintenance requirements. This AD results from the manufacturer determining that additional and revised certification maintenance requirements are necessary in order to ensure continued operational safety of the affected airplanes. We are issuing this AD to prevent safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems.

DATES: This AD becomes effective August 22, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 22, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A310 airplanes and Model A300–600 series airplanes. That NPRM was published in the **Federal Register** on February 6, 2007 (72 FR 5362). That NPRM proposed to require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating new and revised certification maintenance requirements (CMRs).

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request for Transition Period/Grace Period for Certain Maintenance Significant Item (MSI) Tasks

Airbus requests that we give a transition/grace period of approximately 2,000 flight hours (or twelve months) for the tasks specified in MSI 78.30.00 of the CMRs, ''thrust reverser actuation and cowling for airplanes that have installed a third line of defense (TLOD).'' Airbus states that the service bulletins that introduce the TLOD have been available since 2001. Airbus notes that this means that some airplanes might have exceeded the 7,000-flight-hour threshold for doing the MSI requirements and, per the NPRM, the actions specified in the MSI would be required for those airplanes within 3 months after the effective date of the AD. Based upon approximate annual utilization data, Airbus proposes a transition period of 2,000 flight hours or 12 months.

We agree to add a transition/grace period for the MSI 78.30.00 tasks for the

reasons Airbus stated. We have determined that providing this period for the tasks specified in MSI 78.30.00, as recommended by the manufacturer, will not adversely affect safety. We have added a new paragraph (g) to this AD that gives a transition/grace period for MSI 78.30.00 tasks, and we have revised paragraph (f) of this AD to refer to that new paragraph.

Request To Allow for Adjustments of Two Star CMRs

FedEx requests that the NPRM include a mechanism to allow for adjustments of two star CMRs in accordance with an operator's approved escalation practices or by an approved reliability program. FedEx states that the NPRM would require that operators request an alternative method of compliance (AMOC) in order to escalate compliance times specified in the CMRs and this would increase the burden for operators. In addition, FedEx believes that any adjustments should be able to be granted by the FAA, and not the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, as specified in the CMRs.

We partially agree with the commenter. As discussed in advisory circular AC 25–19, task intervals for two star CMRs may be adjusted using an operator's approved escalation practice or an approved reliability program. However, two star CMRs require an FAA-approved letter for any tasks to be changed or deleted. This AD allows adjustments to intervals as specified in Section 4 of the CMRs, ''Handling of Certification Maintenance Requirements'' and requires that the task may not be changed or deleted without prior approval from the aircraft certification office (ACO) of the FAA. Therefore, an AMOC is required for changes to a task but not for adjustments of the task intervals.

We agree that adjustments should be granted by the FAA. We have revised paragraph (f) of this AD to clarify that ''where the CMRs specify to contact the DGAC, operators are required to contact the FAA for such approvals.''

Request To Allow Short-Term Extensions

FedEx requests that we allow for exceptional short-term flight-hour or flight-cycle extensions for specific tasks. FedEx states that the CMRs specify these extensions are to be submitted to the DGAC for approval, but believes that these extensions should be granted by the FAA.

We partially agree with the commenter's request. We already allow for short-term extensions as specified in the CMRs. The short-term extension mechanism is clearly stated in Section 5 of the CMRs, ''Exceptional Short-Term Extensions.'' It is further stated in Section 5, that short-term extensions up to the maximum values may be granted without consultation with the DGAC. Therefore, only extensions in excess of those defined in Section 5 require further FAA approval. In this case, operators will need to request an AMOC from the FAA. We have not revised this AD in this regard.

However, as stated previously, we have revised paragraph (f) of this AD to clarify that where the CMRs specify to contact the DGAC, the operators must contact the FAA.

Request To Revise Model Designations

Air Transport Association (ATA) and UPS request that we revise the model designations in the NPRM. ATA notes that because we have called out all the Model A300–600 designations earlier in the NPRM, we should refer to only the Model A300–600 series aircrafts in paragraph (f) of the NPRM. UPS points out that the model designations for the CMRs in paragraph (f) of the NPRM need to be revised.

We agree to revise the model designations. Since the NPRM was issued, the type certificate data sheet for the affected models has been revised. We have revised the applicability and model designations specified in the AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Request for Clarification of Proposed Requirements

FedEx requests that we clarify the proposed requirements. FedEx questions whether revision of an operator's approved maintenance program to include the latest CMR revision would be all that is required by the NPRM, or if individual CMR inspections would be deemed mandatory and therefore would require repetitive tracking.

Concerning FedEx's request for clarification, we infer that the commenter is wondering if, after revising its copy of the Airworthiness Limitation section, there are other required actions such as ensuring that the operator's maintenance program is updated to incorporate the actions specified in the revised Airworthiness Limitations. Ensuring that one's maintenance program and the actions of its maintenance personnel are in accordance with the Airworthiness Limitations is required but not by the AD. Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies that no person may operate an aircraft for which airworthiness limitations have been issued unless those limitations have been complied with. Therefore, there is no need to further expand the requirements of the AD beyond that which was proposed because section 91.403(c) already imposes the appropriate required action after the airworthiness limitations are revised. We have not revised this AD in this regard.

Request To Reference Later Approved Revisions

FedEx and UPS request that we refer to later approved revisions of the CMRs. FedEx notes that the CMRs seem to be revised regularly.

We cannot use the phrase ''or later FAA-approved revisions'' in an AD when referring to the service document because doing so violates Office of the **Federal Register** (OFR) regulations for approval of materials ''incorporated by reference'' in rules. In general terms, we are required by these OFR regulations to either publish the service document contents as part of the actual AD language, or submit the service document to the OFR for approval as ''referenced'' material—in which case we may only refer to such material in the text of an AD. Since later approved revisions do not exist when the rule is issued, they cannot be submitted to the OFR for approval. To allow operators to use later revisions of the referenced document (issued after publication of the AD), either we must revise the AD to refer to specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with this AD under the provisions of paragraph (h) of this AD. We have not revised this AD in this regard.

Request To Revise the Instructions in Paragraph (f) of the NPRM

UPS requests that we revise the instructions in paragraph (f) of the NPRM. UPS notes that paragraph (f) specifies to revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness. UPS states that this document is controlled by the manufacturer and cannot be revised by the operator. UPS concludes that operators cannot comply with this proposed requirement and suggests rewording the requirement to state, ''revise the Operators Maintenance Program.''

We do not agree. The intent is to have all airworthiness limitations, regardless

whether imposed by original type certification or by later AD, located in one immediately recognizable document. In 1980, the FAA identified the Airworthiness Limitations section of the Instructions for Continued Airworthiness as the appropriate document. We consider that not having all airworthiness limitations in one document could lead to confusion as to what is or is not a mandatory maintenance action as identified in Federal Aviation Regulation, part 25, Appendix H, section H25.4. This is the basis of our requirement to have each operator maintain a current copy of the Airworthiness Limitations section. Each operator is provided with a copy of the Airworthiness Limitations section of the Instructions for Continued Airworthiness and it is the operator's copy that this AD requires to be revised to incorporate the latest revisions provided by the manufacturer. We have not revised this AD in this regard.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Revision of maintenance program	1	$80	$80	203	$16,240

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 have determined that 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.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–14–05 Airbus: Amendment 39–15127. Docket No. FAA–2007–27154; Directorate Identifier 2006–NM–139–AD.

Effective Date

(a) This AD becomes effective August 22, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A310 series airplanes and Model A300–600 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1.

Unsafe Condition

(d) This AD results from the manufacturer determining that additional and revised certification maintenance requirements are necessary in order to ensure continued operational safety of the affected airplanes. We are issuing this AD to prevent safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems.

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.

Revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness

(f) Within three months after the effective date of this AD, revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Airbus A300–600 Certification Maintenance Requirements (CMRs) AI/ST5/829/85, Issue 12, dated February 2005 (for Model A300–600 series airplanes); or Airbus A310 CMR AI/ST5/849/85, Issue 12, dated February 2005 (for Model A310 series airplanes); as applicable. Accomplish the actions specified in the applicable CMRs at the intervals specified in the applicable CMRs, except as provided by paragraph (g) of this AD. Where the CMRs specify to contact the Direction Générale de l'Aviation Civile (DGAC), operators are required to contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, for such approvals. The actions must be accomplished in accordance with the applicable CMRs.

Transition/Grace Period for Maintenance Significant Item (MSI) 78.30.00 Tasks

(g) For tasks identified in MSI 78.30.00, ''Thrust Reverser Actuation and Cowling,'' of Section 2, ''CMR 'Two Star' Tasks,'' of Airbus A300–600 CMR AI/ST5/829/85, Issue 12, dated February 2005; and Airbus A310 CMR AI/ST5/849/85, Issue 12, dated February 2005: The initial compliance time is within 2,000 flight cycles or 12 months after the effective date of this AD, whichever occurs later. Thereafter, actions identified in MSI 78.30.00 must be accomplished within the repetitive interval specified in the applicable CMRs. Where the CMRs specify to contact the DGAC, operators are required to contact the Manager, International Branch, ANM–116, for such approvals. The actions must be accomplished in accordance with the applicable CMRs.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with 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.

Related Information

(i) French airworthiness directive F–2005–123, dated July 20, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus A300–600 Certification Maintenance Requirements AI/ST5/829/85, Issue 12, dated February 2005; or Airbus A310 Certification Maintenance Requirements AI/ST5/849/85, Issue 12, dated February 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 26, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–13322 Filed 7–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27861 Directorate Identifier 2007–CE–035–AD; Amendment 39–15130; AD 2007–15–01]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Jetstream HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

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

ACTION: Final Rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

In-service reports have been received by BAE of failed bolts fitted to frame 199 wing spigot post assembly. If left uncorrected failure of these bolts will severely compromise the structural integrity of the wing to fuselage attachment. Failure of which would lead to loss of the aircraft.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 22, 2007.

On August 22, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at 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: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 18, 2007 (72 FR 28005). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In-service reports have been received by BAE of failed bolts fitted to frame 199 wing spigot post assembly. If left uncorrected failure of these bolts will severely compromise the structural integrity of the wing to fuselage attachment. Failure of which would lead to loss of the aircraft. To address these concerns, BAE issued SB 57–JA020740 original issue in February 2003 mandated by CAA AD 006–02–2003. Recently received additional information has caused BAE to raise the Service Bulletin to revision 2. Revision 2 of the SB introduces various changes. One is substantive, it relates to the need to check for correct washer installation. Incorrect installation could lead to fretting and fatigue crack initiation in the fitting followed by failure or bending loads in the bolt leading to failure of the affected bolts. If left uncorrected failure of these bolts or a wing fitting will severely compromise the structural integrity of the wing to fuselage attachment. Failure of which would lead to loss of the aircraft. This substantive change to the service bulletin necessitates the raising of this superseding AD.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 195 products of U.S. registry. We also estimate that it will take about 50 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. We estimate the cost of this AD to the U.S. operators to be $799,500, or $4,100 per product.

In addition, we estimate that any necessary follow-on actions will take about 25 work-hours and require parts costing $100, for a cost of $2,100 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this 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 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.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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:

2007–15–01 British Aerospace Regional Aircraft: Amendment 39–15130; Docket No. FAA–2007–27861; Directorate Identifier 2007–CE–035–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 22, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Jetstream HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

In-service reports have been received by BAE of failed bolts fitted to frame 199 wing spigot post assembly. If left uncorrected failure of these bolts will severely compromise the structural integrity of the wing to fuselage attachment. Failure of which would lead to loss of the aircraft. To address these concerns, BAE issued SB 57–JA020740 original issue in February 2003 mandated by CAA AD 006–02–2003. Recently received additional information has caused BAE to raise the Service Bulletin to revision 2. Revision 2 of the SB introduces various changes. One is substantive, it relates to the need to check for correct washer installation. Incorrect installation could lead to fretting and fatigue crack initiation in the fitting followed by failure or bending loads in the bolt leading to failure of the affected bolts. If left uncorrected failure of these bolts or a wing fitting will severely compromise the structural integrity of the wing to fuselage attachment. Failure of which would lead to loss of the aircraft. This substantive change to the service bulletin necessitates the raising of this superseding AD.

Actions and Compliance

(f) Unless already done, do the following actions using British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 57–JA020740, Revision 2, dated November 2, 2005.

(1) Inspect and torque check the bolts at frame 199 at the following compliance times:

(i) Initially within the next 90 days after August 22, 2007 (the effective date of this AD) or within the next 100 hours time-in-service (TIS) after August 22, 2007 (the effective date of this AD), whichever occurs first; and

(ii) Repetitively thereafter at intervals not to exceed 4,000 hours TIS.

(2) If any discrepancies are found in any of the inspections required in paragraph (f)(1) of this AD, before further flight, correct any discrepancies.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: We added repetitive inspection requirements in this AD to coincide with the service bulletin.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff,

FAA, ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; has the authority to approve AMOCs for this AD, if requested using the procedures found 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.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to European Aviation Safety Agency (EASA) AD No: G–2006–0003, dated February 2, 2006; and BAE SYSTEMS Jetstream Series 3100 and 3200 Service Bulletin 57–JA020740, Revision 2, dated November 2, 2005, for related information.

Material Incorporated by Reference

You must use BAE SYSTEMS Jetstream Series 3100 and 3200 Service Bulletin 57–JA020740, Revision 2, dated November 2, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact BAE Systems, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on July 9, 2007.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–13793 Filed 7–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 123

[CBP Dec. 07–53]

Advance Electronic Presentation of Cargo Information for Truck Carriers Required To Be Transmitted Through ACE Truck Manifest at Ports in the States of Maine and Minnesota

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Pursuant to section 343(a) of the Trade Act of 2002 and implementing regulations, truck carriers and other eligible parties are required to transmit advance electronic truck cargo information to Customs and Border Protection (CBP) through a CBP-approved electronic data interchange. In a previous document, CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved interchange and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry. This document announces that at all land border ports in Maine and Minnesota truck carriers will be required to file electronic manifests through the ACE Truck Manifest System.

DATES: Trucks entering the United States through land border ports of entry in the states of Maine and Minnesota will be required to transmit the advance information through the ACE Truck Manifest system effective October 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via e-mail at *james.d.swanson@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that CBP promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule to effectuate the provisions of the Act. In particular, a new section 123.92 (19 CFR 123.92) was added to the regulations to implement the inbound truck cargo provisions. Section 123.92 describes the general requirement that, in the case of any inbound truck required to report its arrival under section 123.1(b), if the truck will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, section 123.92 provides that CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

ACE Truck Manifest Test

On September 13, 2004, CBP published a notice in the **Federal Register** (69 FR 55167) announcing a test allowing participating Truck Carrier Accounts to transmit electronic manifest data for inbound cargo through ACE, with any such transmissions automatically complying with advance cargo information requirements as provided in section 343(a) of the Trade Act of 2002. Truck Carrier Accounts participating in the test were given the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange messaging.

A series of notices announced additional deployments of the test, with deployment sites being phased in as clusters. Clusters were announced in the following notices published in the **Federal Register**: 70 FR 30964 (May 31, 2005); 70 FR 43892 (July 29, 2005); 70 FR 60096 (October 14, 2005); 71 FR (January 24, 2006); 71 FR 23941 (April 25, 2006); 71 FR 42103 (July 25, 2006), 71 FR 77404 (December 26, 2006); 72 FR 7058 (February 14, 2007); 72 FR 14127 (March 26, 2007); and 72 FR 32135 (June 11, 2007).

CBP has now tested ACE at all of the planned ports, with the exception of Alaska. CBP expects to announce the test of the ACE truck manifest system at the land border ports in Alaska in a future notice in the **Federal Register**.

Designation of ACE Truck Manifest System as the Approved Data Interchange System

In a notice published October 27, 2006 (71 FR 62922), CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of required data and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry.

ACE will be phased in as the required transmission system at some ports even while it is still being tested at other ports. However, the use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test.

The October 27, 2006, document identified all land border ports in the states of Washington and Arizona and the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota as the first group of ports where use of the ACE Truck Manifest System is mandated. Subsequently, CBP announced on January 19, 2007 (72 FR 2435) that, after 90 days notice, the use of the ACE Truck Manifest System will be mandatory at all land border ports in the states of California, Texas and New Mexico. On February 23, 2007 (72 FR 8109), CBP announced that, after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in Michigan and New York. On April 13, 2007 (72 FR 18574), CBP announced that, after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in Vermont and New Hampshire, and at the land border ports in North Dakota at which ACE had not been required by any previous notice. On May 8, 2007 (72 FR 25965), CBP announced that, again after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in the states of Idaho and Montana, as well.

ACE Mandated at Land Border Ports of Entry in Maine and Minnesota

Applicable regulations (19 CFR 123.92(e)) require CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Accordingly, CBP is announcing in this document that, effective 90 days from the date of publication of this notice, truck carriers entering the United States through land border ports of entry in the states of Maine and Minnesota will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest System.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at the ports of entry announced in this document as of October 16, 2007.

Compliance Sequence

CBP has now either required the use of ACE for the transmission of advance electronic truck cargo information, or provided 90 days notice that it intends to do so, at every land border port in which CBP originally planned to require the use of ACE, with the exception of the land border ports in the state of Alaska.

Following the testing of the ACE truck manifest system at the land border ports in Alaska, CBP expects to announce in a **Federal Register** notice that it is providing 90 days' notice before ACE will be the mandatory transmission system for those ports as well.

Dated: July 12, 2007.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E7–13848 Filed 7–17–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9341]

RIN 1545–BE87

Treatment of Excess Loss Accounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502. Section 1.1502–19(d) governs basis determinations and adjustments of subsidiary stock in certain transactions involving members of a consolidated group. Section 1.1502–80(c) governs the determination of when subsidiary stock is treated as worthless under section 165. These final regulations affect affiliated groups of corporations filing consolidated returns.

DATES: *Effective Date:* These final regulations are effective on July 18, 2007.

Applicability Dates: Section 1.1502–19(d) applies to transactions occurring on or after July 18, 2007. Section 1.1502–80(c) applies to taxable years for which the original consolidated Federal income tax return is due (without extensions) after July 18, 2007.

FOR FURTHER INFORMATION CONTACT: For questions regarding § 1.1502–19(d), contact Theresa M. Kolish, (202) 622–7530 (not a toll-free number). For questions regarding § 1.1502–80(c), contact Theresa Abell, (202) 622–7700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2006, the IRS and Treasury Department published a notice of proposed rulemaking (REG–138879–05, 71 FR 4319) by cross-reference to a temporary regulation under § 1.1502–19 (TD 9244, 71 FR 4264). Prior to the publication of the proposed and temporary regulations, the direction of a transaction determined whether an excess loss account would be reduced or eliminated. For example, if P had owned all the stock of S with an excess loss account of $100 and all of the stock of T with a basis of $150, and T had merged into S in a reorganization described in section 368(a)(1)(D) in which P received additional shares of S stock, under § 1.1502–19(d), P's excess loss account in its original shares of S stock was first eliminated. Therefore, P's original S shares would have had an aggregate basis of $0 and P's new S shares would have had an aggregate basis of $50. However, if S instead had merged into T in a reorganization described in section 368(a)(1)(D) in which P received additional shares of T stock, § 1.1502–19(d) would not have applied because P did not already have T shares with an excess loss account. Therefore, P's original T shares would have had a basis of $150 and P's new T shares would have had an excess loss account of $100.

The IRS and Treasury Department found the electivity of the rule based on the direction of the transaction to be undesirable. Accordingly, the IRS and Treasury Department added § 1.1502–19T(d), which provides that, if a member would otherwise determine shares of a class of S's stock (a new share) to have an excess loss account and such member owns one or more other shares of the same class of S's stock, the basis of such other shares is

allocated to eliminate and equalize any excess loss account that would otherwise be in the new shares.

No public hearing regarding the proposed regulation was requested or held. However, a few informal comments regarding the proposed and temporary regulations were received. In particular, the commentators noted that § 1.1502–19T(d) would appear to apply in the earlier example if P had excess loss accounts in its shares of both S and T. For example, assume that P owned S and T (which were of equal value), P had a $50 excess loss account in its S stock and a $100 excess loss account in its T stock, and T merged into S in a reorganization described in section 368(a)(1)(D) in which additional shares were issued. Under § 1.1502–19T(d), the excess loss accounts in the two blocks of S stock would be equalized so that P would have a $75 excess loss account in each block. The commentators asked whether this outcome was intended. The IRS and Treasury Department believe that the excess loss accounts in this example should be equalized and affirm that § 1.1502–19 does apply under the facts of presented. This application eliminates the disparity between excess loss accounts in order to better reflect P's investment in its subsidiary stock. The proposed regulation under § 1.1502–19 is adopted by this Treasury decision and the temporary regulation is removed.

Additionally, on January 23, 2007, the IRS and Treasury Department published a notice of proposed rulemaking (REG–157711–02, 72 FR 2964) under § 1.1502–80(c) regarding when the stock of a member is treated as worthless under section 165. The proposed regulation is adopted without substantive modification by this Treasury Decision, and is applicable to tax years for which the original consolidated Federal income tax return is due (without extensions) after July 18, 2007. Section 1.1502–80T is removed.

Consistent with the prior final regulations, these regulations provide that subsidiary stock is not treated as worthless before the earlier of the time that the subsidiary ceases to be a member of the group or the time that the stock of the subsidiary is worthless within the meaning of § 1.1502–19(c)(1)(iii). Section 1.1502–19(c)(1)(iii) identifies three separate events that cause a share of subsidiary stock to be treated as worthless and therefore disposed of for purposes of taking into account an excess loss account in the share. Section 1.1502–19(c)(1)(iii)(A) applies when the subsidiary disposes of substantially all of its assets, and the deferral of any worthless securities deduction until that time implements single-entity principles. While an event identified in either § 1.1502–19(c)(1)(iii)(B) or (C) (generally dealing with debt cancellations) will likely occur in connection with an event identified in § 1.1502–19(c)(1)(iii)(A), either may occur independently. In light of the single-entity purpose of the regulations, the IRS and Treasury Department are requesting comments regarding whether these regulations should refer only to the time stock is treated as worthless within the meaning of § 1.1502–19(c)(1)(iii)(A).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to 5 U.S.C. 553(d)(3) it has been determined that that a delayed effective date is unnecessary because this rule finalizes currently effective temporary rules regarding the treatment of excess loss accounts without substantive change. It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of § 1.1502–19 is Theresa M. Kolish of the Office of the Associate Chief Counsel (Corporate), IRS. The principal author of § 1.1502–80(c) is Theresa Abell of the Office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.1502–19T and 1.1502–80T to read in part as follows:

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

Section 1.1502–19 and § 1.1502–80 are also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** Section 1.1502–19 is amended by revising paragraphs (d), (g) Example 2, and (h)(2)(iv) to read as follows:

§ 1.1502–19. Excess loss accounts.

* * * * *

(d) *Special allocation of basis in connection with an adjustment or determination*—(1) *Excess loss account in original shares.* If a member has an excess loss account in shares of a class of S's stock at the time of a basis adjustment or determination under the Internal Revenue Code with respect to shares of the same class of S's stock owned by the member, the adjustment or determination is allocated first to equalize and eliminate that member's excess loss account. See § 1.1502–32(c) for similar allocations of investment adjustments to prevent or eliminate excess loss accounts.

(2) *Excess loss account in new S shares.* If a member would otherwise determine shares of a class of S's stock (new shares) to have an excess loss account and such member owns one or more other shares of the same class of S's stock, the basis of such other shares is allocated to eliminate and equalize any excess loss account that would otherwise be in the new shares.

* * * * *

(g) * * *

Example 2. Basis determinations under the Internal Revenue Code in intercompany reorganizations—transfer of shares without an excess loss account. (i) *Facts.* P owns all of the sole class of stock of each of S and T. P has 150 shares of S stock that it acquired on Date 1. Each S share has a $1 basis and a fair market value of $1. P has 100 shares of T stock that it acquired on Date 2. Each T share has a $1.20 excess loss account and a fair market value of $1. P transfers S's stock to T without receiving additional T stock. The transfer is an exchange described in both section 351 and section 354.

(ii) *Analysis.* Under sections 351 and 354, P does not recognize gain in connection with the transfer. Under § 1.358–2(a)(2)(iii), P is deemed to receive 150 shares of T stock of the same class. Without regard to the application of paragraph (d) of this section, under section 358 and § 1.358–2(a)(2)(i), P would have a $1 basis in each such share.

However, because the basis of the additional shares of T stock will be determined when P has an excess loss account in its original shares of T stock, under paragraph (d)(1) of this section, the basis that P would otherwise have in such additional shares will eliminate the excess loss account in P's original shares of T stock such that each original share of T stock will have a basis of $0 and each share of T stock deemed received will have a basis of $0.20. Then, under § 1.358–2(a)(2)(iii), the T stock is deemed to be recapitalized in a reorganization under section 368(a)(1)(E) in which P receives 100 shares of T stock (those shares P actually owns immediately after the transfer) in exchange for those 100 shares of T stock that P held immediately prior to the transfer and those 150 shares of T stock P is deemed to receive in the transfer. Under § 1.358–2(a)(2)(i), immediately after the transfer, P holds 100 shares of T stock, 60 of which take a basis of $0.50 each and 40 of which take a basis of $0 each. In addition, T takes a $1 basis in each share of S stock under section 362. (If P had actually received an additional 150 shares of T stock of the same class, paragraph (d)(1) of this section would apply to shift basis from such additional T shares to P's original T shares because the basis of the additional T stock would be determined when P had an excess loss account in its original T shares. P would have a basis of $0 in each of the original T shares and a basis of $0.20 in each of the additional T shares.)

(iii) *Transfer of shares with an excess loss account.* The facts are the same as in paragraph (i) of this *Example 2*, except that P transfers T's stock to S without receiving additional S stock. The transfer is an exchange described in both section 351 and section 354. Under paragraph (c) of this section, P's transfer is treated as a disposition of T's stock. Under sections 351 and 354 and paragraph (b)(2) of this section, P does not recognize gain from the disposition. Under § 1.358–2(a)(2)(iii), P is deemed to have received 100 shares of S stock of the same class. Without regard to the application of paragraph (d) of this section, P would have a $1.20 excess loss account in each such share. However, because P will have an excess loss account in such shares and P owns other shares of S stock of the same class, under paragraph (d)(2) of this section, the excess loss account that P would otherwise have in such shares will decrease P's basis in its original shares of S's stock such that each such original share will have a basis of $0.20 and each share deemed received will have a basis of $0. Then, under § 1.358–2(a)(2)(iii), the S stock is deemed to be recapitalized in a reorganization under section 368(a)(1)(E) in which P receives 150 shares of S stock (those shares P actually owns immediately after the transfer) in exchange for those 150 shares of S stock that P held immediately prior to the transfer and those 100 shares of S stock that P is deemed to receive in connection with the transfer. Under § 1.358–2(a)(2)(i), immediately after the transfer, P holds 150 shares of S stock, 90 of which take a basis of $0.33 each and 60 of which take a basis of $0 each. In addition, S takes an excess loss account of $1.20 in each share of T stock under section 362. (If P had actually received 100 additional shares of S stock of the same class, paragraph (d)(2) of this section would apply to shift basis from P's original S stock because P would have otherwise had an excess loss account in such additional shares and P owned other shares of S stock of the same class. The excess loss account that P would have otherwise had in such additional shares would have decreased P's basis in its original shares of S's stock. P would have had a basis of $0.20 in each of the original shares and a basis of $0 in each of the additional shares.)

(iv) *Intercompany merger—shares with excess loss account retained.* The facts are the same as in paragraph (i) of this *Example 2*, except that S merges into T in a reorganization described in section 368(a)(1)(A) (and in section 368(a)(1)(D)), and P receives 150 additional shares of T stock of the same class in the reorganization. Under section 354, P does not recognize gain. Without regard to the application of paragraph (d) of this section, under section 358 and § 1.358–2(a)(2)(i), P would have a $1 basis in each such share. However, because the basis of the additional shares of T stock will be determined when P has an excess loss account in its original shares of T stock, under paragraph (d)(1) of this section, the basis that P would otherwise have in such additional shares eliminates the excess loss account in P's original shares of T stock such that each original share of T stock has a basis of $0 and each additional share of T stock has a basis of $0.20.

(v) *Intercompany merger—shares with excess loss account surrendered.* The facts are the same as in paragraph (i) of this *Example 2*, except that T merges into S in a reorganization described in section 368(a)(1)(A) (and in section 368(a)(1)(D)), and P receives 100 additional shares of S stock of the same class in the reorganization. Under section 354 and paragraph (b)(2) of this section, P does not recognize gain from the disposition. Without regard to the application of paragraph (d) of this section, under section 358 and § 1.358–2(a)(2)(i), P would have a $1.20 excess loss account in each additional share of S stock received. However, because P would have an excess loss account in such shares and P owns other shares of S stock of the same class, under paragraph (d)(2) of this section, the excess loss account that P would otherwise have in such shares decreases P's basis in its original shares of S's stock such that each original share of S stock has a basis of $0.20 and each additional share of S stock has a basis of $0.

* * * * *

(h) * * *

(2) * * *

(iv) *Intercompany reorganizations.* Paragraphs (d) and (g) *Example 2* of this section apply to transactions occurring on or after July 18, 2007. For transactions occurring on or after January 23, 2006, and before July 18, 2007, see § 1.1502–19T as contained in 26 CFR part 1 in effect April 1, 2007. For transactions occurring before January 23, 2006, see § 1.1502–19 as contained in 26 CFR part 1 in effect April 1, 2005.

* * * * *

§ 1.1502–19T [Removed]

■ **Par. 3.** Section 1.1502–19T is removed.

■ **Par. 4.** Section 1.1502–80 is amended by revising paragraph (c) to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

* * * * *

(c) *Deferral of section 165*—(1) *General rule.* Subsidiary stock is not treated as worthless under section 165 until immediately before the earlier of the time—

(i) The stock is worthless within the meaning of § 1.1502–19(c)(1)(iii); or

(ii) The subsidiary for any reason ceases to be a member of the group.

(2) *Cross reference.* See §§ 1.337(d)–2 and 1.1502–35 for additional rules relating to loss on subsidiary stock.

(3) *Effective/applicability date.* This paragraph (c) applies to taxable years for which the original consolidated Federal income tax return is due (without extensions) after July 18, 2007. However, taxpayers may apply this paragraph (c) to taxable years beginning on or after January 1, 1995.

* * * * *

§ 1.1502–80T [Removed]

■ **Par. 5.** Section 1.1502–80T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 10, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–13839 Filed 7–17–07; 8:45 am]

BILLING CODE 4830–01–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

FOIA Processing Fees

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: On January 8, 2007, the Central Intelligence Agency submitted a proposed rule for public comment on Freedom of Information Act processing fees to the **Federal Register**. The CIA has reviewed and carefully considered all of the comments that were submitted in response to our proposal. As a result of that review, the CIA hereby issues its final rule on FOIA processing fees.

EFFECTIVE DATE: July 18, 2007.

FOR FURTHER INFORMATION CONTACT: Scott A. Koch, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505 or by telephone, 703–613–1287.

SUPPLEMENTARY INFORMATION: In the January 8, 2007 edition of the **Federal Register**, the CIA published a proposed rule which reflected a zero-based review of its public FOIA regulations on processing fees. The proposed rule was an expansive attempt to streamline our administrative approach in order to improve our processing of FOIA requests. The proposed system contained a number of innovative features to make this new approach workable. The CIA received comments that supported some aspect of the proposed rule, while also receiving comments which were very critical of other aspects of this approach. After a review and consideration of all of the comments, it was clear that there was no way to reconcile the positive and negative comments into a refinement of our approach that was workable. We concluded that if any features of the proposed system were dropped, the advantages would not outweigh the disadvantages of adopting this system.

Since there was no support to proceed with the proposed rule as originally drafted, rather than implementing the sweeping changes set forth in the proposed rule, we have a more modest change by simply adopting the definition of ''news media'' contained in the March 27, 1987, Office of Management and Budget FOIA Guidelines. Although, the CIA remains confident in the adequacy and sufficiency of its previous interpretation of ''news media'' fee status, it has concluded that it is preferable to avoid sterile and unproductive technical litigation and the associated diversion of resources from more productive pursuits that that entails.

List of Subjects in 32 CFR Part 1900

Classified information, Freedom of Information.

■ As stated in the preamble, the CIA is amending 32 CFR part 1900 as follows:

PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

■ 1. The authority citation for part 1900 continues to read as follows:

Authority: The Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403(g)).

■ 2. In § 1900.02, revise paragraph (h)(3) to read as follows:

§ 1900.02 Definitions.

* * * * *

(h) * * *

(3) *Representative of the News Media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requestor in making this determination:

* * * * *

Dated: July 9, 2007.

Edmund Cohen,

Chief of Information Management Services.

[FR Doc. E7–13931 Filed 7–17–07; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–055]

RIN 1625–AA00

Safety Zone; Oswego Harborfest 2007, Oswego, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Ontario, Oswego, NY. This zone is intended to restrict vessels from a portion of Lake Ontario during the Oswego Harborfest Fireworks display on July 28, 2007. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. to 10 p.m. on July 28, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD09–07–055 and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Boulevard, Buffalo, NY 14203 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracy Wirth, U.S. Coast Guard Sector Buffalo; (716) 843–9573.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port Zones, and the explosive hazards of fireworks, the Captain of the Port Buffalo has determined that fireworks launches proximate to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Oswego Harborfest 2007 fireworks display. The fireworks display will occur between 9 p.m. and 10 p.m. on July 28, 2007.

The safety zone for the fireworks will encompass all waters of Lake Ontario, Oswego, NY within a thousand foot radius of position 43°28′10″ N, 076° 31′04″W. [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Buffalo or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the safety zone's activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake Ontario, Oswego, NY between 9 p.m. and 10 p.m. on July 28, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour for this event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary section 165.T09–055 is added as follows:

§ 165.T09–055 Safety Zone; Oswego Harborfest 2007, Oswego, NY.

(a) *Location*. The following area is a temporary safety zone: All waters of Lake Ontario, Oswego, NY within a thousand foot radius of position 43°28′10″ N, 076°31′04″ W. [DATUM: NAD 83].

(b) *Enforcement period*. This regulation will be enforced from 9 p.m. to 10 p.m. on July 28, 2007.

(c) *Regulations*. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf. The on-scene representative of the Captain of the Port Buffalo will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: July 3, 2007.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E7–13844 Filed 7–17–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0050; FRL–8135–3]

Alachlor, Chlorothalonil, Metribuzin; Denial of Objections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final order.

SUMMARY: In this order, EPA denies objections to an order denying a petition requesting the modification or revocation of the pesticide tolerances for alachlor, chlorothalonil, and metribuzin, established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). The petition was filed on December 17, 2004, by the States of New York, California, Connecticut, and Massachusetts. The petitioners claimed that EPA had improperly removed an additional safety factor for the protection of infants and children from the risk assessments for these pesticide tolerances and that inclusion of this safety factor rendered the tolerances unsafe. EPA issued an order denying that petition, in part, on August 2, 2006. On October 2, 2006, New York, Connecticut, and Massachusetts filed objections to EPA's denial order.

DATES: This final order is effective July 18, 2007. Supplemental objections, as described in Unit VII.C., may be submitted on or before September 17, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0050. To access the electronic docket, go to http://www.regulations.gov, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Public Docket, in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Terria Northern, Special Review and Reregistration Division, (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–7093; e-mail address: *northern.terria@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

C. Can I File an Objection or Hearing Request?

EPA is permitting supplemental objections to be filed under section 408(g) of the FFDCA concerning one issue described in Unit VII.C. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0050 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 17, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0050, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 204607–0001.
- Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Introduction

A. What Action Is the Agency Taking?

In this order, EPA denies objections to an order denying a petition requesting the modification or revocation of the pesticide tolerances for alachlor, chlorothalonil, and metribuzin, among other pesticides, established under section 408 of the FFDCA. The petition was filed on December 17, 2004, by the States of New York, California, Connecticut, and Massachusetts (''the States'') (Ref. 1). The States contended that EPA is lacking data for each of the challenged pesticides on developmental neurotoxicity, endocrine effects, and/or cumulative effects of exposure to pesticides with a common mechanism of toxicity. This lack of data, the States argued, mandates that EPA must retain the statutory additional tenfold (10X) safety factor for the protection of infants and children. The States further alleged that once the 10X safety factor is retained, the challenged tolerances no longer meet the safety standard under FFDCA section 408 and must be modified or revoked.

On August 2, 2006, EPA denied the petition with regard to alachlor, chlorothalonil, and metribuzin. (71 FR 43906, August 2, 2006). As to alachlor and metribuzin, EPA denied the petition because the tolerances for these pesticides would continue to meet the safety standard even if the additional 10X safety factor sought by the States is applied. For chlorothalonil, EPA denied the petition on the ground that there is reliable data on chlorothalonil showing that the additional 10X safety factor is not needed to protect the safety of infants and children. The petition is still pending before EPA as to two other pesticides, methomyl and thiodicarb.

On October 2, 2006, objections were filed to EPA's denial order by the States of New York, Connecticut, and Massachusetts (although California did not join the objections, for simplicity, the objectors are still referred to as the ''States'' in this order). (Ref. 2) The objections renew the States' claim that EPA has unlawfully removed the children's 10X safety factor and also argue that EPA has ''manipulated'' exposure assessments in making its safety determination. It is these objections that are addressed in today's order.

B. What Is the Agency's Authority for taking this Action?

The procedure for filing objections to tolerance actions and EPA's authority for acting on such objections is contained in section 408(g) of the FFDCA and regulations at 40 CFR part 178. (21 U.S.C. 346a(g)).

III. Statutory and Regulatory Background

A. Statutory Background

1. *In general.* EPA establishes maximum residue limits, or ''tolerances,'' for pesticide residues in food under section 408 of the FFDCA. (21 U.S.C. 346a). Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under section 402 of the FFDCA and may not be legally moved in interstate commerce. (21 U.S.C. 331, 342). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration and the U.S. Department of Agriculture. Section 408 was substantially rewritten by the Food Quality Protection Act of 1996 (''FQPA''), which added the provisions discussed below establishing a detailed safety standard for pesticides, additional protections for infants and children, tolerance reassessment requirements, and the estrogenic substances screening program.

EPA also regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), (7 U.S.C. 136 et seq.). While the FFDCA authorizes the establishment of legal limits for pesticide residues in food, FIFRA requires the approval of pesticides prior to their sale and distribution, (7 U.S.C. 136a(a)), and establishes a registration regime for regulating the use of pesticides. FIFRA regulates pesticide use in conjunction with its registration scheme by requiring EPA review and approval of pesticide labels and specifying that use of a pesticide inconsistent with its label is a violation of Federal law. (7 U.S.C. 136j(a)(2)(G)). In the FQPA, Congress integrated action under the two statutes by requiring that the safety standard under the FFDCA be used as a criterion in FIFRA registration actions as to pesticide uses which result in dietary risk from residues in or on food, (7 U.S.C. 136(bb)), and directing that EPA coordinate, to the extent practicable, revocations of tolerances with pesticide cancellations under FIFRA. (21 U.S.C. 346a(l)(1)).

2. *Safety standard for pesticide tolerances.* A pesticide tolerance may only be promulgated by EPA if the tolerance is ''safe.'' (21 U.S.C. 346a(b)(2)(A)(i)). ''Safe'' is defined by the statute to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' (21 U.S.C. 346a(b)(2)(A)(ii)). Section 408(b)(2)(D) directs EPA, in making a safety determination, to:

> consider, among other relevant factors- . . . .
>
> (v) Available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity; . . .
>
> (vi) Available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources.. . . .
>
> (viii) Such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. . . .

(21 U.S.C. 346a(b)(2)(D)(v), (vi) and (viii)). In its first denial order, EPA explained in detail the risk assessment process it follows in making safety determinations under these statutory provisions. (71 FR at 43908–43910).

Section 408(b)(2)(C) requires EPA to give special consideration to risks posed to infants and children. Specifically, this provision states that EPA:

> shall assess the risk of the pesticide chemical based on- . . .
>
> (II) available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults, and effects of *in utero* exposure to pesticide chemicals; and
>
> (III) available information concerning the cumulative effects on infants and children of such residues and other substances that have a common mechanism of toxicity. . . .

(21 U.S.C. 346a(b)(2)(C)(i)(II) and (III)).

This provision further directs that ''[i]n the case of threshold effects, . . . an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.'' (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to ''use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.'' (Id.). [The additional safety margin for infants and children is referred to throughout this order as the ''children's safety factor.''] EPA's policy regarding implementation of the children's safety factor provision is described in the first denial order. (71 FR at 43910, 43918–43919).

3. *Procedures for establishing, amending, or revoking tolerances.* Tolerances are established, amended, or revoked by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, the rulemaking is initiated by the party seeking to establish, amend, or revoke a tolerance by means of filing a petition with EPA. (See 21 U.S.C. 346a(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing and requests public comment. (21 U.S.C. 346a(d)(3)). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing, amending, or revoking the tolerance, issue a proposed rule to do the same, or deny the petition. (21 U.S.C. 346a(d)(4)). Once EPA takes final action on the petition by either establishing, amending, or revoking the tolerance or denying the petition, any affected party has 60 days to file objections with EPA and seek an evidentiary hearing on those objections. (21 U.S.C. 346a(g)(2)). EPA's final order on the objections is subject to judicial review. (21 U.S.C. 346a(h)(1)).

4. *Tolerance reassessment and FIFRA reregistration.* The FQPA requires, among other things, that EPA reassess the safety of all pesticide tolerances existing at the time of its enactment. (21 U.S.C. 346a(q)). In this reassessment, EPA is required to review existing pesticide tolerances under the new ''reasonable certainty that no harm will result'' standard set forth in section 408(b)(2)(A)(i). (21 U.S.C. 346a(b)(2)(A)(i)). This reassessment was substantially completed by the August, 2006 deadline. Tolerance reassessment is generally handled in conjunction with a similar program involving reregistration of pesticides under FIFRA. (7 U.S.C. 136a–1). Reassessment and reregistration decisions are generally combined in a document labeled a Reregistration Eligibility Decision (''RED'').

5. *Estrogenic substances screening program.* Section 408(p) of the FFDCA creates the estrogenic substances screening program. (21 U.S.C. 346a(p)). This provision gives EPA 2 years from enactment of the FQPA to ''develop a screening program . . . to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.'' (21 U.S.C. 346a(p)(1)). This screening program must use ''appropriate validated test systems and scientifically relevant information.'' (Id.). Once the program is developed, EPA is required to take public comment and seek independent scientific review of it. Following the period for public comment and scientific review, and not

later than 3 years following enactment of the FQPA, EPA is directed to ''implement the program.'' (21 U.S.C. 346a(p)(2)).

The scope of the estrogenic screening program was expanded by an amendment to the Safe Drinking Water Act (SDWA) passed contemporaneously with the FQPA. That amendment gave EPA the authority to provide for the testing, under the FQPA estrogenic screening program, ''of any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.'' (42 U.S.C. 300j–17).

The steps taken by EPA in implementing the endocrine screening program are described in the first denial order. (71 FR at 43910–43911, 43920–43921).

B. Evaluating the Safety of Tolerances through the Use of Risk Assessment Including the Use of Safety Factors

In the order denying the petition, EPA explained its risk assessment process for assessing the safety of tolerances in great detail. (71 FR at 43908–43910). That level of detail is not repeated here; however, a brief summary of the risk assessment process with an emphasis on how safety factors are incorporated into the process is included below for the convenience of the reader.

Evaluation of the safety of a pesticide tolerance includes both examination of the pesticide's toxicity and the amount of exposure to the pesticide. EPA principally evaluates a pesticide's toxicity by attempting to establish safe levels of exposure for humans with regard to the adverse effects seen in animal studies conducted with the pesticide. Safe levels of exposure are established by first identifying the doses in animal studies at which no adverse effects were seen, and then dividing these dose levels with safety factors to provide an extra measure of protection for humans. Traditionally, EPA has used 2 safety factors of 10 when establishing a safe human dose level based on animal studies. One factor of 10 is applied to account for potentially increased sensitivity of humans vis-a-vis the test animals and a second factor of 10 is used to account for variable sensitivity in humans. (71 FR at 43909). The FQPA imposed a presumptive additional ten-fold factor to provide extra protection for infants and children.

Having derived a safe dose level for humans, EPA then compares this dose level to aggregate human exposure to the pesticide. EPA follows a tiered approach in assessing exposure to pesticide residues. EPA initially uses the very conservative (health-protective) assumption that all food that legally may contain residues of a pesticide actually does contain such residues at the maximum legal level (Tier 1). Only if this analysis suggests that exposure may be a concern does EPA undertake the more resource-intensive effort of refining its exposure assessment to produce a more realistic estimate of exposure. In the first level of refinement of its worst case assessment, EPA incorporates data on the percentage of a crop treated with a pesticide and/or data on anticipated residues in food from crop field trials (Tier 2). Further refinements rely heavily on pesticide residue monitoring data of food in commerce and may include information from residue decline and degradation studies and studies evaluating the effect of commercial and consumer practices such as washing, cooking, and peeling on pesticide residues (Tiers 3–4). (Ref. 3; 71 FR at 43909–43910).

IV. The Challenged Tolerances

In its first denial order, EPA presented detailed information on the pesticides whose tolerances are at issue. (71 FR at 43911–43912). This information is briefly summarized below.

Alachlor. Alachlor is a selective herbicide used in agriculture for the control of broadleaf weeds and grasses. Alachlor is registered under FIFRA for use on corn, soybeans, sorghum, peanuts, and beans and 37 FFDCA tolerances are currently associated with those uses. (40 CFR 180.249). In December 1998, EPA released a RED for alachlor finding it eligible for reregistration. (Ref. 4). The RED also reassessed alachlor's tolerances concluding that 22 met the requirements of section 408 but that 16 would have to be revised or revoked. (Id. at 184–187; Ref. 5 at 13–14). (The current number of tolerances for alachlor and the other two pesticides may not match the number of reassessed tolerances due to subsequent actions to establish or revoke tolerances as well as to a generic administrative action amending tolerance nomenclature. (68 FR 39428, July 1, 2003)). In making its safety determination as to alachlor, EPA removed the 10X children's safety factor based on its determination that (1) the toxicology database was complete; (2) the toxicology data showed no evidence of neurotoxicity and thus there was no need for a developmental neurotoxicity study for alachlor; (3) the toxicology data showed no evidence of increased susceptibility in the young; and (4) the exposure estimate was unlikely to understate exposure to infants and children. (Ref. 4 at 50).

Chlorothalonil. Chlorothalonil is a broad spectrum, non-systemic protectant pesticide mainly used as a fungicide to control fungal foliar diseases of vegetable, field, and ornamental crops. In connection with these uses there are 66 FFDCA tolerances currently established for chlorothalonil. (40 CFR 180.275). In April 1999, EPA released a RED for chlorothalonil finding it eligible for reregistration so long as various uses were prohibited and numerous risk mitigation steps were taken. (Ref. 6 at v–vi). The RED also reassessed chlorothalonil's tolerances concluding that all met the requirements of section 408 except one that would have to be raised. Further, an additional tolerance was found to be necessary in connection with one use site. (Id. at 171–174; Ref. 5 at 58–59). Except as to acute risks, EPA removed the 10X children's safety factor for chlorothalonil based on its determination that (1) the toxicology database was complete; (2) the toxicology data showed no evidence of increased susceptibility in the young; and (3) the exposure estimate was unlikely to understate exposure to infants and children. (Ref. 6 at 170; 66 FR 56233, 56242, November 7, 2001). Because a chlorothalonil acute study did not identify a dose with no adverse effects, EPA retained an additional FQPA safety factor of 3X in assessing acute risks. (Ref. 6 at 23).

Metribuzin. Metribuzin is a herbicide used on a wide range of sites, including vegetable and field crops, turf grasses (recreational areas), and non-crop areas, to selectively control certain broadleaf weeds and grassy weed species. In connection with these uses there are 61 FFDCA tolerances currently established for metribuzin (40 CFR 180.332).

In February 1999, EPA released a RED for metribuzin finding it eligible for reregistration based on various risk mitigation steps proposed by the registrant. (Ref. 7 at iv). The RED also reassessed metribuzin's tolerances concluding that 22 met the requirements of section 408 but that 38 would have to be revised or revoked. (Id. at 101–107; Ref. 5 at 187–188). EPA removed the 10X children's safety factor for metribuzin based on its determination that the toxicology database was complete and it showed no evidence of increased susceptibility in the young. (Ref. 7 at 51).

V. Prior Proceedings

A. The Petition to Modify or Revoke

The States' petition requested that EPA modify or revoke all of the tolerances for alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb. (Ref. 1 at 1). These tolerances must be modified or revoked, the States asserted, because they do not meet the safety standard in section 408 of the FFDCA. (Id. at 2). The States argued that the tolerances are unsafe because EPA's latest safety conclusion for these tolerances did not include the full 10X children's safety factor and, if that full 10X safety factor is included, EPA cannot make the required reasonable certainty of no harm determination.

The States claimed that ''as a matter of law'' the full 10X children's safety factor must be retained for each of these pesticides because of missing data concerning developmental neurotoxicity, endocrine effects, and/or cumulative effects of pesticides having a common mechanism of toxicity. It is ''legally impermissible,'' the States asserted, if any of these data are absent for EPA to conclude that there are ''reliable data'' to choose an additional safety factor other than 10X. (Id. at 2, 5, 9, 11).

As statutory support for this allegation, the States cited several provisions in section 408. First, as to developmental neurotoxicity, the States pointed to section 408(b)(2)(C)'s requirement that EPA assess the risk to children based on ''available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults . . . .'' The States noted that EPA has announced that it plans to require developmental neurotoxicity (''DNT'') studies on all pesticides that are neurotoxic. (Ref. 1 at 10 citing 64 FR 42945, August 6, 1999). Second, as to endocrine effects, the States cited both the provision in section 408(b)(2)(D)(vii) requiring consideration of ''such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects'' and the requirement in section 408(p) for EPA to develop and implement an endocrine screening program. Finally, with regard to cumulative effects, the States referenced the provision in section 408(b)(2)(D)(v) requiring consideration of ''available data on the cumulative effects of such residues and other substances that have a common mechanism of toxicity,'' and the requirement in section 408(b)(2)(C) mandating that EPA assess the risk to children based on similar considerations.

B. EPA's Denial of the Petition

Following consideration of the petition and comments received on the petition, EPA issued an order on August 2, 2006, denying the requested revocation as to alachlor, chlorothalonil, and metribuzin. (71 FR 43906, August 2, 2006). EPA did not address the requested revocation of methomyl and thiodicarb tolerances because those tolerances are still being evaluated as part of the tolerance reassessment program. The reasons for denying the petition are described below.

1. *Alachlor and metribuzin.* The States' petition was denied as to alachlor and metribuzin because EPA found that, even if it accepted as accurate the States' claim that it should have retained the 10X children's safety factor for these pesticides, the States had not shown that the tolerances were unsafe. (71 FR at 43916). As to alachlor, the States had based their conclusion that alachlor would be unsafe if an additional 10X factor was applied relying on an unrefined risk estimate in the alachlor RED. EPA pointed out, however, that ''the RED also contained a revised risk assessment for alachlor that showed the highest aggregate risk estimate to be that exposure of children aged 1–6 is 4 percent of the [maximum safe dose],'' and that ''incorporating an additional 10X safety factor into such a risk estimate would increase the risk estimate to no greater than 40 percent of the [maximum safe dose], or still well within the safe level.'' (Id.).

A similar conclusion was reached as to metribuzin. (Id.). Again, the States had relied upon a risk estimate based on an unrefined exposure assessment to argue that application of the additional 10X safety factor would show that the metribuzin tolerances are unsafe. EPA showed that a slight refinement of the exposure and risk assessment made the requested retention of the additional 10X safety factor irrelevant to the safety determination. EPA made clear that, in moving from an unrefined, worst case exposure assessment to a more refined assessment, it had still taken a very conservative, health-protective approach to estimating exposure. An example is the manner in which EPA incorporated monitoring data on the level of metribuzin residues in potatoes into the exposure assessment. Data from the U.S. Department of Agriculture had shown that only 1 out of 1,472 samplings of potatoes revealed any detectable residue of metribuzin. ''Nonetheless, in its risk assessment, EPA assumed that all potatoes contained metribuzin at the level found in that one sample (0.05 parts per million).'' (Id. at 43917).

Therefore, EPA did not evaluate the merits of the States' claim that the 10X children's safety factor should have been retained for alachlor and metribuzin. Instead it denied the petition as to these two pesticides because the petition, even if its claims were accepted as true, did not demonstrate that the pesticide tolerances were unsafe.

2. *Chlorothalonil.* Based on its conclusion that application of an additional 10X safety factor to the chlorothalonil risk assessment may have raised a safety issue, EPA evaluated the merits of the States' claims that EPA should have retained the 10X children's safety factor for chlorothalonil. The States had argued that the children's safety factor must be retained for chlorothalonil due to the lack of data on cumulative effects and potential endocrine disruption. Further, although the States did not specifically claim that EPA should retain the children's safety factor due to a lack of developmental neurotoxicity data on chlorothalonil, its general allegations could be read as suggesting as much.

As to developmental neurotoxicity data, EPA pointed out that it only required such data for pesticides that were neurotoxins. The States, EPA found, had made no plausible argument that developmental neurotoxicity data were needed for non-neurotoxic pesticides nor had they alleged that chlorothalonil was neurotoxic. Further, EPA confirmed that its review of the chlorothalonil database did not show chlorothalonil to be neurotoxic. Accordingly, EPA rejected the States' claim that data bearing on developmental neurotoxicity were needed for chlorothalonil. (Id. at 43919).

The States contended that data was lacking on cumulative effects due to EPA's finding that chlorothalonil was a member of a related group of chemicals. In response, EPA reviewed the data on chlorothalonil and these chemicals and concluded that chlorothalonil did not share a common mechanism of toxicity with these chemicals, and thus combined exposure to chlorothalonil and these chemicals would not produce cumulative effects. Therefore, EPA found that no additional data was needed on potential cumulative effects from exposure to chlorothalonil and these chemicals. (Id. at 43922).

On endocrine effects data, the States' entire argument was that because EPA had not obtained data under the

endocrine screening program on chlorothalonil it was legally obligated to retain the 10X children's safety factor. EPA responded that the States had misread the statute and not considered the factual information bearing on chlorothalonil. The children's safety provision, EPA noted, does not impose rigid rules regarding retaining the children's safety factor if particular pieces of data are missing. Rather, EPA pointed out that the safety provision gives EPA the discretion to evaluate the completeness of the database and determine if reliable data are available to choose an additional safety factor different than 10X that is protective of the safety of children. Nothing in the endocrine screening provision or its legislative history, EPA concluded, overturned this discretion granted EPA under the children's safety provision. (Id. at 43920). Further, EPA took into account that its existing data requirements for pesticides included testing very similar to that which had been proposed for use in the endocrine screening program. A review of the relevant test data for chlorothalonil showed that chlorothalonil is not an endocrine disruptor. EPA concluded that it had adequate reliable data on chlorothalonil's potential to cause endocrine effects to determine that it was safe to remove the children's safety factor. (Id. at 43921).

Given its conclusion - based on interpretation of the statute as well as a thorough review of all of the extensive test data on chlorothalonil - that adequate, reliable data were available on developmental toxicity, cumulative effects, and endocrine effects, EPA rejected the States' claim that EPA was required to retain the 10X children's safety factor for chlorothalonil. Because the States' argument that the chlorothalonil tolerances are unsafe and must be revoked was based entirely on retention of the 10X children's safety factor, EPA denied its petition to revoke these tolerances.

VI. The States' Objections

On October 2, 2006, three of the four petitioning States (New York, Connecticut, and Massachusetts) filed objections to EPA's denial of their petition. (Ref. 2). EPA finds the objections to be somewhat unclear. To the best of its understanding, EPA believes the objecting States are making four separate, but related, objections.

First, the States take issue with EPA's denial of the petition as to alachlor and metribuzin based on the conclusion that application of the children's safety factor for these pesticides would not change the determination on these pesticides' safety. The States claim that EPA made its determination on the need for the children's safety factor based on the size of the risk posed by these pesticides as opposed to the ''merits.'' (Id. at 7).

Second, the States claim that EPA ''manipulated'' exposure data using ''statistical sleight-of-hand techniques'' to make pesticide exposure levels appear to be lower. (Id. at 2, 5). The objected-to techniques are reliance on data showing the percent of a crop treated with a pesticide and data showing the effect of food processing on residue amounts. The States argue that ''EPA's use of such techniques are [sic] counter to the intent of the FQPA to protect infants and children from unsafe exposure to pesticides.'' (Id. at 5).

Third, the States renew their claim that EPA lacks data on endocrine disruption. The States allege that ''[e]ndocrine disruption was not considered in the FQPA assessment because EPA does not yet have in place the endocrine disruption screening program that was required by the FQPA to have been completed by 1999.'' (Id. at 3). Additionally, the States argue that EPA has ignored ''the growing body of evidence that the effects of endocrine disrupting chemicals can be associated with very low doses, especially if exposure occurs in vulnerable stages such as fetal development.'' (Id. at 4).

Finally, the States argue that EPA removed the children's safety factor for these pesticides despite lingering uncertainty concerning their safety. As support for the assertion of uncertainty, the objecting States cite to EPA's description of the adverse effects seen in animal studies with several of the pesticides. (Id. at 7–8).

The States do not include in their objections any of the claims in their petition regarding lack of data on developmental neurotoxicity or cumulative effects.

VII. EPA's Response to the Objections

For the reasons stated below, EPA denies each of the four objections lodged by the States. EPA's response to objections is necessarily circumscribed by the scope of the objections. Section 408 contains a mandatory exhaustion provision which requires that issues be presented and resolved by EPA in administrative proceedings prior to judicial review. (21 U.S.C. 346a(g) and (h)). This exhaustion requirement is designed to ''bring the agency's experience to bear on a contested question'' and make a full record on the dispute to aid in any judicial review of EPA's action. *Nader* v. *US EPA*, 859 F.2d 747, 753–54 (9th Cir. 1988). EPA cannot bring its experience to bear or make a record on challenges that have not been made. To ensure that EPA can evaluate the challenges that are made, the statute requires that objections ''specif[y] with particularity the provisions of the regulation or order deemed objectionable and stating reasonable grounds therefor,'' and EPA's regulations make clear that for an objection to be properly presented it must explain ''with particularity . . . [its] basis . . . .'' (40 CFR 178.25(a)(2)). For EPA to go beyond the specific arguments raised in objections, or to treat vague allegations as a general challenge to an EPA decision, and address matters not raised with particularity would undermine the purpose for exhaustion and merely invite objectors to improperly raise issues on judicial review which had not been exhausted before the Agency.

A. Addressing the ''Merits'' of the Children's Safety Factor Determination for Alachlor and Metribuzin

For alachlor and metribuzin, EPA denied the States' petition because grounds for the petition (failure to retain the children's safety factor) did not support the relief requested (revocation of the tolerances). The States object to this determination arguing that EPA should not decide whether to apply the children's safety factor based on the risks posed by a pesticide but instead based on the ''merits.'' Although EPA does not disagree with the general thrust of this proposition, EPA does not believe it has any relevance to EPA's decision on the petition as to alachlor and metribuzin. In responding to the States' petition, EPA did not decide whether the children's safety factor should be retained for alachlor and chlorothalonil. To the contrary, EPA simply assumed that the State's contention on the children's safety factor was correct for the purpose of determining whether it affected the safety determination. When it became clear the State's contention (that the children's safety factor should be retained) did not support their claim that the tolerances were unsafe, EPA denied the petition for failing to show the tolerances were unsafe.

EPA believes it is appropriate for it to refuse to adjudicate the merits of claims where it can be shown that the claims - even if true -- do not justify the relief requested. In related circumstances, the Supreme Court has refused to require agencies to undertake such an ''exercise in futility.'' (*Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 621 (1973) (upholding FDA's authority to deny an administrative hearing on a

new drug application when the hearing requestor had not offered any evidence showing the statutory standard for approval could be met)). EPA has enshrined this principle in its regulations governing objections and requests for hearings by providing that hearings will not be granted as to ''factual issues that are not determinative with respect to the action requested. For example, a hearing will not be granted if the Administrator concludes that the action would be the same even if the factual issue were resolved in the manner sought.'' (40 CFR 178.32(b)(3)).

Accordingly, EPA denies the objection that it was required to determine whether the children's safety factor should be applied for alachlor and metribuzin on the ''merits.'' EPA is not required to adjudicate issues that, even if substantiated, would not support the relief requested in the petition.

B. Use of Data on Percent Crop Treated and Residue Reduction from Processing

1. *Overview/failure to raise issue in petition.* The States object to the lawfulness of EPA's reliance on percent crop treated information and food processing factors in assessing the risk to the three pesticides. According to the States, reliance on percent crop treated data runs ''counter to the intent of the FQPA to protect infants and children from unsafe exposure to pesticides . . . because EPA's methods have resulted in a failure to address individual exposures.'' (Ref. 2 at 5, 6). Individuals are not protected, the States contend, when EPA, in estimating pesticide exposure, takes percent crop treated data into account by assuming that consumers eat a mixture of pesticide-treated and untreated food and thus are exposed to an average of the residues on the treated and untreated commodities. This approach, the States argue, spreads a pesticide's exposure - by a ''statistical sleight-of-hand'' -- over the entire population instead of focusing on the individuals who eat the treated commodities. The States assert that if EPA's approach was applied to the enforcement of drunk driving laws, highway patrol officers could not make drunk driving arrests based on an individual driver's blood alcohol level but instead would have to examine the average blood alcohol levels of all drivers. As to the effect of food processing on residue levels, the States allege that EPA assumes that reductions in pesticide residues that occur as a result of food processing will also occur in unprocessed raw foods. Finally, they also assert that EPA has limited data on food processing's effect on residue levels.

As an intial matter, EPA believes that such an objection is improper, for the most part, as beyond the scope of the denial order. The objection is appropriate, if at all, only as to EPA's decision as to metribuzin, and even then, only as to reliance on percent crop treated data. Objections must be made with ''particularity [as to] the provisions of the . . . order deemed objectionable . . . .'' (21 U.S.C. 346a(g)(2)). The FFDCA's tolerance revocation procedures are not some sort of ''game,'' whereby a party may petition to revoke a tolerance on one ground, and then, after the petition is denied, file objections to the denial based on an entirely new ground not relied upon by EPA in denying the petition. (See *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)).

Although it is clear on the face of the alachlor and chlorothalonil REDs that EPA relied on percent crop treated and processing data and factors in assessing the chronic risk these pesticides posed, (Ref. 4 at 56, 83–83; Ref. 6 at 28–31), the States did not once mention a concern with the lawfulness of this practice in their petition to revoke tolerances. Understandably, given the States' silence regarding reliance on percent crop treated data and processing factors, EPA did not address this issue in its denial order as to alachlor and chlorothalonil. To the contrary, EPA's denial order for these pesticides was based on other grounds. For chlorothalonil, EPA denied the States' claim that EPA must retain the 10X children's safety factor by rejecting the States' arguments that the safety factor must be retained because of missing data on neurotoxicity, endocrine effects, and cumulative effects. As to alachlor, the denial order was based on an even more narrow ground - that the States had failed to show that retention of the 10X children's safety factor would render the alachlor tolerances unsafe. The States' error, EPA pointed out, was in misreading the RED's explicit conclusions on the size of the alachlor risk. The only issue, therefore, that the order resolved was what the RED stated with regard to the risk of alachlor. Accordingly, because the denial order as it pertains to alachlor and chlorothalonil did not address reliance on percent crop treated data and processing factors, the States' objection to use of percent crop treated data and processing factors is not an objection to the ''provisions of the . . . order.'' (21 U.S.C. 346a(g)(2)).

Arguably, the States' objection to the use of percent crop treated data is timely and appropriate as to reliance on percent crop treated data for metribuzin because EPA relied on percent crop treated data for the first time in denying the petition as to that pesticide. However, as with alachlor and chlorothalonil, there does not appear to be any basis for the processing factor objection as to metribuzin. Not only does the metribuzin RED discuss processing data that was relied upon, but also the only processing factors used in the revised risk assessment cited in the petition denial were factors used to increase estimated exposure values in processed food. (Ref. 7 at 26, 102; Ref. 8 at 5). Notably, the only specific processing factor cited in the objections as problematic is a processing factor that pertains to a different pesticide (chlorothalonil) and was used to show residues were reduced upon food processing. (Ref. 2 at 6).

Turning to the merits, for the reasons explained below, EPA finds the States' objection to the use of percent crop treated data and processing factors to be without basis. In brief, EPA concludes that:

i. It has ample legal authority to consider percent crop treated data and food processing factors in making a safety determination under section 408 of FFDCA;

ii. Reliance on percent crop treated data in risk assessment is not inconsistent with protection of individuals and was used in a conservative fashion in estimating metribuzin exposure; and

iii. Processing factors are only applied to processed foods.

2. *Legal authority.* It is not clear from the States' objections as to whether they are arguing that EPA may never use percent crop treated and food processing data in estimating pesticide exposure or whether EPA has used it in an impermissible fashion with regard to the challenged pesticide tolerances. To the extent that the States are contending that the ''intent of the FQPA'' bars EPA as a legal matter from relying on percent crop treated information and processing data factors in estimating pesticide exposure and risk, they are mistaken. Such an interpretation is contrary to the plain language of the statute.

Section 408(b)(2)(D)(vi) directs that EPA ''shall consider, among other relevant factors -- . . . available information concerning the aggregate exposure levels of consumers . . . to the pesticide chemical residue . . . .'' (21 U.S.C. 346a(b)(2)(D)). The extent of use of a pesticide and the degree to which a pesticide residue degrades or concentrates during processing are clearly relevant information

''concerning aggregate exposure levels of consumers.'' Further, Congress expressly recognized in the FQPA that this type of information is relevant and appropriate to a FQPA safety analysis. The statute, as amended by the FQPA, contains special provisions placing certain requirements upon EPA when it relies upon percent crop treated data in chronic risk assessments or anticipated residue data. (21 U.S.C. 346a(b)(2)(E) and (F)). Anticipated residue data is a term of art encompassing, among other things, data on the effect food processing has on pesticide residue levels. (70 FR at 46731–46732; Ref. 9) This term was in use by EPA well before such language was adopted in the FQPA. (Ref. 10; see, e.g., 54 FR 33044, 33045, August 11, 1989).

Given this clear legal authority, the States' vague allegations that the use of percent crop treated data or processing factors runs counter to the intent of the FQPA are meritless.

3. *Use of percent crop treated data and individual exposure.* The States' claim that EPA's use of percent crop treated data is not protective of individuals appears to be based on a lack of understanding of (1) the differences between acute and chronic risks and (2) the different techniques EPA uses for incorporating percent crop treated information into risk assessments. At times, EPA uses percent crop treated data in estimating exposure for both chronic and acute risk assessments. Such data, however, is used in a different manner in these assessments due to the differences in how acute and chronic exposures may result in harm. Moreover, as to both acute and chronic risk, EPA is concerned with the risk to an individual within major, identifiable population subgroups and incorporates percent crop treated data in a manner consistent with that concern. Further explanation of this approach is provided below.

With a chronic risk, EPA is concerned with adverse effects that occur from the cumulative effect of repeated exposures over an extended time period (i.e., generally a period of 1 year or more for dietary exposure). The focus for a chronic exposure assessment is not on the level of any one exposure or even the variation in exposure from day-to-day so much as the general level of the continuing exposure. Thus, in estimating chronic pesticide exposure, EPA uses average daily pesticide exposure over the appropriate time period. In estimating average daily pesticide exposure, EPA takes into account that, given the national distribution of food in the United States, over a chronic timeframe a person will consume food from a mixture of sources—regional, national, and international—as well as food grown at different times of the growing season. It is likely, therefore, that to the extent a food commodity is not uniformly treated with a given pesticide, the consumer will over time be exposed to a fairly representative sample of treated and untreated commodities. Accordingly, in refined exposure estimates for chronic pesticide exposures, EPA generally averages dietary pesticide exposure from a food based on the percentage of that food that has been treated with the pesticide. For example, if the estimated residue value for a pesticide on treated blueberries is 1 part per million (ppm) and half of the blueberry crop is treated, EPA would estimate the chronic pesticide exposure level from blueberries using the assumption that all blueberries contain 0.5 ppm of the pesticide (i.e., treated blueberries bear 1 ppm pesticide residues and over time a person gets an equal mixture of treated and untreated blueberries). EPA has long used percent crop treated data in this manner in chronic risk assessments and Congress explicitly recognized the appropriateness of this method of estimating pesticide exposure in the FQPA. (21 U.S.C. 346a(b)(2)(F)).

With acute hazards, EPA is concerned with an adverse effect that can result from a single pesticide exposure or pesticide exposure over a single day to an individual. Thus, acute pesticide exposure assessments are designed to measure or estimate the maximum amount of residue that may be present in a single commodity serving or meal. EPA's traditional method of using percent crop treated data in chronic risk assessments is problematic for acute risk assessments because it masks the highest levels of pesticide residues expected in food by averaging residue values from treated and untreated commodities in estimating pesticide exposure. For this reason, EPA, up until the mid–1990's, did not use percent crop treated data in acute risk assessments. Instead, for acute risk assessments, EPA assumed that all commodities for which a pesticide had a tolerance contain residues at the tolerance level. That changed, however, with the introduction in the last decade of probabilistic risk assessment analysis.

Probabilistic analysis, when used in pesticide exposure/risk assessment, is ''a statistical method where the range of exposures to pesticide residues and the probability of exposure to any particular level is quantified.'' (Ref. 3 at 22). Probabilistic exposure assessments are particularly helpful in realistically estimating pesticide exposure levels from short-term exposures (e.g., a single meal) where there are multiple variables affecting pesticide exposure levels. For pesticide exposures from food these variables can include:

i. Several different foods may be consumed in differing amounts;

ii. The consumed foods may or may not have been treated with the pesticide in question; and

iii. Foods that are treated may have a wide range of residue levels.

Integral to probabilistic analysis of pesticide exposure is information on differing consumption patterns among individuals, the range of the levels of pesticide residue in treated food, and the percent of food that has been treated with a pesticide. Importantly, information on percent crop treated is not used in a probabilistic analysis to average residue levels between treated and untreated crops but rather solely to determine ''the probability of [an individual] encountering a treated commodity.'' (Ref. 11 at 14). Thus, percent crop treated information is used in a fundamentally different fashion in probabilistic acute risk assessments than in non-probabilistic chronic risk assessments. (The Agency currently does not use probabilistic techniques for chronic risk assessment due to limitations in its food consumption database.)

The States' challenge to EPA's use of percent crop treated data for metribuzin is flawed because the States attack the appropriateness of the exposure estimate for a chronic risk assessment based on concerns more applicable to acute risk. The States argue that the adjustment of residue values by the percentage of the treated crop understates exposure of individual children because ''if a child is eating treated carrots, he or she is consuming carrots that all contain pesticide residues . . . .'' (Ref. 2 at 5). EPA generally agrees that if the concern is acute risk, it would be inappropriate to estimate acute exposure for non-blended commodities by multiplying the expected residue value in a food (e.g., carrots) by an estimate of the percent of carrots treated with the pesticide. Acute exposure assessments should be designed to identify actual exposures that can occur to an individual at a single meal or in a single day. For metribuzin (and alachlor and chlorothalonil as well), however, EPA used percent crop treated data only for estimating chronic pesticide exposure and risk. For chronic dietary risk, it is generally exposure over a period of at least 1 year that matters and over such a time period a person is likely to

consume a mixture of treated and untreated commodities.

For the same reason, the States' drunk driving hypothetical is not persuasive. Their hypothetical is somewhat analogous to the situation EPA faces in assessing acute pesticide risk - both the highway patrol officer investigating a suspected drunk driver and EPA in evaluating acute risk from pesticide exposures are interested in ascertaining an individual's actual level of exposure (to alcohol or pesticides, respectively) at a certain point in time. However, the hypothetical has no relevance to chronic pesticide risk assessment - the type of risk assessment involved in the State's objections -- because with chronic pesticide risk it is appropriate for EPA to focus on a person's general pesticide exposure level over an extended period rather than one particular exposure at a single point in time.

The States additionally argue that because ''families purchase food from the same place each week, a family could virtually always eat treated carrots . . . .'' (Ref. 2 at 5). What the States fail to take into account, however, is that, although a family may do its food shopping at the same store week-to-week and even may purchase a bag of carrots every week, from week-to-week the bag of carrots is likely to come not just from a different farm but a different region of the United States due to the national distribution of food commodities. Perishable foods are available on a nearly year-round basis in the United States only because the country's national food distribution network ships foods nationwide from different parts of the country or world as dictated by the differing growing seasons in these areas. For foods such as grains, root crops, or other commodities which have significantly greater storage times, a broad mixing of commodities occurs due to centralization of storage facilities prior to the commodities entering the food distribution network.

The States also fail to take into account the conservative manner that EPA uses percent crop treated data to estimate chronic exposure both generally and with regard to how these data were used for the metribuzin risk assessment. As discussed earlier, EPA uses a tiered approach to assess pesticide exposure in food, starting with a worst case assessment which assumes that all foods with tolerances contain the pesticide at the tolerance level (Tier 1) and then refining those assumptions through a series of tiers that increasingly incorporate data designed to measure residues at the time of consumption. Higher tiers (Tiers 3 and 4) rely heavily on monitoring data of pesticide residues in food sampled either at central food distribution points or in retail locations. Percent crop treated data is commonly introduced in Tier 2 as an initial refinement of worst case assumptions, and that is how it was used in the metribuzin risk assessment. There, EPA conducted primarily a Tier 2 assessment assuming that foods with metribuzin tolerances contained residues at the tolerance level reduced only by the percentage of these foods treated with metribuzin. EPA's experience has been that Tier 2 assessments significantly overstate exposure levels compared to higher tier assessments relying on monitoring data. This is well illustrated by the metribuzin risk assessment. For one crop commodity in that assessment, potatoes, EPA used monitoring data to estimate exposure levels rather than a combination of assuming tolerance level residues diminished only by the percent of the crop treated. The monitoring data showed that only 1 out of 1,472 potato samples had metribuzin residues. In that sample, metribuzin was detected at a level of 0.05 ppm. Conservatively, EPA assumed in its risk assessment that all potatoes contain 0.05 ppm of metribuzin. Despite this conservative approach to the monitoring data, a Tier 2 assessment relying on percent crop treated data and tolerance level residues in potatotes would have produced a much higher exposure estimate than the assessment relying on monitoring data. The tolerance for metribuzin in potatoes is 0.6 ppm. Decreasing that value by the percent crop treated value for metribuzin use on potatotes (70 percent) yields an estimated residue value in potatoes of 0.42 ppm, or almost an order of magnitude higher than the value derived from monitoring data which was used in the metribuzin risk assessment. (Ref. 8). There would have been an even bigger gap between a Tier 2 exposure assessment for potatoes and an assessment relying on monitoring data if EPA had made the reasonable, but still conservative assumption, that all potato samples in which no metribuzin was detected contained metribuzin at half the level of detection for the analytical method (levels of detection ranged from 0.016 to 0.030 ppm). (Ref. 12).

The conservativeness of EPA's metribuzin exposure assessment is further demonstrated by the most recent pesticide monitoring data (for the years 2002 – 2005) on foods for which EPA relied on percent crop treated information (asparagus, barley, carrots, corn (field, sweet, and pop), peas (dried and succulent), sugarcane, tomatoes, and wheat). Over these 4 years, USDA, through its Pesticide Data Program has collected pesticide monitoring data on asparagus, barley, carrots, corn (sweet), peas (succulent), tomatoes, and wheat. Out of 10,313 samples, only 11 showed metribuzin residues. (Ref. 13). These data demonstrate that, for all practical purposes, meaningful levels of metribuzin are nonexistent in food. Thus, EPA's use of percent crop treated data to refine the worst case assumption of all food bearing tolerance level residues in estimating chronic human exposure to metribuzin is very unlikely to have resulted in an understatement of such exposure. The States, for their part, offer no evidence to support their contention that EPA's use of percent crop treated data in the metribuzin risk assessment has led to an underestimate of metribuzin exposure.

Accordingly, the States' objection to the use of percent crop treated information is denied. First, as discussed in Unit VII.B.1., EPA denies this objection as to alachlor and chlorothalonil because it exceeds the scope of denial order and the petition underlying it. Second, as is explained in Unit VII.B.1., to the extent the States are making a legal argument that EPA may never consider percent crop treated data, that argument is defeated by the plain language of the statute. Third, to the extent they are arguing that the manner in which EPA uses percent crop treated data in chronic risk assessments understates pesticide exposures to individuals, their argument is not well-taken because they confuse chronic and acute exposure and risk; they do not take into account that the food distribution system in this country is national in scope; and they do not recognize the conservative fashion in which percent crop treated data was used in the metribuzin risk assessment to estimate exposure. Moreover, the States have offered no evidence to support their speculations about EPA underestimating exposure. Finally, the States have made no challenge to the accuracy of EPA's factual findings with regard to the percent crop treated data on metribuzin.

4. *Use of processing data.* The States object to the use of food processing factors claiming that such factors ''are generally based on limited test data from certain crops and extrapolated to other crops or conditions using a variety of statistical techniques.'' (Ref. 2 at 5). Further, citing to the chlorothalonil RED, the States claim that EPA wrongfully used a processing factor for carrots showing that chlorothalonil residues declined significantly in cooked carrots in estimating exposure to chlorothalonil from raw carrots.

According to the States, EPA erred because ''if a child is eating freshly treated raw carrots, the processing factor should not apply.'' (Ref. 2 at 6). The States imply that it is common practice for EPA to apply processing factors to raw food.

A bit of background might be helpful here. In estimating exposure to pesticide residues in food, EPA uses residue data from commercial food processing studies as well as, on occasion, data from in-home food preparation studies. (Ref. 3). These studies reveal whether commercial or home processing concentrates or reduces pesticide residues. Based on the degree of reduction or concentration of residues in food processing, EPA computes processing factors which when applied to level of residues found in raw foods will calculate the level of residue expected in the food following processing.

Data on the commercial processing of food (e.g., processing apples into apple juice; separating wheat into grain and bran) is routinely required as a part of pesticide registration under FIFRA and the tolerance petition process under the FFDCA. (40 CFR 158.240; Ref. 14). EPA has extensive guidance on the use of such data in pesticide exposure assessments including the appropriateness of extrapolating between data on different commodities. (Refs. 9 and 14). In the absence of commercial processing data, EPA relies on default processing factors in estimating exposure in processed foods. These default processing factors are extremely conservative in that they assume that:

i. Residues are concentrated to the maximum extent physically possible in processed foods, and

ii. When a raw commodity is processed into two separate processed commodities, all of the pesticide in the raw commodity is translocated to both processed commodities.

For example, in estimating residues in processed commodities resulting from the juicing of apples, EPA uses default processing factors that assume that all pesticide residues from the apple concentrate in both the juice and the remaining dry matter, apple pomace, which is fed to animals. (70 FR at 46733–46734). Data on pesticide residue levels following in-home food preparation is not routinely required and reliance on this information is used in risk assessments relatively rarely. Generally, these data are produced by pesticide manufacturers in an attempt to demonstrate that EPA has overstated residues in food as consumed.

The States' objection as to the use of processing factors is replete with problems. First, as noted above, if the States were concerned about the use of processing data in calculating processing factors, those concerns should have been raised in its petition. The REDs for all three pesticides extensively discussed processing data. Second, the States' claim that processing data are ''limited'' is too general and vague to satisfy the regulatory requirement that the basis for objections be stated with ''particularity.'' (40 CFR 178.25(a)(2)). The States neither point to specific data missing on these pesticides nor address the extensive EPA guidance and test guidelines concerning the collection and use of processing data. Third, the States' claim that EPA applies processing factors to raw foods in estimating residue levels in raw foods is specious. In support, the States assert that, in the chlorothalonil RED, EPA used a processing factor that showed a marked reduction of residues during the cooking of carrots to estimate the residues in raw carrots. The States are wrong. As the RED clearly states, the processing factor of 0.005 is for ''all cooked or processed food forms'' of carrots. (Ref. 6 at Table 6). Further, although the printouts from the computer risk assessment runs used to compile the 1998 chlorothalonil RED do not contain a high level of detail, later chlorothalonil risk assessments plainly show that the cooking factor for carrots is only applied to ''cooked'' carrots and not to ''uncooked'' carrots. (Ref. 15). The States, again, cite no basis for their claim to the contrary. The States' objection here is based on nothing more than speculation and incorrect assumptions and is, therefore, denied.

C. Data on Endocrine Effects

The States object to EPA's removal of the children's safety factor for chlorothalonil arguing that ''[e]ndocrine disruption was not considered in the FQPA assessment because EPA does not yet have in place the endocrine disruption screening program that was required by the FQPA . . . .'' (Ref. 2 at 3). The States further allege that ''EPA failed to consider other published information on endocrine disruption, and instead has made a unilateral decision to wait for the endocrine disruption program to be established before it can make any determination about endocrine disruption potential.'' (Id.).

These claims have no factual basis. In its order denying the States' petition, EPA described the multiple chlorothalonil studies it had addressing potential endocrine effects and found that chlorothalonil was not an endocrine disruptor. (71 FR at 43921). The States have made no credible challenge to EPA's scientific determination based on this extensive database. Further, the States are simply wrong in claiming that potential endocrine disruption was not considered by EPA.

In reviewing EPA's disposition of the endocrine disruptor issue in its petition denial, EPA has discovered one error in that document. There, EPA stated that the chlorothalonil two-generation reproduction study in rats was conducted ''under the most recent testing guidelines.'' (71 FR at 43921). Although this chlorothalonil study is largely consistent with these testing guidelines it was performed and reviewed by EPA prior to the finalization of the revised guidelines. In light of this misstatement, EPA has once again carefully reviewed the evidence on whether chlorothalonil is an endocrine disruptor. EPA reaffirms its earlier conclusion that chlorothalonil is not an endocrine disruptor for the reasons below.

EPA has extensive data bearing on chlorothalonil's potential to disrupt endocrine systems. For all pesticides that result in residues in foods, EPA reviews numerous studies that bear on a pesticide's potential endocrine effects. (71 FR at 43921). For chlorothalonil, EPA reviewed two complete sets of data on developmental toxicity, reproductive toxicity, subchronic toxicity, chronic toxicity, and cancer. (Ref. 16). Developmental studies evaluate several endpoints susceptible to endocrine influence including effects on maternal animal fertility and pregnancy rates and on pup viability and sex ratios in pups. (71 FR at 43921). The chlorothalonil studies showed no treatment-related effects on any of these endpoints. (Refs. 17, 18, 19, and 20). Subchronic, chronic, and cancer studies must include examination of organs that play a critical role in the endocrine system (e.g., testes, epididymides, uterus, ovaries, mammary glands, and thyroid with parathyroid). These organs are removed, weighed and subjected microscopically to examination for evidence of any pathology. (71 FR at 43921). For chlorothalonil, no effects were seen in these organs in sub-chronic, chronic, and cancer studies involving rats, dogs, and mice. Rather, these studies consistently showed non-endocrine mediated effects on the stomach and kidneys, or on body weight. (Refs. 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32).

The most important study for evaluating endocrine effects is the two-generation reproduction study in rats. (71 FR 43921). This study has been proposed by the Endocrine Disruptor Screening Program as the critical study for resolving whether chemicals are endocrine disruptors in mammals. The two-generation reproduction study examines numerous endpoints potentially influenced by the endocrine system including the endocrine-related organs noted above, as well as various reproduction endpoints both with regard to adults and pups. The most recent amendment to the guidelines for the reproduction study recommended expansion of the study to include consideration of the time of vaginal patency and balanopreputial separation in pups and determination of estrous cycle length and sperm enumeration, morphology, and motility in adults. (Ref. 33). Although the most recent chlorothalonil reproduction study was conducted prior to finalization of these amendments to the guideline, it nonetheless addressed all of these endpoints other than examination of adult sperm. Consistent with the other chlorothalonil toxicity studies, the reproduction study reported similar effects on the stomach and kidneys and no effects on the endocrine-related organs. A delay in vaginal patency and balanopreputial separation was noted at the high dose in pups; however, this effect was determined to have been a consequence of body weight decrements during lactation and not an endocrine effect, based on the fact that no differences were seen in mating and reproductive performance between treated and control animals. (Ref. 34). The findings in this study were similar to those in an earlier reproduction study with chlorothalonil. (Ref. 35).

What each of these studies show is that chlorothalonil's toxicity is not endocrine-mediated but rather operates by quite different mechanisms. Chlorothalonil causes a thickening and roughening, including hyperplasia and hyperkeratosis, of the lining (epithelium) of the non-glandular portion of the stomach and adverse effects on the kidney including increased weight and tumors. Chlorothalonil's effects on the stomach are due to irritation of the stomach lining followed by cytotoxicity, necrosis, increased cell proliferation, and restorative hyperplasia. The kidney effects are caused by chlorothalonil's disruption of enzymatic processes in the kidney leading to vacuolar degeneration, rapid cellular regeneration and proliferation, and eventually tumor formation. These effects are not related to the endocrine system. (Ref. 16). In fact, repeated examinations of the primary organs in the endocrine system in chlorothalonil studies have shown no adverse effects. Similarly, chlorothalonil's effect on body weight is a non-specific response not targeting any of the body's organs and thus not endocrine-related. Although data on effects on adult sperm were not collected in the reproduction study, repeated examinations of the testes in that and other studies showed no concern with this organ. Accordingly, EPA reaffirms its prior conclusion that it has sufficient data on the potential of chlorothalonil to cause endocrine effects in the young to remove the additional children's safety factor with regard to this endpoint.

For the first time in this proceeding, the States claim in their objections that EPA ignored ''published data [on endocrine disruption] that suggests that the full 10X factor should be applied . . ..'' (Ref. 2 at 4). Specifically, the States cite to two scientific articles which they claim document ''the growing body of evidence that the effects of endocrine disrupting chemicals can be associated with very low doses, especially if exposure occurs in vulnerable stages such as during fetal development.'' (Id.). EPA has several difficulties with this claim. First, for the reasons cited in Units VII.B., EPA questions the appropriateness of raising new factual claims at this stage of the proceedings. Second, the two articles cited are, for the most part, general overview discussions of endocrine disrupting chemicals, and do not show - and the States do not claim they show - that chlorothalonil is an endocrine disruptor.[1] Third, EPA does not understand the relevance the level at which endocrine disruptors cause effects has with regard to a pesticide such as chlorothalonil which has been found not to be an endocrine disruptor.

Accordingly, EPA denies the States' objection concerning endocrine disruptor data. To recap, EPA denied the States' petition which sought the revocation of the chlorothalonil tolerances based on the States' claim that EPA had unlawfully removed the children's safety factor given the alleged absence of data on, among other things, endocrine disruption. EPA explained that:

i. It was not legally compelled to retain the children's safety factor because data on chlorothalonil had not been collected under the endocrine disruptor screening program;

ii. It had adequate data on whether chlorothalonil was an endocrine disruptor; and

iii. Those data showed that chlorothalonil was not an endocrine disruptor. (71 FR at 43919–43921).

In its objections the States make no specific challenge to EPA's factual determination as to the second and third points; rather, they do little other than repeat the assertion presented in their petition that EPA cannot remove the children's safety factor until data is gathered under the endocrine disruptor screening program. EPA, therefore, denies the objections based on the legal and unchallenged factual grounds asserted in its order denying the petition. (See 71 FR at 43906). To the extent the States believe that the misstatement concerning conformance of the chlorothalonil reproduction study to the most recent testing guidelines caused it not to dispute EPA's factual findings, EPA will entertain supplemental objections addressing this factual issue so long as such supplemental objections are filed within 60 days of the date of publication of this order and otherwise meet the requirements governing objections in section 408(g) of FFDCA and 40 CFR part 178.

D. Alleged Uncertainty with Regard to Safety

The States object that there is uncertainty with regard to the safety of each of the pesticides and, for that reason, EPA should have retained the 10X children's safety factor. To demonstrate the alleged uncertainty, the States do nothing more than quote language from EPA's denial order that summarized the toxicological effect findings for chlorothalonil, alachlor, and methomyl. Presumably, the States are contending that the mere fact that at some dose a pesticide can cause an adverse effect in an animal study is sufficient to show a level of uncertainty that bars EPA from exercising its discretion to vary from the tenfold children's safety factor. As explained below, this argument is without a basis. The mere presence of an adverse effect

[1] One of the articles, contains an EPA list of endocrine disruptors which includes chlorothalonil. That list is dated October 24, 1996 and provides no reason for chlorothalonil's inclusion. The article notes that there is ''no doubt this list will change rapidly in the near future. Some of the chemicals on this list will probably be dropped from future consideration and other new ones are expected to be added.'' (Keith, Lawrence H., Environmental Endocrine Disruptors, Pure & Applied Chemistry., Vol. 70,No 12 pp. 2319–2326, at 2321 (1998)). As EPA has detailed in its order on the petition and this order, it has extensive data on chlorothalonil that shows that chlorothalonil is not an endocrine disruptor. As mentioned above, the objectors have provided no factual grounds challenging that determination.

in a toxicology study is insufficient without more factual context to show uncertainty. Because the States do not provide that context, their argument collapses at its inception.

Before addressing the merits of the States' objection, as a preliminary matter, EPA notes that this objection only applies to chlorothalonil and not to methomyl, alachlor, or metribuzin since EPA declined to retain the children's safety factor only as to chlorothalonil. As discussed above, the methomyl petition is still pending before EPA, and as to alachlor and metribuzin EPA did not address the issue of whether the children's safety factor should be retained given that, even if the factor is retained (due to uncertainty or some other reason), the tolerances would still meet the safety standard. Finally, even as to chlorothalonil, EPA questions the appropriateness of this objection given that it is based on arguments not included in the States' petition.

Turning to the merits of the objection-assuming it is properly filed as to chlorothalonil -- the objection can be quickly dismissed. The States are correct to note that the issue of whether there is uncertainty regarding the safety of children is a key consideration in a determination as to whether to retain or modify the children's safety factor. However, the States fail to make a significant argument that there is uncertainty regarding the safety of chlorothalonil. Certainly, the mere repetition of EPA's findings for chlorothalonil on the adverse effects seen in animal studies does not demonstrate uncertainty as to the safety of infants and children.

Adverse effects found in toxicological animal studies with a pesticide comprise just one piece of the complex puzzle informing the evaluation of uncertainty that is critical to the children's safety factor determination. Standing alone, they show little regarding the certainty or uncertainty regarding risks to infants and children. Rather, this certainty or uncertainty, which drives the determination of the children's safety factor, is informed by a weight-of-the-evidence evaluation of many issues including: what effects are seen in animals; what dose levels the effects occurred at; how strong the effects were; whether there was a good dose-response relationship with regard to the effects; how clearly a threshold for the effects have been identified; whether similar or related effects were seen in the same or other species in other studies; whether these effects are seen in adult and young animals, and, if so, at the same or differing levels; and what level of protection against the effects is provided by traditional safety factors. Reliance on a single fact (such as the type of adverse effect seen in an animal study), in isolation, without explanation of how it bears on the ultimate safety factor determination and certainty/uncertainty regarding that determination, is insufficient to state a meaningful challenge to EPA's conclusion on the children's safety factor.

For example, the first adverse effect cited by the States is that ''increased kidney weights and hyperplasia'' were seen in a chlorothalonil chronic rat study and that these effects were used in calculation of a safe dose for that pesticide. That is all the States say with regard to the increased kidney weights and hyperplasia. They do not discuss what dose level the effects occurred at, how significant the effects were, whether a clear no-effect level was identified for the effects, what safety factors were used to protect against the effect in humans, or any of the other issues identified above bearing on EPA's certainty/uncertainty regarding these effects. By itself, the fact that an adverse effect occurred shows little, and the failure of the States to offer any argument as to why such an effect evidences uncertainty renders their objection deficient on its face.

Accordingly, the States' objection that the children's safety factor is required for chlorothalonil due to uncertainty raised by adverse effects is denied. This argument is entirely absent from its petition and is thus not properly raised as an objection. In any event, the objection is denied on the merits for a failure to cite relevant factors or to make a meaningful factual showing on uncertainty.

E. Summary of Findings on the Objections

EPA denies each of the States' four objections for the reasons summarized below:

Objection #1: EPA was required to determine whether the children's safety factor should be applied for alachlor and metribuzin on the ''merits.''

In ruling on a petition to revoke tolerances as unsafe, EPA is not required to resolve substantive issues concerning the children's safety factor if resolution of those issues in the manner sought by the petitioner would not alter the safety determination for the challenged tolerances.

Objection #2: EPA unlawfully relied on percent crop treated data and processing factors to decrease the estimated risks of the challenged pesticide tolerances.

First, this objection is improper as to alachlor and chlorothalonil because the denial order did not rely on percent crop treated data or processing factors in resolving the objections as to these pesticide tolerances. The objection as to use of processing factors is improper as to metribuzin because EPA did not rely on processing factors to decrease metribuzin exposure estimates in the denial order.

Second, as to the objection with regard to the use of percent crop treated data in the metribuzin risk assessment, the plain language of the statute makes clear that EPA may rely on such information and the States' claims that reliance on such data is not protective of individual risk were not substantiated. Additionally, EPA's conservative use of percent crop treated data in the metribuzin risk assessment is unlikely to have underestimated metribuzin exposure and the States have presented no evidence to the contrary.

Third, alternate grounds for denying the States' objection to the use of processing factors include: (1) the States have failed to particularize their criticism of the use of such information and instead rely on vague and unsubstantiated allegations; and (2) the States' claim that EPA uses processing factors to estimate residue levels in raw, unprocessed food is in contravention of clear record evidence, and without any substantiation.

Objection #3: EPA has failed to consider endocrine effects for challenged pesticides because EPA has not obtained data for these pesticides under the endocrine-screening program and because EPA has not considered outside literature bearing on endocrine effects.

First, this objection is improper as to alachlor and metribuzin because the denial order did not resolve any issue regarding endocrine effects as to these two pesticides. This objection is only properly filed as to chlorothalonil.

Second, EPA has considered substantial data on the potential endocrine effects of chlorothalonil and concluded that it is not an endocrine disruptor. The States' objection does not challenge this factual determination. The statute does not require that EPA retain the children's safety factor until the endocrine-screening program is completed.

Third, the States' claim that EPA has not properly considered outside literature on endocrine disruption is denied as going beyond the provisions of the denial order. An alternate ground for denying this argument is that literature cited by the States is general

in nature and does not provide information on chlorothalonil.

Objection #4: Where a pesticide causes adverse effects in animal toxicological studies EPA may not remove the children's safety factor due to lingering uncertainty concerning its safety.

First, this objection is improperly submitted in that the question of whether the mere presence of adverse effects in animal toxicological studies is determinative under the children's safety factor provision was not addressed in the petition denial order.

Second, an alternate ground for denying this objection is that the mere citation of adverse effects is inadequate standing alone to demonstrate uncertainty regarding the safety of a pesticide.

VIII. Judicial Review

This is a final order under FFDCA section 408(g)(2)(C) and is reviewable in the United States Courts of Appeals pursuant to FFDCA section 408(h)(1). (21 U.S.C. 346a(g)(2)(C) and 346a(h)(1)). To the extent supplemental objections are timely filed, as discussed in Unit VII.C., EPA will issue a separate, reviewable order under FFDCA section 408(g)(2)(C) pertaining solely to any such supplemental objections.

IX. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's final order regarding objections filed under section 408 of FFDCA. As such, this action is an adjudication and not a rule. The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

X. 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, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

XI. References

1. Petition of New York, California, Connecticut and Massachusetts for Modification of Tolerances for Pesticide Chemical Residues Established in Reregistration Eligibility Determinations for the Following Chemicals: Alachlor; Chlorothalonil; Methomyl; Metribuzin; Thiodicarb (December 17, 2004) (petition addressed to Michael O. Leavitt, Administrator, United States Environmental Protection Agency).

2. Objection of New York, Connecticut, and Massachusetts to Order Denying Petition to Revoke or Modify Tolerances for Alachlor, Chlorothalonil and Metribuzin (October 2, 2006).

3. Office of Pesticide Programs, U.S. EPA, ''Available Information on Assessing Pesticide Exposure From Food: A User's Guide'' (June 21, 2000).

4. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Reregistration Eligibility Decision: Alachlor (December 1998).

5. U.S. EPA, Permanent Tolerances by Pesticide: Aug. 1996 TIS (August 2002) (available at *http://www.epa.gov/oppsrrd1/tolerance/pdf-files/TolUniv8-05-2002.PDF*).

6. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Reregistration Eligibility Decision: Chlorothalonil (April 1999).

7. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Reregistration Eligibility Decision: Metribuzin (February 1998).

8. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Douglas Dotson to Paula Deschamp, ''Metribuzin Acute and Chronic Dietary Exposure Assessments'' (April 17, 2006).

9. Office of Pesticide Programs, U.S. EPA, ''Guidance For Refining Anticipated Residue Estimates For Use In Acute Dietary Probabilistic Risk Assessment'' (June 15, 2000).

10. U.S. EPA, ''Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment'' (March 25, 1991).

11. Office of Pesticide Programs, U.S. EPA, ''Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern.'' (March 16, 2000) (available at *http://www.epa.gov/pesticides/ trac/science/trac2b054.pdf*).]

12. Office of Pesticide Programs, U.S. EPA, ''Assigning Values To Nondetected/Non-Quantified Pesticide Residues In Human Health Food Exposure Assessments.'' (March 23, 2000).

13. U.S. Department of Agriculture, Pesticide Data Program (2002 – 2005) (available at *http://www.ams.usda.gov/science/pdp/download.htm* and in the docket).

14. Office of Prevention, Pesticide, and Toxic Substances, U.S. EPA, OPPTS Harmonized Test Guidelines: Series 860 Residue Chemistry Test Guidelines, OPPTS 860.1520 - Processed Food/Feed (August 1996).

15. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from J.R. Tomerlein to Dennis McNeilly/Rosemary Kearns, ''Chlorothalonil: Acute and Chronic Dietary Exposure Assessments for a Tolerance on Edible Podded Peas Without a U.S. Registration'' (December 15, 2004).

16. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from P.V. Shah to Pete Caulkins, ''HED Response to Questions Raised by SRRD Regarding Chlorothalonil'' (June 22, 2006).

17. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): Prenatal Developmental Toxicity Study - Rabbit; Chlorothalonil (1994).

18. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): Prenatal Developmental Toxicity Study - Rat; Chlorothalonil (1994).

19. Office of Pesticide and Toxic Substances, U.S. EPA, Memorandum from Alan C. Levy to Cynthia Giles-Parker, ''Chlorothalonil - Reviews of the Following Toxicity Studies: Rat Oncogenicity, Rabbit Teratogenicity, One-Generation Rat Reproduction (rangefinding), Rat Pilot Metabolism With AT-125, Comparison of Dog and Rat Metabolism, and Rat Dermal Metabolism'' (1991).

20. Office of Pesticide and Toxic Substances, U.S. EPA, Memorandum from David L. Ritter to Henry Jacoby, ''EPA Reg. No 677–313 - Review of miscellaneous Toxicity Data'' (1984).

21. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): Subchronic Oral Toxicity in Dogs (diet); Chlorothalonil (1994).

22. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): 90–Day Oral Toxicity [diet] - rats; Chlorothalonil (1994).

23. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): Subchronic Feeding Neurotoxicity in Rat; Chlorothalonil (2004).

24. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): Combined chronic toxicity/carcinogenicity (diet)- rats; Chlorothalonil (1996).

25. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): Chronic Toxicity in Dogs (diet); Chlorothalonil (1995).

26. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): Carcinogenicity study in mice [feeding]; Chlorothalonil (1995).

27. Office of Pesticides and Toxic Substances, U.S. EPA, Memorandum to Diane Beavers, ''Chlorothalonil (CTN)

and its 4-OH metabolite in almonds, rice, wheat and meat, milk, poultry and eggs. Petition for tolerances'' (1984).

28. Office of Pesticides and Toxic Substances, Memorandum from David Ritter to H. Jacoby, ''EPA Reg.No 50534–7 Data Call in Submission. Chlorothalonil Registration Standard; review of data'' (1986).

29. Office of Prevention, Pesticides, and Toxic Substances, Memorandum from Alan C. Levy to Walter Waldrop/ Andrew W. Ertman, ''Chlorothalonil - Review of 30–Day, 90–Day and One–Year Dog Studies (Oral Administration, Gelatin Capsules)'' (1996).

30. Health Effects Division, U.S. EPA, Data Evaluation Report; Ninety Day Mouse Feeding Study; Technical Chlorothalonil (DS–2787) (1983).

31. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Alan C. Levy to Karen Whitby, ''Chlorothalonil - Rereview of a Chronic Dog Study and a Developmental Rat Study; Review of a Dermal Absorption Rat Study'' (1995).

32. Office of Pesticides and Toxic Substances, U.S. EPA, Memorandum from D. Ritter to Lois Rossi, ''EPA No 50534–7 - CX, Submission of additional toxicity data'' (1988).

33. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Health Effects Test Guidelines; OPPTS 870.3800; Reproduction and Fertility Effects (August 1998).

34. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR No: 0052493): Reproduction and Fertility Effects Study - [rat]; Chlorothalonil (1995).

35. Office of Pesticide and Toxic Substances, U.S. EPA, Memorandum from Alan C. Levy to Walter Waldrop/ Andrew W. Ertman, ''Chlorothalonil - Two-Generation Reproduction Study in Rats'' (1993).

List of Subjects in 40 CFR Part 180

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

Dated: July 1, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7–13830 Filed 7–17–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 278

[EPA–HQ–RCRA–2006–0097; FRL–8326–1]

RIN 2050–AG27

Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as ''Chat''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is promulgating mandatory criteria for the environmentally protective use of chat in transportation projects carried out, in whole or in part, with Federal funds. Specifically, chat used in such transportation projects will be safe and environmentally protective if it is used in asphalt concrete, in slurry seals, microsurfacing, or in epoxy seals for anti-skid on bridge decking. Chat used in such transportation projects will also meet EPA's criteria if it is used in Portland cement concrete, flowable fill, stabilized base, chip seals, or as road base providing, on a case-by-case basis, either: Synthetic Precipitation Leaching Procedure (SPLP, EPA SW–846 Method 1312) tests are conducted on the proposed material and the leachate testing results show that concentrations in the leachate do not exceed the Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 ug/l; or EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not cause an exceedance of the National Primary Drinking Water Standards for lead and cadmium in potential drinking water sources and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 ug/l in surface water. Furthermore, this rule also establishes a criterion that other uses of chat will be safe and environmentally protective and are acceptable if they are part of, and otherwise authorized by, a State or Federal response action undertaken in accordance with Federal or State environmental laws, with consideration of a site-specific risk assessment. This rule does not require that chat be sized (dry or wet) prior to its use, as long as this rule's criteria are complied with. EPA is also establishing recommended criteria as guidance on the environmentally protective use of chat for non-transportation cement and concrete projects. Finally, the Agency is establishing certification and recordkeeping requirements for all chat, except that under the jurisdiction of the U.S. Department of Interior, Bureau of Indian Affairs (BIA). The chat covered by this rule is from the lead and zinc mining areas of Oklahoma, Kansas and Missouri, known as the Tri-State Mining District.

DATES: This final rule is effective on September 17, 2007.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 17, 2007.

ADDRESSES: The public docket for this final rule, Docket ID No EPA–HQ–RCRA–2006–0097, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.*, Confidential Business Information or other information the disclosure of which 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 *http://www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Public Reading Room is 202–566–1744, and the telephone number to make an appointment to view the docket is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: Stephen Hoffman, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460–0002, Mail Code 5306P; telephone number: 703–308–8413; fax number: 703–308–8686; e-mail address: *hoffman.stephen@epa.gov.* Additional information on this rulemaking is also available on the internet at *http://www.epa.gov/epaoswer/other/mining/chat/*.

The contents of this final rule are listed in the following outline

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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does This Rule Apply to Me?

These criteria affect the following entities: aggregate, asphalt, cement, and concrete facilities, likely limited to the Tri-State Mining District. However, other types of entities not identified could also be affected—that is, the list is not intended to be exhaustive, but to provide a guide for readers regarding those entities that potentially could be affected by this action. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria of this preamble. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Are the Statutory Authorities for This Final Rule?

Through Title VI, Section 6018 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (HR 3 or ''the Act''), Congress amended Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 *et seq.*) by adding Sec. 6006. This provision requires the Agency to establish safe and environmentally protective criteria (including an evaluation of whether to establish a numerical standard for concentrations of lead and other hazardous substances) for the use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat,' in cement and concrete projects and in transportation construction projects that are carried out, in whole or in part, using Federal funds. Section 6006(a)(4) requires that any use of the granular mine tailings in a transportation project that is carried out, in whole or in part, using Federal funds, meet EPA's established criteria.

In establishing such criteria, EPA is required to consider ''the current and previous uses of granular mine tailings as an aggregate for asphalt, and any environmental and public health risks and benefits derived from the removal, transportation and use in transportation projects of granular mine tailings'' carried out, in whole or in part, using Federal funds. EPA is also required to consult with the Secretary of Transportation, and other Federal agencies in developing these criteria. RCRA section 2002(a) grants the Agency broad rulemaking authority, providing that the Administrator is authorized to prescribe ''such regulations as are necessary to carry out his functions under this chapter.''

While this is a regulation promulgated under RCRA, the rule sets the criteria that must be complied with at transportation construction projects funded, in whole or in part, with Federal funds. The U.S. Department of Transportation (DOT) has statutory responsibility over the dispersement of federal funds for transportation projects. Therefore, USDOT will make reference to this rule as one of the regulatory requirements it requires all states to adhere to as a condition of receiving Federal funds for transportation projects using chat.

C. Definitions and Acronyms Used in the Rule

- *Asphalt*—also known as asphalt cement, is liquid bitumen (heavy petroleum) used as the binder in cold, warm, and hot mix asphalt, chip seals, slurry seals, and microsurfacing. The term 'asphalt' is sometimes used generically in place of cold, warm, or hot mix asphalt.
- *Asphalt concrete*—a layer, or combination of layers, composed of a compacted mixture of an asphalt binder and mineral aggregate.
- *Pozzolanic*—a siliceous material which when combined with calcium hydroxide in the presence of moisture exhibits cementitious properties.
- *State or Federal response action*—State or Federal response action undertaken pursuant to applicable Federal or State environmental laws and with consideration of site-specific risk assessments.
- *Raw chat*—unmodified lead-zinc ore milling waste that comes from the Tri-State Mining District.
- *Washed chat*—lead-zinc ore milling waste that has been wet-screened to remove the fine-grained fraction and which is sized so as not to pass through a number 40 sieve (0.425 mm opening size) or smaller.
- *Sized chat*—lead-zinc ore milling waste that has been wet-screened (washed) or dry sieved to remove the fine-grained fraction smaller than a number 40 sieve (0.425 mm opening size).

Non-transportation cement and concrete projects uses are:

—Construction uses of cement and concrete for non-residential structural uses limited to weight bearing purposes such as foundations, slabs, and concrete wall panels. Other uses include commercial/industrial parking and sidewalk areas. Uses do not include any residential use of cement or concrete (*e.g.*, residential parking areas, residential construction, concrete counter tops).

Transportation construction uses are:

—*Hot mix asphalt*—a hot mixture of asphalt binder and size-graded aggregate, which can be compacted into a uniform dense mass. Hot mix asphalt also includes hot mix asphalt sub bases and hot mix asphalt bases.

—*Portland cement concrete (PCC)*—pavements consisting of a PCC slab that is usually supported by a granular (made of compacted aggregate) or stabilized base and a sub base. In some cases, the PCC slab may be overlaid with a layer of hot mix asphalt. PCC uses also include bridge supports, bridge decking, abutments, highway sound barriers, jersey walls, and non-residential side walks adjacent to highways.

—*Flowable fill*—a cementitious slurry consisting of a mixture of fine

aggregate or filler, water, and cementitious materials which is used primarily as a backfill in lieu of compacted earth. This mixture is capable of filling all voids in irregular excavations, is self leveling, and hardens in a matter of a few hours without the need of compaction in layers. Most applications for flowable fill involve unconfined compressive strengths of 2.1 MPa (300 lb/in2) or less.

—*Stabilized base*—a class of paving materials that are mixtures of one or more sources of aggregate and cementitious materials blended with a sufficient amount of water that result in the mixture having a moist nonplastic consistency that can be compacted to form a dense mass and gain strength. This class of base and sub base materials excludes stabilization of soils or aggregates using asphalt concrete or emulsified asphalt.

—*Granular bases*—road base typically constructed by spreading aggregates in thin layers of 150 mm (6 inches) to 200 mm (8 inches) and compacting each layer by rolling over it with heavy compaction equipment. The aggregate base layers serve a variety of purposes, including reducing the stress applied to the sub grade layer and providing drainage for the pavement structure. The granular sub base forms the lowest (bottom) layer of the pavement structure and acts as the principal foundation for the subsequent road profile.

—*Embankment*—a volume of earthen material that is placed and compacted for the purpose of raising the grade of a roadway above the level of the existing surrounding ground surface.

—*Slurry seals*—a material composed of emulsified asphalt, aggregate, and mineral fillers, such as Portland cement or lime which is applied as a thin coating on top of asphalt or PCC road surfaces.

—*Micosurfacing*—polymer-modified slurry seal.

—*Cold mix asphalt*—an asphalt/aggregate mixture composed of binders, soaps, or other chemicals which allow its use when cold or warm.

—*Epoxy seals*—the mixture of aggregate in epoxy binders. Epoxy seals are typically used as an anti-skid surface on bridge decking.

—*Chip seals*—a material composed of aggregate placed on top of a layer of an asphalt or asphaltic liquid binder. The aggregate may be rolled into the binder.

Abbreviations and Acronyms Used in This Document

ANSI American National Standards Institute
AASHTO American Association of State Highway and Transportation Officials
ASR Alkali-Silica Reaction
ASTM American Society for Testing and Materials
ATSDR Agency for Toxic Substances and Disease Registry
BDAT Best Demonstrated Available Technology
BIA Bureau of Indian Affairs
CAA Clean Air Act (42 USCA 7401)
CERCLA Comprehensive Environmental Response Compensation and Liability Act (42 USCA 9601)
CFR Code of Federal Regulations
CWA Clean Water Act (33 USCA 1251)
DOT Department of Transportation
EO Executive Order
EPA Environmental Protection Agency
FHWA Federal Highway Administration
FR Federal Register
ICR Information Collection Request
IEUBK Integrated Exposure Uptake Biokinetic (Model)
MCL Maximum Contaminant Level (Safe Drinking Water Act)
NIOSH National Institute for Occupational Safety and Health
NPL National Priorities List
ODEQ Oklahoma Department of Environmental Quality
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
OU University of Oklahoma
OUs Operable Units
PCC Portland cement concrete
PEL Permissible Exposure Level
ppmv parts per million by volume
ppmw parts per million by weight
Pub. L. Public Law
RCRA Resource Conservation and Recovery Act (42 USCA 6901)
ROD Record of Decision
SMCL Secondary Maximum Contaminant Level (Safe Drinking Water Act)
SPLP Synthetic Precipitation Leaching Procedure (EPA SW 846 Method 1312)
SSL (Superfund) Soil Screening Level
TCLP Toxicity Characteristic Leaching Procedure (EPA SW 846 Method 1311)
TWA Time-Weighted Average
USACE U.S. Army Corp of Engineers
U.S.C. United States Code

II. Summary of This Rule

On April 4, 2006, EPA published a **Federal Register** notice (64 FR 16729) seeking comment on a proposed rule that would establish criteria for the safe and environmentally protective use of chat in transportation projects funded, in whole or in part, with Federal funds, as well as proposed guidance on the use of chat in non-transportation cement and concrete projects. Based on a request to extend the comment period, the Agency again sought comment on this proposal on May 19, 2006 (71 FR 29117). The purpose of the proposed rule was to establish criteria that would identify environmentally protective uses of chat in federally funded transportation projects.

The Agency received many comments in response to its April 4 and May 19, 2006 notices. Numerous commenters generally supported the proposed rule, while other commenters suggested changes to the proposal. After considering all comments, we are finalizing the proposed rule with several significant modifications. The final rule, similar to the proposed rule, establishes criteria allowing the use of chat in federally funded transportation projects when used in asphalt concrete for roadway surfaces and in asphalt for road bases and sub bases. Upon consideration of the comments, the Agency is expanding its criteria for chat in federally funded transportation projects to include chat used in slurry seals, microsurfacing, epoxy seals, and cold and warm mix asphalt. However, a significant modification to the proposal is that before chat can be used in Portland cement concrete (PCC) federally funded transportation projects, a person must show, on a case by case basis that: (1) Synthetic Precipitation Leaching Procedure (SPLP, EPA SW–846 Method 1312) tests are conducted on the proposed material and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 ug/l; or (2) EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not cause an exceedance of the National Primary Drinking Water Standards for lead and cadmium in potential drinking water sources and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 ug/l in surface water.

The Agency is making these changes in response to comments received on the proposed rule, including comments

from the Peer Review Panel, which argued that there were insufficient data for the Agency to determine the range of risk from the use of chat in PCC. In addition, based on comment, the Agency also concluded that the use of chat in flowable fill, stabilized based, chip seals and as road base may only be allowed if a case-by-case demonstration is made, as described above. This rule's approach will generate the data needed to determine if such uses are safe and environmentally protective. Such an approach is also similar to that already used by a number of states when they make beneficial use determinations.

The Agency wishes to emphasize that the use of chat in transportation projects, funded in whole or in part using Federal funds, does not affect a person's obligation to comply with existing state or Federal materials specifications. Further discussion of this matter is noted in the sections entitled, Physical and Chemical Characteristics of Chat and Relationship of this Rule to other Federal Regulations and Guidance.

The Agency has retained its proposal that chat authorized by a State or Federal response action undertaken in accordance with Federal or State environmental laws need not comply with the criteria in sections 278.3 (a) or (b). Such response actions are undertaken with consideration of site-specific risk assessments. For example, unencapsulated uses of chat may be authorized in a State or Federal remediation action. This rule also retains the certification requirement, since the Agency believes that such notice is important for states and the public to know how and where chat is used in transportation.

EPA believes that this rule will encourage the environmentally sound use of chat in transportation projects funded, in whole or in part, with Federal funds.

III. Background Information

1. What Is Chat?

Chat is the waste material that was generated from the extraction and beneficiation of lead/zinc minerals to produce lead/zinc concentrate in the Tri-State Mining District of Southwest Missouri, Southeast Kansas and Northeast Oklahoma. Chat is primarily composed of chert, a very hard rock. The primary properties that make chat useful in asphalt-based road materials, Portland cement concrete, and epoxies are grain size distribution, durability, non-polishing, and low moisture absorption.

In 1980, Congress enacted the Solid Waste Disposal Act Amendments (Pub. L. 96–482) which added section 3001(b)(3)(A)(ii) (the Bevill Amendment) to RCRA. This section required the Agency to study extraction/beneficiation wastes and in 1989 the Agency promulgated a rule (54 FR 36592) which exempts extraction/beneficiation wastes from regulation under the RCRA Subtitle C hazardous waste regulations (see (40 CFR 261.4(b)(7)). Therefore, chat is a ''Bevill exempt'' waste and is not subject to regulation under RCRA Subtitle C. This exemption does not, however, affect CERCLA jurisdiction over chat, since chat contains hazardous substances, nor does it affect the jurisdiction of RCRA section 7003, as long as the chat is a solid waste.

2. What Is the Areal Scope for This Action?

The Act directed EPA to develop criteria for chat from the Tar Creek, Oklahoma Mining District. However, there is no definition of the term ''Tar Creek Oklahoma Mining District.'' Available literature references the ''Tar Creek Superfund site,'' which is in Oklahoma, but the term ''mining district'' is only used in reference to the ''Tri-State Mining District.'' For purposes of this final rule, the areal scope includes chat originating from the Tri-State Mining District of Ottawa County, Oklahoma, Cherokee County of southeast Kansas, and Jasper, Newton, Lawrence and Barry Counties of southwest Missouri, regardless of where it is used.

In 1979, the U.S. Bureau of Mines completed a study to identify all mined areas and mine-related hazards which confirmed that lead-zinc mining covers a portion of each of the States of Kansas, Missouri, and Oklahoma. This area is the same area known as the Tri-State Mining District.

Chat located in this historical mining district is a product of similar mineralization processes that sets it aside from related lead-zinc mineralization districts elsewhere in the United States. The Tri-State mineralization is specifically associated with wall rock alteration into dolomite and microcrystalline silica (chert). The term chat is derived from the word ''chert,'' referring to the cherty wallrock found in this mining district. The lead/zinc ore and its related waste, chat, in this district also have a well defined lead to zinc ratio.

For over one hundred years of activity ending in 1970, the Tri-State Mining District has been the source of a major share of all the lead and zinc mined in the United States. Surface piles of chat, as well as underground mining areas, extend uninterrupted across the Oklahoma-Kansas State line. In the proposal, the Agency did not include Lawrence and Barry counties in southwest Missouri as part of the areal extent of the rule, but requested comment on whether it would be reasonable to include them (see 71 FR 16732). Commenters requested that the Agency expand the scope of the rule to include these two counties in southwest Missouri. Based on communication with state regulatory officials in Kansas, Missouri, and Oklahoma and review of mineral geology studies, EPA concludes that there is no real factual distinction between chat derived from these three states, and believes that it is reasonable to apply this rule to the areal extent of all chat generated and currently located in the following counties: Ottawa county, Oklahoma, Cherokee county, Kansas, and Newton, Jasper, Lawrence and Barry counties in Missouri.

3. Are There Any Current Regulations of Asphalt, Portland Cement Concrete or Chat Washing Facilities?

Based on the Agency's review of existing state and federal regulations, the Agency did not propose to apply any additional regulations on chat washing or hot mix asphalt and Portland cement concrete plants, although the Agency solicited comment on whether it would be prudent for this rule to apply additional controls, over those that currently exist, to address environmental releases from these types of facilities.[1] Specifically, at proposal, the Agency assessed existing regulations in Oklahoma, Kansas, and Missouri for hot mix asphalt plants and Portland cement concrete plants to determine whether those operations are appropriately regulated to address environmental releases for such facilities. (See memorandum entitled: *Evaluation of State Regulations* in the docket.) Those regulations set standards for point and fugitive air emission sources (see Kansas: K.A.R. 28–19–500, Missouri: 10 CSR 10–6.170, and Oklahoma: OAC 252:100–7/8/29) and also set requirements for water discharges from point source discharges (see Kansas: K.A.R. 28–16, Missouri: 10

[1] It should be noted that the statute does not require the Agency to set criteria for facilities that prepare chat prior to its use, but restricts the activities for which the Agency is to establish criteria for the use of chat in transportation projects funded, wholly or in part, with Federal funds. Nevertheless, the Agency evaluated the potential for environmental releases from these types of facilities—chat washing, hot mix asphalt and Portland cement concrete plants as part of the rulemaking.

CSR 20–6.200, and Oklahoma: OAC 252:606–5–5). In addition, Oklahoma, Missouri and Kansas all require that trucks transporting aggregate must be covered to reduce fugitive emissions and reduce damage to other vehicles from windblown debris. The Bureau of Indian Affairs (BIA) also requires that trucks transporting chat from Tribal lands be covered to prevent blowing dust from transport.

The Agency also assessed existing regulations in Oklahoma, Kansas, and Missouri for chat washing facilities to determine whether chat ''washing'' operations are adequately managed.[2] There are two commercial chat washing facilities in the Tri-State area and both are located within the Tar Creek Superfund site. While the States do not have specific regulations applicable to chat washing facilities, these facilities are subject to State general fugitive air emissions and general storm water discharge regulations. These general State permits require that fugitive dusts and runoff be controlled in a fashion so that dusts and other pollutants do not leave the property line or the boundary of the construction activity. In addition, because the two chat washing facilities are located within the Tar Creek Superfund site, the Agency may rely on CERCLA authority to establish any additional conditions that are considered necessary to be safe and environmentally protective.

The BIA is also establishing air and water standards for chat washing facilities located on Tribal lands and lands administered by BIA. BIA's requirements include that the chat washing facility manage waste water discharges so that they do not exceed State standards, that fugitive dusts be controlled, and that fines are handled and disposed of so that they do not contaminate ground water. In addition, BIA requires all purchasers of chat from Tribal lands, or lands administered by BIA, to certify that the chat will be used in accordance with authorized uses set forth in EPA fact sheets and other guidance. (See report titled, *Chat Sales Treatability Study Workplan for the Sale of Indian-Owned Chat within the Tar Creek Superfund Site, Ottawa County, Oklahoma,* June 23, 2005.).

A number of commenters noted their concern that existing regulations do not adequately control releases from these types of facilities. As noted above, the Agency reviewed existing state and Federal regulations of these facilities, and determined that they are in fact subject to regulation of their releases and that the existing regulations assure safe and environmentally protective conditions at these facilities—that is, hot mix asphalt plants, PCC plants and chat washing facilities. Therefore, the Agency is not promulgating additional controls for these facilities.

4. Are There Existing Criteria for the Use of Chat?

As noted in a 2005 University of Oklahoma (OU) report, the Oklahoma Department of Environmental Quality (ODEQ) has determined that the following transportation uses of raw chat are inappropriate: Use in residential driveways and as gravel or unencapsulated surface material in parking lots, alleyways, or roadways (See *A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application: Final Report*). ODEQ also identified the following non-transportation uses of raw chat that are deemed inappropriate for residential use:

—Fill material in yards, playgrounds, parks, and ball fields
—Playground sand or surface material in play areas
—Vegetable gardening in locations with contaminated chat
—Surface material for vehicular traffic (e.g., roadways, alleyways, driveways, or parking lots)
—Sanding of icy roads
—Sandblasting with sand from tailings ponds or other chat sources
—Bedding material under a slab in a building that has underfloor air conditioning or heating ducts
—Development of land for residential use (*e.g.*, for houses or for children's play areas, such as parks or playgrounds) where visible chat is present or where the lead concentration in the soil is equal to or greater than 500 mg/kg unless the direct human contact health threat is eliminated by engineering controls (*e.g.*, removing the contaminated soil or capping the contaminated soil with at least 18 inches of clean soil)

EPA Region 6 also issued a Tar Creek Mining Waste Fact Sheet on June 28, 2002 that identified the following as acceptable uses of chat: (1) Applications that bind (encapsulate) the chat into a durable product (*e.g.*, concrete and asphalt), (2) applications that use the chat as a material for manufacturing a safe product where all waste byproducts are properly disposed, and (3) applications that use the chat as sub-grade or base material for highways (concrete and asphalt) designed and constructed to sustain heavy vehicular traffic. This fact sheet also incorporated the ODEQ list of unacceptable residential uses of chat.

In addition, EPA Region 7 issued a Mine Waste Fact Sheet in 2003 that identified the uses of chat that are not likely to present a threat to human health or the environment. Those uses are: (1) Applications that bind material into a durable product; these would include its use as an aggregate in batch plants preparing asphalt and concrete, (2) applications below paving on asphalt or concrete roads and parking lots, (3) applications that cover the material with clean material, particularly in areas that are not likely to ever be used for residential or public area development, and (4) applications that use the material as a raw product for manufacturing a safe product. The fact sheet also lists mine waste (chat) uses that may not be safe and environmentally protective and are similar to those listed by ODEQ and the Region 6 fact sheet. However, the Region 7 fact sheet also lists use as an agricultural soil amendment to adjust soil alkalinity as a use that may not be safe and environmentally protective.

This rule is more restrictive than the 2002/2003 Region 6 and 7 fact sheets. Therefore, the Agency is issuing new fact sheets on the use of chat from the Tri State Mining District in transportation construction projects funded, in whole or in part, with Federal funds and in non-transportation non-residential uses of chat. The new fact sheets are consistent with this rule. The fact sheets are available at *http://www.epa.gov/epaoswer/other/mining/chat/*.

5. Physical and Chemical Characteristics of Chat

This section provides information on the physical characteristics, such as hardness, soundness (durability), gradation, shape and surface texture, and chemical characteristics, such as the leaching potential of chat.

Physical Characteristics

In an OU study (*A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application: Final Report (August 2005)*), the specific gravity of the raw chat was found to be 2.67, which is similar to some commonly used aggregates, such as limestone and sandstone.

According to an ODEQ study (*Summary of Washed and Unwashed Mining Tailings (Chat) from Two Piles at the Tar Creek Superfund Site, Ottawa County Oklahoma, Revised June 2003*), chat consists of materials ranging in diameter from 15.875 mm (5/8 inch) to

[2] While EPA recognizes that some chat is washed or sized prior to being used, today's final rule does not require that chat be washed prior to its use. Therefore, imposing additional requirements for chat washing facilities would seem inappropriate.

less than 0.075 mm (the size fraction that passes the No. 200 sieve).

Since raw chat is a crushed material from mining operations, raw chat particles have fractured faces. Raw chat also has numerous inter-granular voids in the loose aggregate form. The more angular the aggregate the higher the amount of voids. The uncompacted void content or the fine aggregate angularity of raw chat was found to be 46%. This value exceeds the higher fine aggregate angularity required by most State DOTs.

Raw chat is harder than some other aggregates, such as limestone. The L.A. abrasion value (determined by the Test for Resistance to Degradation of Aggregate by Abrasion and Impact in the Los Angeles Abrasion Machine) of raw chat was found to be 18% which is lower than that of limestone (23%) used in the OU study. This makes chat a good material in road surfaces since it does not wear down as fast as other aggregates.

Cubical shape is another desirable property of a good aggregate. The coarse aggregate in raw chat (particles retained on a 4.75 mm (#4) sieve) has less than 5% flat or elongated particles. Therefore, chat is viewed as a desirable aggregate material.

State DOTs specify minimum aggregate durability indices depending on the type of road surface. In the OU study, the aggregate durability index of raw chat was found to be 78%. The insoluble residue of raw chat was found to be 98%. Oklahoma DOT has established a 40% insoluble requirement for combined aggregates used in a surface layer of hot mix asphalt, for the purpose of skid resistance. Surface treatments, like microsurfacing, have higher insoluble residue requirements. Thus, the use of insoluble aggregates like chat in hot mix asphalt surface mixes and other surface treatments can improve the skid resistance and safety of pavements.

State DOTs also specify aggregate requirements for hot mix asphalt and PCC. Most State DOTs, including Kansas, Oklahoma and Missouri, have adopted aggregate standards developed by the American Association of State Highway and Transportation Officials (AASHTO). According to AASHTO, the 0.075 mm (#200) sieve size is the dividing line between sand-size particles and the finer sized particles defined as silts and clays. These finer particles often adhere to larger sand and gravel particles and can adversely affect the quality of hot mix asphalt and Portland cement concrete. The AASHTO standards for Fine Aggregate for Bituminous Paving Mixtures (M 29–03) and Fine Aggregate for PCC (M 6–03) specify limits for the amount of aggregate, on a percent mass basis, in hot mix asphalt and Portland cement concrete according to aggregate size and gradation. The aggregate sizes included in the AASHTO standards range from .075 mm to 9.5 mm which is within the range of particles found in raw chat. The AASHTO standards do not preclude the use of fine chat particles in hot mix asphalt or PCC. Depending on the designated grading, however, AASHTO limits particles finer than sieve size #50 in the range of 7% to 60% for aggregate in asphalt. Fine aggregate for use in concrete is limited by the States of Oklahoma and Missouri to between 5% and 30% for particles less than sieve size #50, while the corresponding values in Kansas are 7% to 30%. Therefore, chat used in asphalt or PCC must meet sizing specifications. This can be accomplished either by the raw chat meeting these specifications as is, or mixing the raw chat with other aggregates, by dry sizing, or by washing (wet sizing) the chat.

Current law requires that the chat used as an aggregate in transportation projects meet existing State Department of Transportation or Federal Highway Administration material specifications, which assure that the road surface, composed of hot, warm or cold mix asphalt, concrete or epoxy, is durable and will not degrade prematurely. As discussed below, in light of these existing requirements, EPA concluded that it was not necessary to establish any additional material specifications for the use of chat as an aggregate in federally funded transportation projects to ensure that when chat is used, it will be safe and environmentally protective.

Chemical Characteristics

Dames and Moore, 1993 and 1995; *Sampling and Metal Analysis of Chat Piles in the Tar Creek Superfund sites* for the Oklahoma Department of Environmental Quality, 2002, and Datin and Cates; *Summary of Washed and Unwashed Mining Tailings (Chat) from Two Piles at the Tar Creek Superfund Site*, Ottawa County Oklahoma, Revised June 2003, provide data on metals concentrations in washed and unwashed (or raw) chat. The Dames and Moore study indicated that total lead concentrations in the raw chat ranged from 100 mg/kg to 1,660 mg/kg, while the Datin and Cates study noted that mean total lead concentrations from the raw chat piles located throughout the Tri-State area ranged between 476 to 971 mg/kg. The AATA International, Inc. December 2005; *Draft: Remedial Investigation Report for Tar Creek OU4 RI/FS Program* found that the concentration of lead in the raw chat ranged from 210 mg/kg to 4,980 mg/kg, with an average of 1,461 mg/kg; cadmium ranged from 43.1 mg/kg to 199.0 mg/kg, with an average of 94.0 mg/kg; and zinc ranged from 10,200 mg/kg to 40,300 mg/kg, with an average of 23,790 mg/kg.

These studies show that as chat sizes become smaller, their metals content increases. The cited Datin and Cates report, *Summary of Washed and Unwashed Mining Tailings (Chat) from Two Piles at the Tar Creek Superfund Site, Ottawa County Oklahoma*, Revised June 2003, shows that total metals testing of wet screened material (larger fractions) resulting from chat washing have lead concentrations which range from 116 to 642 mg/kg, a range much lower than raw chat. Therefore, the data show that chat washing generates chat aggregate (greater than sieve size #40) with considerably lower metals concentrations than raw chat.[3]

6. What Are the Environmental and Health Effects Associated With Pollutants Released From Raw Chat?

The Tri-State Mining District includes four National Priorities List (NPL) Superfund sites that became contaminated from the mining, milling, smelting, and transportation of ore and the management practices for chat. These sites are located in Tar Creek in Ottawa County, Oklahoma, Cherokee County in southeast Kansas, and in Jasper and Newton Counties in southwest Missouri. Superfund cleanup activities related to the millions of tons of mining waste that were deposited on the surface of the ground at these sites have been designated as Operable Units (OUs). OUs are groupings of individual waste units at NPL sites based primarily on geographic areas and common waste sources.

Certain uses of raw chat have caused threats to human health and the environment as a result of the concentrations of lead, cadmium and zinc present in the chat.[4] Evaluation of

[3] The Datin and Cates report also provides TCLP testing data that indicates the dry sieve sizes greater than #40 would not exceed 5 mg/l, as well as data on wet screened material (larger fractions) that also shows that the leaching potential of this material is below 5 mg/l (1.028 to 3.938 mg/l). 5 mg/l is the level of lead that defines whether a waste is hazardous under RCRA subtitle C. Thus, this is another indication that the larger sizes of chat have lower lead concentrations than do smaller sized chat particles. (Note: As indicated earlier, chat is considered a Bevill mining waste and is thus, exempt from regulation under RCRA Subtitle C. However, we are using the TCLP leachate value for lead simply as a comparative measure to evaluate the leaching characteristics of chat.)

[4] Information regarding the specific threats to human health from lead, cadmium and zinc can be

raw chat also indicates that this waste in most unencapsulated uses has the potential to leach lead into the environment at levels which may cause threats to humans (*i.e.* elevated blood lead concentrations in area children). Such threats have been fully documented in Records of Decision (RODs) for the OUs at these NPL sites (See Tri-State Mining District RODs in the docket to this action). Copies of Site Profiles and RODs can be searched at: *http://www.epa.gov/superfund/sites/rods/index.htm*.

IV. Rationale for This Rule and Response to Comments

A. What Was the Process EPA Used to Develop This Action?

In developing the proposed rule, the Agency initially reviewed information concerning the environmental effects of the improper placement and disposal of chat found in the RODs cited above for the four NPL sites located in the Tri-State Mining District (Tar Creek, Jasper County, Cherokee County, Newton County). The Agency then reviewed reports which identified current or past uses of chat, primarily studies prepared to support Oklahoma Governor Keating's Taskforce (Governor Frank Keating's Tar Creek Superfund Task Force, *Chat Usage Subcommittee Final Report*, September 2000) and research on chat uses conducted by OU (*A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application: Final Report August 2005*), as well as interviewed the principal authors of the OU studies to further evaluate their findings. Additionally, the Agency interviewed representatives from the Departments of Transportation in Oklahoma, Kansas, and Missouri and met with the U.S. Department of Transportation, Federal Highway Administration to discuss the use of aggregate substitutes in road surfaces and relied on the joint EPA/FHWA document of the use of wastes in highway construction [*User Guidelines for Waste and Byproduct Material in Pavement Construction*, FHWA, 1997 (*http://www.rmrc.unh.edu/Partners/UserGuide/begin.htm*)]. Furthermore, EPA met with the BIA to discuss BIA requirements for the sale of chat on Tribal lands. The Agency also conducted a series of interviews with the environmental regulatory agencies in the three involved States to further identify acceptable versus unacceptable uses of chat. Moreover, the Agency conducted interviews with companies which either used chat at that time or had used chat previously. As part of this effort, EPA representatives visited the Tri-State area to observe the condition of chat piles and confirm the location of chat washing and asphalt companies in the area. Finally, the Agency has communicated with the tribal members in the Tri-State area to inform them about this action and seek information about current uses.

Based on our review of the reports and interviews noted above, the Agency published a Proposed Rule on April 4, 2006, in which we specifically solicited comment on a number of issues (see 64 FR 16729). The Agency received approximately 20 comments on the proposal. The Agency's response to the comments received can be found in the docket for this rule (see Response to Comments Document). In addition, the Agency conducted an external Peer Review of the risk screen conducted for the proposal. The Peer Review Panel submitted comments to the Agency and based on those comments, the Agency conducted an additional risk screen of chat dusts from milling of road surfaces containing chat to determine if such an activity presented a risk to human health and the environment. Both the original risk screen and subsequent risk evaluations are noted in the risk section of the preamble to this final rule, and are also in the Docket to this final rule. The Agency also met with representatives from the Department of Transportation to seek their input on a number of issues raised by commenters. Finally, the Agency consulted with the Tribal interests to assure that their comments were fully understood by the Agency. Based on the additional work noted above, as well as responding to comments, the Agency is today finalizing the chat rule.

B. What Criteria Are EPA Establishing for the Use of Chat?

1. Transportation Construction Uses

Transportation construction uses of chat addressed in this final rule are those construction activities that occur as part of transportation construction projects that are funded, wholly or in part, with Federal funds. The Agency has evaluated all the transportation construction uses and has concluded that chat used in hot, warm, or cold mix asphalt, slurry seals, microsurfacing and in epoxy seals, or other uses of chat that are evaluated on a case-by-case basis will be safe and environmentally protective.

a. What Is the Final Action?

This final rule establishes criteria that chat used in transportation construction projects that are funded, wholly or in part, with Federal funds, must meet as a condition of receiving Federal transportation funding. Specifically, those criteria define the following uses to meet the statutory standards: chat that is used in asphalt concrete, slurry seals, microsurfacing, or epoxy seals. The use of chat also meets EPA's criteria if it is used in PCC, stabilized road base, granular road base, flowable fill, and in chip seals, provided that on a case-by-case basis: (1) Synthetic Precipitation Leaching Procedure (SPLP, EPA SW–846 Method 1312) tests are conducted on the proposed material and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 ug/l; or (2) EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not cause an exceedance of the National Primary Drinking Water Standards for lead and cadmium in potential drinking water sources and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 ug/l in surface water.

EPA has also established a criterion that other chat uses will be safe and environmentally protective if they are part of, and otherwise authorized by a State or Federal response action undertaken in accordance with Federal or State environmental laws. Such response actions are undertaken with consideration of site specific risk assessments.

In addition, for all chat used in transportation construction projects that are funded, in whole or in part, using Federal funds that is not subject to the BIA Chat Use Certification requirements described in Section IV.B1, the Agency is establishing a certification requirement similar to that required by BIA. Specifically, any acquirer of the chat must submit a signed, written certification that the chat will be used in accordance with EPA's criteria. The certification will also include the location of origin of the chat and the amount of chat acquired.

The certification must be provided to the environmental regulatory agency in the State where the chat is used, except for chat acquired on lands administered

found in the *Agency for Toxic Substances and Disease Registry (ATSDR) Fact Sheet for Lead*, September 2005, the *ASTDR Fact Sheet for Cadmium*, June 1999 and the *ATSDR Fact Sheet for Zinc*, September 1995, all of which are available in the Docket to today's final rule.

by the BIA which is subject to the BIA certification requirements. The Agency is also requiring that if the acquirer sells or otherwise transfers the chat, the new owner of the chat must also submit a signed, written certification as described in this section. Most commenters did not support the certification requirement, because they believe that it would increase the cost of using chat. As noted earlier, BIA has established a chat sales program affecting chat sales from tribal lands. That program includes a certification requirement similar to that found in this rule. The Agency believes that certification is necessary to assure that chat users comply with today's criteria, as well as serving as a means to inform State environmental agencies about the use of chat in their state. The Agency has reviewed the burden on industry to fill out and maintain the certification records and does not find that such a requirement is burdensome. Moreover, the Agency believes that the certification requirement will provide important information to state environmental agencies to ensure that the chat is used as required under this rule.

This rule also requires that chat users maintain records. The Agency is requiring that the acquirer, or any other person that receives a copy of the certification, maintain a copy of the certification in its files for three years following transmittal to the State environmental regulatory agency. If the use is based on a case-by-case basis, the acquirer must maintain copies of any SPLP leachate testing results or any site-specific risk assessment for three years.

b. What is the rationale for the Rule?

The Agency is basing this action on our review of various studies and data that show that certain uses of chat are safe and environmentally protective.

i. Hot Mix Asphalt

There are a number of factors which lead us to conclude that chat used in hot mix asphalt is safe and environmentally protective:

Several studies have been conducted on the use of chat in hot mix asphalt. The most comprehensive study was conducted by the OU School of Civil Engineering and Environmental Science. OU published their findings in a report titled, *A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application: Final Report* (August 2005). OU tested the durability and leaching potential of a variety of mixtures of hot mix asphalt with raw chat for road surfaces and for road bases. In addition, OU milled (sawed) samples to simulate weathering. The Agency relied on these findings as one of the principal sources of data supporting the use of chat in hot mix asphalt road surfaces and asphalt road bases. The OU study also confirms the findings of an earlier study conducted by the U.S. Army Corp of Engineers (*Tar Creek Superfund Site, Ottawa County, Oklahoma, Final Summary Report: Chat—Asphalt Paved Road Study* USACE—Tulsa District, February 2000). Specifically:

- Comparison of the Synthetic Precipitation Leaching Procedure (SPLP) results of milled (weathered) chat asphalt samples in the OU study with the National Primary and Secondary Drinking Water Standards (*www.epa.gov/safewater/mcl.html*), without dilution and attenuation, show that milled surface and road base mixtures did not exceed the primary drinking water standard for lead [5] (0.015 mg/l) or cadmium (0.005 mg/l). The OU results also show that milled asphalt road bases and surfaces did not exceed the secondary drinking water standard for zinc (5 mg/l).[6]
- The TCLP test was designed as a screening test to simulate leaching of materials in a municipal solid waste landfill. The SPLP test is also a screening test to simulate leaching of materials when exposed to acid rain. It is highly unlikely that road surfaces would be exposed to leaching conditions found in municipal solid waste landfills. Therefore, the Agency believes that of these two tests, the SPLP tests are likely to better mimic the leaching potential of such mixtures when they are to be used in road construction.
- The OU study tested unweathered and milled samples. The Agency believes milled samples represent worst case scenarios because milling exposes more surface area to leaching.
- In a dissertation submitted to the University of New Hampshire titled, *Contributions to Predicting Contaminant Leaching from Secondary Material Used in Roads,* Defne S. Apul, September 2004, the author noted that if pavement is built on highly adsorbing soils, the concentrations of leached contaminants reaching groundwater are more than several orders of magnitude lower than the MCLs.

The ODEQ report entitled, *Summary of Washed and Unwashed Mining Tailings (Chat) from Two Piles at the Tar Creek Superfund Site, Ottawa County Oklahoma,* Revised June 2003, also evaluated leachate from asphalt containing chat removed from the Will Rogers Turnpike located near Quapaw, Oklahoma. This evaluation was conducted to determine if asphalt concrete containing chat that is removed at the end of its useful life poses contamination threats from metals leaching into the environment. TCLP results for lead ranged from less than 0.050 mg/l to 0.221 mg/l. There are no SPLP test data in this report. However, based on best professional judgment and review of TCLP versus SPLP results, EPA believes that if SPLP tests were conducted, there would be a reduction in lead concentrations of approximately one order of magnitude as compared to the results of TCLP tests. Therefore, we believe that SPLP results would not exceed the MCL for lead. Based on these results, EPA does not believe the disposal of chat asphalt should present risks to the environment. The Agency sought comment on whether data was available which would further clarify whether the leachate potential from end of life use of chat in asphalt presented any threats. The Agency did not receive any comments or information that disproves the Agency's contention that it is unlikely that end of life chat asphalt will adversely affect the environment.

Finally, the Peer Review Panel that reviewed and commented on the risk screen for the proposed rule concluded that the use of chat in hot mix asphalt road surfaces and in asphalt road bases are safe and environmentally protective. The Agency, therefore, concludes that the use of chat in hot mix asphalt for pavement (which accounts for about 95% of the current chat usage), asphalt base, and asphalt sub base are safe and environmentally protective. EPA does not believe that it is necessary to establish specifications of what constitutes ''hot mix asphalt'' because transportation construction uses are required to comply with Federal and State Department of Transportation material specifications. These specifications delineate requirements which ensure that when chat is used in hot mix asphalt, the resulting product will be structurally stable. It is

[5] The National Primary Drinking Water Regulations set a Maximum Contaminant Level Goal of zero and a Treatment Technique action level of 0.015mg/l for lead.

[6] Several hot mix asphalt samples were also tested in the OU study using the Toxicity Characteristic Leaching Procedure (TCLP). For surface samples, TCLP average concentrations for lead ranged from <0.005 mg/l to a high of 0.46 mg/l. TCLP average concentrations for cadmium ranged from <0.010 mg/l to 0.223 mg/l and zinc concentration averages ranged from 11.3 mg/l to 28.53 mg/l. Road base samples usually have higher metals concentrations than do surface samples. For road base samples, average TCLP lead concentrations ranged from 0.069 mg/l to 2.008 mg/l, while average TCLP cadmium concentrations ranged from 0.011 mg/l to 0.087 mg/l and average TCLP zinc concentrations ranged from 19.9 mg/l to 41.33 mg/l.

recommended that chat users first determine if the proposed use meets State or Federal DOT materials specifications, since adherence to them is separately required under current law.

ii. Slurry Seal, Microsurfacing, Warm Mix Asphalt, Cold Mix Asphalt, and Epoxy Seal

While the proposal limited the use of chat as a direct ingredient in hot mix asphalt (including use as road pavement, asphalt base and asphalt sub base), many commenters requested that the Agency expand the scope of the criterion to include other road surface uses associated with asphalt that they believed retard the leaching of metals in chat in the same manner as does hot mix asphalt, including slurry seals, microsurfacing, cold mix asphalt, epoxy seals and chip seals. Commenters did not provide data to support their assertions. The Agency reviewed published information regarding the binding and durability characteristics of these uses and found that, except for chip seals, they would retard the leaching of metals in the same manner as hot mix asphalt. To further confirm this information, we met with Department of Transportation officials to determine which of these applications, if any, do in fact encapsulate chat similarly to hot mix asphalt. Based on those discussions and our review of published information, the Agency's criteria includes the use of chat in slurry seals, microsurfacing, warm mix asphalt, cold mix asphalt, and epoxy seals as safe and environmentally protective in transportation construction projects that are carried out in whole, or in part, using Federal funds, but does not include the use of chat in chip seals. Specifically:

• Slurry seals and microsurfacing involve the application of a mixture of asphalt, chemical binders, petroleum liquids and aggregate on the top surface of roads. This ''resurfacing'' meets a number of needs, including repairing fine fractures in the road surface, extending the life of the road, and improving skid resistance. EPA reviewed literature on these uses and found that these uses have the same engineering characteristics as hot mix asphalt. EPA also met with the FHWA, U.S. DOT to determine if microsurfacing and slurry seals retard the leaching of metals in the same manner as hot mix asphalt. FHWA indicated that slurry seals and microsurfacing would bind metals in the same manner as hot mix asphalt and would result in similar leaching results. Based on this conclusion and our review of the literature, the Agency today views the use of chat in slurry seals and microsurfacing as safe and environmentally protective.

• As part of EPA's discussions with FHWA, we also discussed the ability of warm mix asphalt and cold mix asphalt to encapsulate and bind chat. Warm mix asphalt is a combination of asphalt, asphalt emulsions, paraffin or esterfied wax, and mineral additives that allow the materials to be worked at temperatures much lower than hot mix asphalt. Cold mix asphalt is a combination of asphalt, petroleum liquids, soaps, and other chemicals which allow the materials to be worked with when cold. FHWA confirmed that warm and cold mix asphalt would encapsulate chat in the same manner as hot mix asphalt, and thus, would likely result in similar leaching results. Based on Agency conversations with FHWA and our review of the literature, the Agency also views the use of chat in warm and cold mix asphalt as safe and environmentally protective.

• EPA also discussed the use of epoxy binders on bridge decks with FHWA. Commenters and one of the chat washing companies noted that some chat is sold to companies which mix chat with epoxy binders for use as an anti-skid coating for highway bridges. EPA evaluated the engineering durability of these epoxies and found that they are equal to or are more durable than asphalt. FHWA also confirmed that the use of epoxies would encapsulate chat equally to the binding found with asphalt, and thus, would result in similar leach results. Based on this conclusion, the Agency today views the use of chat in epoxy binders for anti-skid purposes as safe and environmentally protective.

In conclusion, the use of chat in hot mix asphalt, slurry seals, microsurfacing, warm mix asphalt, cold mix asphalt, or epoxy seals in transportation construction projects funded, in whole or in part, with Federal funds is safe and environmentally protective. Such uses do not require approval from EPA prior to their use, as long as certification and recordkeeping requirements are met.

iii. Concrete, Flowable Fill, Granular Road Base, Stabilized Road Base and Chip Seals and Conditions for Use

This rule regarding the use of chat in concrete pavement has changed from that presented in the April 2006 proposal and this rule sets additional requirements on chat used in PCC. In particular, the proposed rule allowed chat used as an aggregate in PCC without any testing or other requirements. The Agency proposed the use of chat in PCC based on the following data and information:

• An undated OU Surbec-Art Environmental study [7] and a 2000 OU study [8] conducted the only known assessments of total metals content and TCLP testing of concrete matrices mixed with raw chat. The 2000 OU results are also presented in the 2005 OU study. The results from those two studies are presented in the following Table:

	S1		S2		C40	
	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)
Lead	178	0.92	379	0.17	150	1
Cadmium	[R] 30	0.09	[R] 35	0.12	35	0.1
Zinc	4200	0.23	4400	0.16	4100	.....

[R] rounded to nearest whole number.

• While not a direct measure of the leaching potential of chat contained in PCC, waste stabilization technologies and their effectiveness are well defined in the Agency's *Final Best Demonstrated Available Technology (BDAT) Background Document for Universal Standards, Volume A, July 1994 and Proposed Best Demonstrated Available Technology (BDAT) Background Document for Toxicity Characteristic Metal Wastes D004–D011,*

[7] *Preliminary Report on the Findings of Environmental and Engineering Tests Performed on Mine Residual Materials from Ottawa County, Oklahoma.*

[8] *Development of Holistic Remediation Alternatives for the Catholic 40 and Beaver Creek.*

July 1995. One of those technologies is stabilization or encapsulation of the waste in a cement matrix, to reduce the mobility of the metals in the waste. That is, the metals are chemically bound into a solid matrix that resists leaching when water or a mild acid comes into contact with the waste. The Agency evaluated contaminant levels in unstabilized versus stabilized wastes to determine the reduction in mobility of metals, including lead and cadmium, when those wastes were stabilized in a cement matrix. These results indicate that stabilization with cement generally reduced lead and cadmium mobility by two to three orders of magnitude (*see* Table A4 of the July 1994 document cited above).

However, the Peer Reviewers and commenters who reviewed and commented on the risk screen analyses to the proposed rule raised concerns with the lack of data presented on the stabilization of chat in concrete. Specifically, the Peer Reviewers indicated that there were only three samples analyzed and that given the limited data, it was not possible for them to determine if risks existed from the use of chat in concrete. While the Peer Reviewers noted that it was likely that the concrete bound the metals in a similar fashion as asphalt, they also did not believe there was enough data or information to reach a definitive conclusion.

Some commenters also argued with the lack of leaching data for chat in PCC and questioned whether the Agency has sufficient information to finalize the proposal. Other commenters also noted that there were significant differences between stabilizing high metal bearing wastes with cement and the mixing of chat into PCC pavement. Commenters indicated that from a risk standpoint, concrete road surfaces after aging contain fine surface fractures that would allow rain water to percolate through the surface into groundwater. The Agency acknowledges these differences.

Commenters also noted that it was unlikely that chat would be used in concrete pavement since it can be a poor performing aggregate when used in PCC due to potential alkali-silica reaction (ASR) and freeze/thaw durability issues. This is the reason that chat is not an approved PCC aggregate by Oklahoma DOT. At proposal, the Agency also evaluated highway design specifications; *i.e.*, layering of compacted material and the movement of water through concrete (hydraulic conductivity,[9]) and initially thought that such designs in general retard the movement of rainwater through concrete and into groundwater. Commenters questioned this conclusion. As a result, the Agency met with the FHWA to determine how extensively water flowed across and through concrete pavements. FHWA indicated that there is considerable water flow through concrete pavement either through flow out of the joints or cracks, or through flow from the shoulders downward into the base. Based on Agency discussions with FHWA, the Agency no longer believes that such designs in general retard the movement of rainwater through concrete.

Commenters also requested that the rule allow the use of chat in flowable fill. However, commenters did not provide information to support this request. While flowable fill involves the use of a pozzolanic material (cement), the ability of flowable fill to bind chat is unclear because flowable fill uses cement in amounts as little as 3 to 5 percent by weight. Therefore, the Agency does not have sufficient information to allow this use without additional information or setting additional conditions.

In addition, commenters requested that the rule allow the use of chat as granular road base. Such bases are typically constructed by spreading aggregates in thin layers and compacting each layer to reduce the stress applied to the sub grade layer and providing drainage for the pavement structure. The Agency acknowledges that some chat can meet state or Federal materials specifications for this use. These commenters did not, however, provide any information to support this request. As noted above, some washed chat has significantly lower lead concentrations than raw chat. However, as FHWA notes, highway designs retard some, but not all of the water flowing across and into ground water. Such water movement could leach metals from the chat road base into ground water. Because the Agency did not receive additional information on the leaching characteristics of this use, the Agency is unable to allow it without additional information or setting additional conditions.

Still other commenters requested that the rule allow the use of chat in stabilized base. Stabilized base uses chat mixed with cement or other pozzolanic materials to increase their bearing weights. This additional material should reduce the mobility of the metals. However, the stabilized road base may use cement or other materials in amounts corresponding to 4 to 6 percent by weight which is less than that used in PCC. The commenters did not provide information to support this request. While some binding of metals is likely to occur, the Agency does not have sufficient information to allow this use without additional information or setting additional conditions.

Finally, at proposal, the Agency did not include an evaluation of the use of chat in chip seals. Commenters requested that the rule allow the use of chat in chips seals. These commenters did not, however, provide information to support this request. Chip seals involve application of an asphalt liquid on top of an existing road surface. After the application of the asphalt liquid, an aggregate (such as chat) is placed on the asphalt liquid and may then be rolled into the liquid. It is possible that several applications can be applied. In some circumstances, the aggregate layer is coated with asphalt liquids. EPA met with the FHWA to determine if chip seals were generally viewed as being able to retard the leaching of metals in the same manner as hot mix asphalt. FHWA indicated that under most circumstances, asphalt used in chip seals did not always fully coat chat particles, and chat could be released into the environment. Given the concerns raised by FHWA and the lack of data on this use, the Agency concludes that it does not have sufficient information to allow the use of chat in chip seals without additional information or setting additional conditions.

A number of commenters also noted that some washed chat does not test hazardous under the TCLP and that restricting all uses of raw chat, or encapsulated uses where leach data are not available, was overly restrictive.[10] The Agency has reviewed the TCLP/SPLP test data of raw chat and recognizes that some washed chat has significantly lower lead and zinc concentrations than raw chat. Nevertheless, the Agency remains concerned that the use of raw chat or chat mixed with other materials could pose risks to human health and the environment, based on the physical and chemical characteristics of the material, as well as the history of its use.

[9] Acording to the Portland Cement Association, the hydraulic conductivity of a typical Portland cement concrete is 1×10^{-1}cm/sec.

[10] While the Agency is not requiring that chat be washed or dry sized prior to being used, the rules also do not prevent a person from washing or dry sizing chat before it is used either directly or in combination with another material.

After careful evaluation of the comments received and the report from the Peer Reviewers, the Agency believes that the limited amount of leaching data on chat used in PCC, flowable fill, granular road base, stabilized road base, and chip seals do not provide enough support to determine that these uses of chat will be safe and environmentally protective.

In the proposal, the Agency requested comment on whether there was a need for leachate testing of chat used in hot mix asphalt or in PCC (*see* 54 FR 16738). Most commenters noted that the use of chat in hot mix asphalt was protective and that a requirement of additional SPLP testing was not warranted, however, they did not provide information to support this position. Nevertheless, as already discussed, the Agency believes there are sufficient data, particularly that provided in the 2005 OU study, to support its finding that chat used in hot mix asphalt, as well as warm mix asphalt, cold mix asphalt, slurry seals, microsurfacing, and in epoxy seals will be safe and environmentally protective without the need for further leachate testing.

Other commenters, while they did not call for specific leachate testing of chat used in PCC, did raise concerns as to whether there were sufficient data to reach the conclusion that chat used in PCC or other uses was protective. The Agency agrees that insufficient data exist to conclude that the use of chat in PCC would be safe and protective. Therefore, the Agency has concluded that additional information, either through the use of SPLP testing or through a site-specific risk assessment, is necessary to be able to conclude that the use of chat in PCC, as well as flowable fill, granular road base, stabilized road base, and chip seals would meet the statutory standards. Specifically, EPA has established a criterion defining the use of chat in PCC, flowable fill, granular road base, stabilized road base, and chip seals as safe and environmentally protective if, on a case-by case basis, either: (1) Synthetic Precipitation Leaching Procedure (SPLP, EPA SW–846 Method 1312) tests are conducted on the proposed material and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 μg/l[11]; or (2) EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not cause an exceedance of the National Primary Drinking Water Standards for lead and cadmium in potential drinking water sources and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 μg/l in surface water.

If a chat user chooses to conduct SPLP leachate testing and the results indicate that they do not exceed the standards noted above, the user does not need to submit the data to EPA (or a state, if it chooses to do so) for review and approval. However, the regulation requires that the user submit a certification statement to the environmental regulatory agency in the State where the chat is acquired and maintain copies of the SPLP testing results for a period of three years.

If a chat user chooses to prepare a site specific risk assessment, the assessment must be submitted to EPA, or the State environmental agency, at the State's option, prior to use. EPA or the State environmental agency will review the site-specific risk assessment and determine, after notice and comment, if the use is safe and environmentally protective (see Section iii c below). After EPA or the State makes its determination, the user will still be required to meet the certification and recordkeeping requirements described in Section IV. B. 1. of this final rule.

iv. Sizing of Chat Prior to Use

Finally, this final rule is not requiring that chat be sized before it is used because chat used in transportation construction projects must meet material specification standards established by either the State or Federal DOT. Those specifications set their own size standards which can be met in a variety of ways, such as by sizing chat or by blending chat with other sized aggregate. Since existing specifications address the sizing issue, this rule need not do so. However, some commenters recommended that the Agency allow any use of sized chat since it has lower lead concentrations than raw chat. Studies of the lead concentrations found in raw chat piles indicate that those concentrations vary from pile to pile. Data indicates that particles finer than sieve size #40 in raw chat tend to have a TCLP for lead of greater than 5 mg/l, while larger particles in the raw chat tend to have a TCLP for lead of less than 5 mg/l. While the Agency acknowledges these results, commenters did not provide information showing a lack of risks from other uses of washed chat not covered by this rule. As a result, the Agency is unable to allow these other uses unless the user can show the use is protective through a case-by-case demonstration as discussed previously.

v. Use of the SPLP Versus the TCLP

EPA developed the TCLP as a tool to predict the leaching potential of constituents from waste in a municipal solid waste landfill. The TCLP method is used to determine if a waste is hazardous under 40 CFR 261.24 (see the Toxicity Characteristic rule, 55 FR 46369; November 2, 1990). The TCLP is also used in listing hazardous wastes to estimate leachate concentrations for use in groundwater modeling (for example, see the petroleum listing, 63 FR 42110, August 6, 1998). The TCLP leaching solution contains acetic acid that is adjusted to a pH of 4.93 or 2.88, depending on the acidity of the waste sample.

On the other hand, EPA developed the SPLP as a method to predict the leaching from wastes or soils under exposure to the slightly acidic, dilute solution generated by normal rainfall. The SPLP test uses a leach solution which mimics acid rain, while the TCLP uses a leach solution which mimics acids formed in municipal landfills. In past actions, EPA has recognized that the TCLP's use of organic acids may not be appropriate for disposal scenarios that do not involve municipal landfills. For example, in the proposed rule for management and disposal of lead-based paint debris, EPA used the SPLP to assess leaching from landfills that do not accept municipal wastes (see 63 FR 70189; December 18, 1998). Similarly, EPA utilized the SPLP in screening low hazard wastes as part of its 1989 Bevill determination (see 54 FR 36592; September 1, 1989). The use of chat in transportation construction projects would preclude chat from being exposed to the conditions found in municipal landfills. Chat used in transportation construction projects will, however, be exposed to rainfall that then enters the groundwater.

In determining which leach test to require, the Agency believes that the SPLP is the more appropriate test. As stated previously, the TCLP was designed as a screening test to simulate the leaching potential of wastes in municipal solid waste landfills. Since it

[11] It should be noted that this case-by-case showing does not require public notice and comment.

is highly unlikely that road surfaces would be exposed to leaching conditions found in municipal landfills, and because the SPLP test is a more likely scenario that would simulate the leaching potential of metals in chat used in transportation construction projects, we are requiring that if chat is to be used in PCC, granular road base, flowable fill, stabilized road base or chip seals, the user make a case-by-case demonstration using the SPLP test.

vi. Rationale for Setting National Primary Drinking Water Standards Versus National Recommended Water Quality Criteria, and Dilution and Attenuation Factors (DAFs)

Because the Agency is requiring leachate testing if chat is to be used in PCC, granular road base, flowable fill, stabilized road base or chip seals, the Agency also must establish specific numeric criteria. In the proposal, the Agency requested comment on this issue. Specifically, the Agency stated, ''For example, the Agency could specify that the results of testing would need to meet the Primary and Secondary Drinking Water Standards for lead, cadmium, and zinc. The Agency also solicits comment on whether the leachate should be measured against the National Recommended Water Quality Criteria which address acute and chronic biological effects.'' The Agency also requested comment on whether a Dilution and Attenuation Factor should be applied to reflect how contaminant concentrations may change as they move through the environment (see 64 FR 16738–39). The Agency received only one comment on this issue. The commenter suggested that SPLP results should be measured against state water quality standards for lead, cadmium and zinc, and the Agency should use the chronic criteria for protection of aquatic life.

The Agency disagrees with the commenter that we should use the State water quality criteria instead of the National Primary Drinking Water standards for lead and cadmium. State water quality criteria are established for the protection of aquatic life and human health in surface water for approximately 150 pollutants. National Primary Drinking Water standards protect public health by ensuring safe drinking water and protecting ground water. EPA has selected the National Primary Drinking Water standard for lead and cadmium since those standards are most protective of human health. The Agency has selected these standards for a variety of reasons. First, review of the Tar Creek Superfund site RODs indicated that one of the metals of concern is lead. The 2005 OU studies on the use of chat in asphalt also indicated that lead, cadmium and zinc are the principle heavy metals of concern in chat. Those conclusions are based on review of a series of studies which evaluated the metals concentrations in raw chat piles. They are also the criteria that EPA used in determining that chat used in hot mix asphalt is safe and environmentally protective.

RODs also show that runoff from chat piles may be adversely affecting biological resources in streams throughout the Tar Creek Superfund site. Agency review of the environmental impacts of zinc (see ATSDR report on zinc) confirms that it can adversely affect aquatic species. Since the Agency agrees with the commenter that aquatic life should be protected, the Agency has decided to use the freshwater chronic National Recommended Water Quality Criteria for zinc of 120 µg/l. It should be pointed out that there is no National Primary Drinking Water standard for zinc and that the National Secondary Drinking Water standard for zinc is a non-enforceable guideline regulating contaminants that may cause cosmetic effects or aesthetic effects in drinking water. The Agency believes it is more appropriate to use the National Recommended National Water Quality Criteria for zinc since it addresses aquatic toxicity, as opposed to the National Secondary Drinking Water standard which addresses cosmetic and aesthetic effects.

As noted above, other commenters stated that they did not believe leachate testing is necessary when chat is mixed with asphalt or concrete. They asserted that such uses were safe and environmentally protective. With respect to most uses of chat in asphalt; *i.e.*, hot mix asphalt, warm mix asphalt, cold mix asphalt, slurry seals, and microsurfacing, the Agency agrees with the commenters. However, as stated previously, there is insufficient data or evidence that other uses of chat; *e.g.*, in PCC, granular road base, flowable fill, stabilized road base or chip seals are safe and protective. This final rule allows these uses of chat in transportation construction projects if the user conducts SPLP testing and the leachate does not exceed the National Primary Drinking Water Standards for lead and cadmium and the freshwater chronic National Recommended Water Quality Criteria for zinc of 120 µg/l.

At proposal, the Agency also solicited comment on whether Dilution and Attenuation Factors (DAFs) should be applied to the leachate criteria if such criteria were established. The Agency received only one comment on this issue. The commenter suggested that to assess surface water quality, a DAF of 100 times the Water Quality Criteria be used, while for groundwater no DAF be used and reliance should be directly on the primary MCLs. This rule is not establishing DAFs due to the lack of data the Agency has regarding the leachate potential for uses requiring SPLP testing, a lack of data to properly establish DAFs which would assure that chat use is safe and environmentally protective, and because the Agency did not use DAFs in evaluating the use of chat in hot mix asphalt. Therefore, we are requiring that chat used in PCC, granular road base, flowable fill, stabilized road base or chip seals undergo SPLP testing prior to its use and the results compared to the National Primary Drinking Water Standards for lead and cadmium and the freshwater chronic National Recommended Water Quality Criteria for zinc of 120 µg/l, without DAFs. Again, if the test results do not exceed the National Primary Drinking Water Standards for lead and cadmium and the freshwater chronic National Recommended Water Quality Criteria for zinc, the test results do not need to be submitted to EPA or the State for review and approval.

vii. Rationale for Use of Site-Specific Risk Assessments

As noted above, a chat user can conduct SPLP testing prior to use in PCC, granular road base, flowable fill, stabilized road base or chip seals to demonstrate, on a case-by-case basis, that the use of chat in such uses are safe and environmentally protective. If the results of such testing exceed the standards noted above, the chat user may still make another case-by-case showing by conducting a site-specific risk assessment. Our rationale for allowing chat uses based on site-specific risk assessments is to encourage greater use of chat provided the uses are safe and protective. We believe site-specific risk assessments conducted according to EPA guidelines referenced below will provide the necessary data to determine whether a proposed use is safe and protective. The Agency received comments on the April 4, 2006 proposal requesting that EPA allow these uses of chat. Some commenters argued that allowing these uses would encourage greater use of chat and facilitate the elimination of chat piles. They also suggested that these uses would be more protective of human health and the environment than the chat piles, however, the commenters did not

provide data or evidence to show that these uses are in fact safe and protective. Nevertheless, EPA agrees with the commenters that encouraging chat use, as long as uses are safe and environmentally protective, would lead to a quicker drawdown of the chat piles and ultimately benefit the communities where the piles are located. As a result, the use of chat in PCC, granular road base, flowable fill, stabilized road base or chip seals will be allowed in transportation construction projects if there is a demonstration through a site-specific risk assessment, as described below, that the use is safe and environmentally protective.

Such risk assessments involve analyses of how the leachate moves into surface or groundwater and whether metals concentrations down gradient from the chat use location will exceed relevant standards. Therefore, risk assessments involve the modeling of leachate in the environment and findings of whether, after such movement, health or environmental based standards are exceeded. This type of surface and groundwater modeling involves analysis of the type and concentration of metals in the leachate and their mobility. A commenter noted that the Agency should compare the results of modeling of leachate movement in ground water against the National Primary Drinking Water standards as the basis in determining if a use is protective. We generally agree with this position, as it applies to lead and cadmium. However, in some cases, drinking water standards may not be relevant for ground water, for example where it is already contaminated so that it is not suitable for drinking, and controls are in place to prevent consumption. Also, where the ground water drains into surface water, the reviewing agency should consider the freshwater chronic Water Quality Criteria for zinc of 120 μg/l.

EPA, or the State environmental agency, if the State chooses to do so, will determine whether the proposed use is safe and environmentally protective based on the information in the site-specific risk assessment. The agency conducting the evaluation may request additional information from the chat user to assure that the risk assessment meets EPA or State criteria and there is sufficient information to determine if the proposed use is safe and environmentally protective.

EPA, or the state if it chooses to do so, will solicit public input by a number of means; for example, it can publish its proposed determinations in a local newspaper, prior to making a final determination. In addition, EPA will provide sufficient time for the public to review and comment on the proposed decision. For example, EPA provides 45-days for public review and comment of proposed permit decisions under the hazardous waste regulations. Such timeframe may also be appropriate in this case. States might achieve the same level of public input by following a similar approach.

If a chat user decides to conduct a site-specific risk assessment, it is recommended that they consult with EPA or the State environmental agency to discus how best to conduct the risk assessment to reflect existing site conditions and receptors.

EPA has established guidelines on how to conduct risk assessments. These guidelines were developed to help guide EPA scientists in assessing risks to human health from chemicals or other agents in the environment. They also inform EPA decision makers and the general public about these procedures. When risk assessments are conducted, we recommend that these guidance documents be utilized (see *http://cfpub.epa.gov/ncea/cfm/nceaguid_human.cfm*). EPA's Superfund program has also developed guidance on how to conduct human health and ecological risk assessments. Those guidance documents can be accessed at: *http://www.epa.gov/oswer/riskassessment/superfund_hh_exposure.htm.*

viii. Uses Authorized by a State or Federal Response Action

This rule also establishes a criterion that other uses of chat in transportation construction projects funded, in whole or in part, with Federal funds will be safe and environmentally protective if they are part of, and otherwise authorized by, a State or Federal response action undertaken in accordance with Federal or State environmental laws. Such actions are undertaken with consideration of site-specific risk assessments, which account for the full variety of conditions at the site, such as existing contamination in assessing risks to human health and the environment. For example, Region 7 assessed the protectiveness of using unencapsulated chat as road base for a proposed highway bypass and, as a result of a site-specific risk assessment, determined that such use, compared to other alternatives, was a more protective action (*Engineering/Cost Analysis—Highway 71, Jasper County, Missouri*, USEPA Region 7, August 2000).

This approach was included in the proposal and the Agency did not receive any adverse comments on this approach. The Agency also discussed this option during the comment period with State environmental regulatory agencies who indicated that they supported the ability to utilize chat as a result of their response actions.

ix. Certification

At proposal, the Agency noted that the rule should include a certification requirement. A number of commenters objected to this requirement since they argued that this type of reporting would increase the cost of using chat and therefore discourage its use. The Agency noted at that time that the BIA had established a similar certification requirement for chat sold from lands under their authority.

The Agency does not agree that this rule's certification requirements will place an undue financial burden on chat users (see Economic impact section of this rule). In addition, the Agency believes that the certification requirement is necessary to assure that chat users comply with today's action, and that it is not used in a manner that would necessitate Federal or State cleanup actions. The certification will also serve as a means to inform State environmental agencies about the use of chat in their state.

This final rule requires that chat users must submit a signed, written certification to the environmental regulatory agency in the State where the chat is to be used within 30 days of the date of acquisition. The certification will contain the following information: location of origin of the chat, amount of chat acquired, and a Certification Statement that the chat used in this transportation project will meet the criteria established by this rule. If the chat is sold or otherwise transferred to another party, the acquirer shall provide a copy of the certification to the new owner of the chat. The new owner shall submit a certification according to § 278.4(a)(1). The new certification supersedes all previous certifications.

The acquirer of chat, and any other person that receives the chat, will also maintain copies of all of the following for three years; (a) A copy of the certification following transmittal to the State department(s) of the environment, and, as appropriate, (b) any SPLP testing results, or (c) any site specific risk assessments.

2. Non-Transportation Uses—Cement and Concrete Projects

Title VI of Section 6018 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (HR 3 or ''the Act''), amended Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 *et seq.*) by adding Sec. 6006. This

provision also requires the Agency to develop environmentally protective criteria for the safe use of chat in cement and concrete projects. However, these criteria are only guidance and are not Federally enforceable since the Act requires only that transportation construction projects funded, in whole or in part, with Federal funds meet the criteria established in this rule.

Non-transportation uses of chat include its use as a raw material in the manufacture of cement and as an aggregate in PCC. This final rule establishes criteria as guidance for chat used in cement and concrete for non-transportation, non-residential projects. Specifically, chat used in cement and concrete in non-transportation construction projects should only be used in non-residential construction projects, and for structural purposes if, based on a case-by-case basis, a demonstration shows that the proposed use of chat is safe and environmentally protective. The remainder of this section discusses the approach and rationale for the approach taken.

a. What is our approach?

Based on the lack of leaching data available on the use of chat in PCC, the Agency is establishing guidance that chat used in cement and concrete projects for non-transportation uses rely on the same approach taken for the transportation use of chat used in PCC. That is, for such uses, the Agency recommends that chat only be used in cement and concrete for non-transportation, non-residential construction projects if, on a case-by-case basis, either: (1) Synthetic Precipitation Leaching Procedure (SPLP, EPA SW–846 Method 1312) tests are conducted on the proposed material and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 µg/l; or (2) EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not exceed the National Primary Drinking Water Standards for lead and cadmium in drinking water sources and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 µg/l in surface water. It is recommended that such a finding should be subject to public notice and comment before any decision is final.

At proposal, the Agency sought comment on whether it should place some restrictions on the use of chat in cement and concrete in non-transportation projects. The proposal offered a restriction that chat used in such non-transportation projects be limited to non-residential uses. The Agency assessed information about potential exposure of metals in cement and concrete containing chat when used for residential purposes and was unable to find data on whether such use presented risks to human health or the environment. Due to the lack of information, the Agency proposed to limit potential exposures by limiting chat in cement and concrete to only non-residential uses. That is, the guidance would allow, after SPLP testing or site-specific risk assessment, chat in cement or concrete to be used in commercial and industrial uses. Some commenters supported this limitation to non-residential uses to limit potential human exposure to lead. Other commenters requested that such uses also be allowed in residential structural uses. However, the Agency did not receive data or information supporting this request. Considering the lack of data, the range of risks related to the residential use of chat in cement and concrete remains largely unknown, and that there is the potential for these uses to be used for ''sham recycling,'' the Agency believes it is prudent to maintain the non-residential restriction in our guidance, even though we recommend in this rule that a case-by-case demonstration be made that such use is safe and environmentally protective.

b. What is the rationale for this guidance?

As noted previously, the Peer Review Panel that reviewed the risk screen document and commenters to the proposed rule indicated that there was insufficient leachate data to characterize the risk from the use of chat in cement and concrete. Therefore, as we discussed previously, this guidance recommends that for non-transportation construction projects, chat only be used in cement and concrete for non-residential uses and only if a case-by-case showing is made, based on SPLP testing or a site-specific risk assessment, that the proposed use is safe and environmentally protective.

In the past, chat has been used in the manufacture of cement and used in concrete for building foundations and roads. Ash Grove Cement, in a communication with EPA (Memo to File: *Conversation with Ash Grove Cement Regarding Use of Chat*, which is available in the docket to this final rule), indicated that it had produced cement clinker in 2001–2003 using chat as a silica substitute. According to Ash Grove, the clinker produced with chat met American Society for Testing and Materials (ASTM) standards for clinker. However, Ash Grove is no longer producing cement with chat. The Agency also reviewed published data and conducted interviews with chat sellers and State regulators and determined that chat is not currently being used in cement manufacturing or in non-transportation PCC projects.

Pursuant to section 6006(a)(1) of the Act, the Agency reviewed the possible use of chat as aggregate in concrete, and as it did in its transportation construction projects evaluations, concludes that certain non-transportation uses of chat in concrete may be safe and environmentally protective. However, due to the lack of data for non-transportation uses, information is required that shows such uses are protective. Consequently, EPA recommends that using chat in cement and concrete be allowed only if a case-by-case showing is made that shows such use is safe and environmentally protective (see discussion under concrete in transportation uses for further details of the approach recommended and our rationale). To meet this goal, the Agency recommends that such non-transportation uses of chat in cement and concrete projects be limited to non-residential foundations, slabs, concrete wall panels, retaining walls, commercial and industrial parking areas and sidewalks. Other non-residential uses also may be approved after a review of SPLP test data or a site-specific risk assessment as described throughout this final rule. As noted previously, we would not recommend that chat be used in residential settings (*e.g.*, concrete countertops, sidewalks, foundations, slabs, driveways, roads).

There were comments raising concerns about the possible exposure of workers involved in non-transportation construction projects to chat in cement or concrete. The Agency has reviewed the Occupational Safety and Health Administration (OSHA) standards governing worker health and safety related to the construction and demolition of non-residential non-transportation uses of cement and concrete. Based on this review, the Agency concludes that existing standards require employers to provide adequate protection to workers from dusts and metals and these standards would extend to dusts and metals from cement and concrete containing chat. It should also be noted that when chat is

used as an aggregate in concrete, worker exposures would be limited since the metals would already be bound.

C. Relationship of This Rule to Other Federal Regulations and Guidance

For all uses of chat in transportation construction projects carried out, in whole or in part, with Federal funds that is affected by this action, users must meet the relevant specifications (*e.g.*, for durability, granularity) established by the relevant state departments of transportation and the Federal Highway Administration (FHWA), prior to it being used in transportation projects. This final rule does not affect or change these specifications and requirements.

The FHWA established minimum standards at 23 CFR Part 626 for Highways (including references to the AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing) and at 23 CFR Part 633, Required Contract Provisions. Aggregate requirements for Concrete include AASHTO–6, Fine Aggregate for Portland cement concrete and AASHTO–80, Coarse Aggregates for Portland cement concrete. Technical requirements for Hot Mix Asphalt include AASHTO–29, Fine Aggregate For Bituminous Paving Mixtures and ASTM D6155, Standard Specification for Nontraditional Coarse Aggregates for Bituminous Paving Mixtures. FHWA National Highway *Standard Specifications and Supplements* is divided into topic areas corresponding to the divisions used in the ''Guide Specifications for Highway Construction'' Manual published by the AASHTO and can be accessed at (*http://fhwapap04.fhwa.dot.gov/nhswp/servlet/LookUpAgency?category=Standard+Specifications+and+Supplements*) [12].

In addition, ASTM Standard C–33 restricts the amount of chert that may be mixed into PCC when the chert has a specific gravity (ratio of its density to the density of water) less than 2.4. Chat in the Tri-State area, a form of chert, has a specific gravity greater than 2.4 and thus, would not be limited by this standard. Chat does, however, have the potential to be a poor performing aggregate when used in PCC due to its potential alkali-silica reactivity (ASR) [13].

The Agency also assessed current regulation of dusts from milling and demolition. As part of this assessment, based on the Peer Review comments, the Agency conducted an additional risk screen from the milling of chat encapsulated in asphalt road surfaces. Based on this review and analyses, we conclude that exposure to fine particles released during milling and demolition operations would be limited to on-site workers (for the basis of this conclusion, see Section V). The Occupational Safety and Health Administration have established limits for worker exposure to the metals found in chat (29 CFR 1926.55—Safety and Health Regulations for Construction, Gases, Vapors, Fumes, Dusts, and Mists, available at: *http://www.osha.gov/pls/oshaweb/owastand.display_standard✖;group?p_toc_level=1&p_part_number=1926*). EPA has reviewed the OSHA standards (see Section V ''What Are the Environmental and Health Impacts?'' below) and concludes that the OSHA standards require adequate worker health and safety protection and thus, it is not necessary to promulgate additional standards to address this issue.

D. How Does this Rule Affect Chat Sales From Lands Administered by BIA or Directly From Tribal Lands?

BIA signed a Memorandum of Agreement with EPA Region 6 in February 2005, designed to lead to the renewed sale of chat from Tribal lands and from lands administered by BIA. EPA's rule does not prevent chat sales, nor is it intended to delay such sales. This rule is consistent with BIA's chat sales requirements.

The draft sales agreement prepared by BIA requires the submittal of a certification which requires buyers of chat from tribal lands to use it in a fashion which is deemed acceptable by EPA. This rule requires the same certification for the use of non-tribal chat.

E. How Does This Rule Affect CERCLA Liability, Records of Decision, and Response Actions?

If waste material, such as chat, is used in a way that creates a threat to human health or the environment, the owner of the property and the party responsible for creating the hazardous situation could be liable for conducting or financing a response action under CERCLA or State law.

This rule establishes criteria for chat use in federally funded transportation construction projects. However, such Federal funding does not include compensation for any response action as defined in CERCLA section 101 (25), (42 U.S.C. Section 9601 (25)) involving chat or other hazardous substances.

Finally, nothing in this rule shall affect existing RODs issued at EPA National Priorities List sites or Removal Decisions associated with chat nor does the rule affect the determination of liability as noted in CERCLA Sections 104, 106, and 107 or State corrective action decisions.

F. How Does This Rule Affect the Use of Federal Funds Administered by the U.S. Department of Transportation for Transportation Construction Projects?

Through Title VI of Section 6018 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (HR 3 or ''the Act''), Congress amended Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 *et seq.*) by adding Sec. 6006. This provision requires, among other things, for the Agency to develop environmentally protective criteria (including an evaluation of whether to establish a numerical standard for concentrations of lead and other hazardous substances) for the safe use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as ''chat,'' in transportation construction projects that are carried out, in whole or in part, using Federal funds. Section 6006(a)(4) requires that any such use meet EPA's established criteria.

As noted above, the oversight of Federal funds used in transportation is the responsibility of the U.S. DOT. Its policies and procedures related to the management of those funds can be found in the Code of Federal Regulations beginning at Title 23 Part 1(23 CFR 1). DOT requires that users of Federal transportation funds must comply with applicable State or Federal regulations (23 CFR 1.9 and 1.36). DOT will include reference to compliance with this rule in its guidance regarding the awarding of federal transportation funding.

V. Impacts of the Final Rule

A. What Are the Potential Environmental and Public Health Impacts From the Use of Chat in Transportation Construction Projects?

For the proposed rule, we conducted an assessment of the risks associated with the proposed use of chat. (See the preamble to the proposed rule at 71 FR 16729, April 4, 2006 and the *Report on Potential Risks Associated with the Use of Chat from the Tri-State Mining Area*

[12] State highway construction specifications can be found at the following internet web sites for Oklahoma (*http://www.okladot.State.ok.us/materials/700index.htm*), Kansas (*http://www.ksdot.org/burMatrRes/specification/default.asp*), and Missouri (*http://www.modot.State.mo.us/business/standards_and_specs/highwayspecs.htm*).

[13] The Agency also reviewed studies on the potential for alkali-silica reactions in chat concrete and concludes that it can be used if appropriate materials testing is conducted prior to use.

in Transportation Projects (RTI, 2006) for more details on this assessment.) Data from studies conducted by OU present total metal concentrations and leaching characteristics of (1) asphalt concrete surface and base mix formulations prior to roadway application, (2) asphalt and stabilized base samples from roads currently in use, (3) spent asphalt concrete samples that were broken up and stored in piles, and (4) milled asphalt concrete samples intended to simulate weathering. These studies show that the metals are tightly bound in the encapsulated matrix when the total metals concentrations in asphalt concrete samples are compared to corresponding TCLP and SPLP leachate concentrations. In particular, for asphalt concrete surface mix and stabilized road base uses for all four categories, the highest TCLP concentrations reported for lead and cadmium were below the toxicity characteristic (TC) regulatory limits (5 mg/L and 1 mg/L, respectively). In fact, when the metals were detected, in many cases, they were below the drinking water MCLs for lead and cadmium.[14] For zinc, when detected, the TCLP concentrations were found to be generally above the SMCL (5 mg/L) by up to a dilution and attenuation factor of 16. As we have noted earlier, however, we believe that use of the TCLP in evaluating the leaching potential of encapsulated chat used in transportation construction projects is inappropriate since it does not accurately reflect the environmental conditions of the management scenario. Rather, we believe the SPLP is a more appropriate test of the conditions expected to lead to leaching of metals from this material. In addition, where leachate testing was conducted using the TCLP and SPLP methods, in all cases, the concentrations of the metals were approximately an order-of-magnitude lower for the SPLP as compared to the TCLP. In most cases, the SPLP concentrations were below the MCLs for lead and cadmium and were always below the SMCL for zinc.

In summary, this assessment concluded that based on the available reports and data reviewed, the use of chat as an aggregate for hot mix asphalt poses negligible risks to human health through the groundwater exposure pathway, while some unencapsulated uses of chat may pose substantial risks to human health and the environment. The leachate data representing the binding capacity of the asphalt matrix—particularly in hot mix asphalt—show that the metals are tightly bound throughout the life of these products.

By inference and based on limited data, it appears as though certain other uses of chat, such as chat contained PCC, flowable fill and stabilized base would have similar binding properties that would reduce the leaching of metals. However, the available leachate data on these uses are very limited, and may be a concern given the volume of chat that could be used in road construction projects.

In addition to these data deficiencies on specific uses, we identified other data gaps with respect to risk, including the milling of chat-containing asphalt concrete. Milling of asphalt concrete roadways during resurfacing would likely release to the air fine chat particles, which could lead to contamination of residential soils and homes located in the vicinity of a road construction project. Our assessment concluded that these events would be episodic and infrequent (corresponding to approximately once over a 15 year lifespan of the asphalt), resulting in transitory exposures of relatively short durations. The Agency assumed that the milling operations would be subject to regulations and best management practices that would protect the health of workers. However, the data were not available to evaluate the potential exposures to nearby residents from chat concrete particles blowing on to residential areas. The assessment concluded, however, that the uncertainty of the exposures to residents from milling and management of encapsulated chat products during road resurfacing could be an area for future study.

The Agency also considered in its assessment non-transportation uses and the demolition of structures containing chat. We did not perform any environmental modeling as with the evaluation of transportation uses. However, with existing fugitive dust regulations and demolition practices, we concluded that exposures from dust generated during the use or demolition of chat in concrete buildings would not pose significant risks to human health.

Concurrent with the public notice and comment period for the proposed rule, the Agency conducted an external peer review of its assessment, *Report on Potential Risks Associated with the Use of Chat from the Tri-State Mining Area in Transportation Projects.* Based on the comments received from the public and from the Peer Reviewers, the Agency has revised the screening evaluation report to reflect those comments. The following discussion provides the Agency's response to the major comments received from the peer reviewers. In addition, the revised report and our response to comments are provided in the docket for this rule.

The following are the major issues raised by the peer reviewers and the Agency's responses.

(1) Potential Exposures During the Milling Process Were Not Evaluated

The peer review commenters believe that the lack of data on air emissions from the grinding of the road surface prior to resurfacing (''milling'') is a considerable source of uncertainty in evaluating the potential risks of using chat in hot mix asphalt. They contend that potential exposure to chat dust generated during the milling of asphalt concrete roads, in addition to the storage of milled materials, should be evaluated through pathways that consider both the inhalation of dust and the incidental ingestion of metals contaminated soil from areas adjacent to a roadway being milled. In addition, peer review commenters noted two additional concerns associated with the milling process: (a) Addressing the short-term exposure of lead to a developing fetus or young child during critical and sensitive periods of growth, and (b) considering background levels of lead in the screening analysis.

The Agency believes that the concerns raised by the peer reviewers are valid and conducted further study to address them. Specifically, we performed a screening analysis to evaluate exposures through direct inhalation of air emissions associated with milling and incidental ingestion by a child of metals-containing soils adjacent to a milled roadway. The assessment was designed to be conservative by selecting both a methodology and the use of high-end parameters that result in upper-bound estimates of hazard and risk. Examples of high-end parameters used in the screen are: (1) Total metals concentrations for lead, zinc, and cadmium from the 2005 OU study where chat comprised 40% of the aggregate used in hot mix asphalt, where typical hot surface mix includes up to 20% chat, (2) the risk screen utilized maximum, hourly air concentrations, rather than an average concentration for inhalation exposure to an adult and also to a child (using the Agency's Integrated Exposure Uptake Biokinetic Model for lead in Children (IEUBK), (3) the risk screen assumed the placement of the milled asphalt concrete storage pile on the side of a

[14] Comparisons of leachate concentrations with drinking water criteria assume that no dilution or attenuation occurs before the dissolved metals reach a drinking water well or surface water. The Agency believes this worst case scenario is highly unlikely to occur in the area of the country where the use of chat is occurring.

road closest to a receptor and locating the receptors at the point of maximum off-site air concentration, (4) the risk screen assumed exposure to chat dust occurs 24 hours/day, for seven days a week, and (5) protective assumptions were used with respect to emissions factors for street sweeping and storage pile loading/unloading operations and meteorological conditions.

The results of this additional analysis show that the milling of chat in asphalt concrete roadways will not adversely affect public health. Specifically, for the direct inhalation pathway, the highest cancer risk predicted for cadmium was 2×10^{-9} (that is, 2 excess cases of cancer per 1,000,000,000 people exposed to the estimated air concentration). The highest non-cancer hazard quotient for cadmium was 0.004 (a hazard quotient is the ratio of the air concentration of cadmium and the level at which no adverse effects are expected; if the hazard quotient is less than 1, then no adverse health effects are expected as a result of exposure). For the direct ingestion of soil adjacent to the roadway, the predicted concentrations of metals in soil were 37.6 (Zn), 3.2 (Pb), and 0.2 (Cd) mg/kg soil, all of which are below (a) The generic EPA Superfund Soil Screening Levels (SSLs) for cadmium and zinc, (b) the 400 ppm CERCLA/RCRA screening level for lead in residential soils, and (c) the background soil concentrations for the western U.S. The comparison with background concentrations was intended to provide additional insight into the contribution to the current environmental ''burden'' of these metals in the area in which chat-containing surface mixes could be used. A soil concentration below background levels suggests that the milling operations will not result in significant increases in the zinc, lead, and cadmium concentrations in soil.

In order to address the concern of lead exposures for children, the Agency used the IEUBK model, which includes multiple pathways of lead exposures (for example, inhalation of dust, ingestion of soil and dust, and dietary intake), and is considered a good predictor of potential long-term blood-lead levels for children in residential settings. We ran the IEUBK model using the maximum air concentration estimated from the direct inhalation analysis, and both the soil concentration we estimated due to milling operations and a separate analysis using a background soil concentration for lead reported in the western U.S. In both cases, a hypothetical child exposed to the estimated air and soil levels resulted in a chance of less than 5% of exceeding a 10μg/dL blood-lead level. The blood-lead levels predicted were 4.328μg/dL and 4.473μg/dL, respectively, from the lead levels we estimated in soil from milling operations and for background soils. The criterion of no more than a 5% chance of exceeding a 10μg/dL blood-lead level is the current Agency guidance level. The Center for Disease Control considers a blood-lead level of 10μg/dL to be of concern for children.

A complete discussion of the screening analysis for the milling of asphalt concrete roads is available in the public docket supporting this final rule. In addition, the screening level analysis was reviewed by selected Agency experts in the fields of emissions modeling and risk assessment. Their comments are also in the docket supporting this final rule. Responses to their comments are reflected in the final document for the screening analysis (RTI, 2007).

(2) Demolition

The peer review commenters raised concerns that dusts resulting from the demolition of chat contained in asphalt concrete and PCC could pose a threat to human health. Road surfaces using chat may also be demolished at the end of their useful life (like conventional asphalt concrete, the useful life could be on the order of 15 years). The demolition of road surfaces containing chat would likely involve low emissions of chat dust particles, theoretically with subsequent dispersion and deposition to nearby soils. Based on discussions with demolition contractors, it is apparent that dusts from such demolitions are regulated under the State fugitive dust regulations. Exposure to such dusts probably would be limited to workers because existing State regulations require that dusts be contained within the area of origin. As noted elsewhere in this preamble, OSHA has established exposure limits for dusts and metals for workers in construction and demolition. Most, if not all, road concrete which is demolished is reused as fill or as road base. Based on the information noted above, the Agency concludes that exposure to chat in demolished pavement does not present a significant risk.

(3) Data Are Insufficient To Establish Risks From the Use of Encapsulated Chat in Products Other Than Hot Mix Asphalt

The peer review commenters noted that there is very limited information to determine whether the use of chat in products other than HMA poses low risk. One of the Peer Reviewers stated that it is ''likely that the risk from other encapsulated forms will be closer to HMA than to unencapsulated forms, but it is not possible to state how close it will be to the HMA risks.''

The Agency generally agrees that data are insufficient to determine if the use of specific products other than HMA evaluated in the *Report on Potential Risks Associated with the Use of Chat from the Tri-State Mining Area in Transportation Projects* are environmentally safe. Consequently, as discussed elsewhere in this preamble, the Agency is allowing the use of chat in Portland cement concrete products (and certain other uses) if a person can demonstrate, on a case-by-case basis, either that: (1) Synthetic Precipitation Leaching Procedure (SPLP, EPA SW–846 Method 1312) tests are conducted on the proposed material and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 ug/l [15]; or (2) EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not cause an exceedance of the National Primary Drinking Water Standards for lead and cadmium in potential drinking water sources or the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 ug/l in surface water.

We believe this approach directly addresses the Peer Review commenters concerns, while at the same time allow persons to proceed with the use of chat in other products or activities if they can make the relevant showing.

(4) Non-Transportation Risks-Demolition

Peer review commenters requested that the Agency carefully review whether existing regulations adequately protect workers from the demolition of chat encapsulated materials. To address that request, this assessment considered how dust generated during the demolition of nonresidential buildings which used chat encapsulated in PCC would occur and whether regulations address worker exposure.[16] The Agency

[15] It should be noted that this case-by-case showing does not require public notice and comment.

[16] The American National Standards Institute ANSI–A 10.6–1983 American National Standard for Demolition Operations Safety Requirements set minimum dust exposure limits and recommends

Continued

assumed that such buildings would be demolished once every 30 years, based on the Internal Revenue Service allowable straight-line depreciation for non-residential real property of 31.5 years. The Agency determined that demolition practices, as noted by the National Association of Demolition Contractors, would generally generate dusts for periods rarely in excess of 20–30 minutes when buildings are imploded. Furthermore, the Agency has reviewed the fugitive dust demolition regulations in Oklahoma, Missouri, and Kansas and found that building demolition requires a general fugitive dust permit that mandates that demolition related dusts be contained within the property line (most often through the use of water sprays). Based on this information, the Agency concludes that dusts from the demolition of nonresidential buildings with chat contained in PCC are not likely to present a significant threat to human health.

Even if chat metal levels do not trigger OSHA requirements, however, other OSHA controls would still be utilized to address worker health risks from exposure to fine particulates, which indirectly addresses the issues associated with chat. In particular, demolition of concrete structures is known to produce extremely fine particles of crystalline silica. Breathing crystalline silica dust can lead to silicosis, a commonly known health hazard which has been associated historically with the inhalation of silica-containing dusts. Silicosis is a lung disease which can be progressive and disabling; it can lead to death. The OSHA standards for exposure to dust, (29 CFR 1926.55) prohibit employee exposure to any material at concentrations above those specified in the ''Threshold Limit Values of Airborne Contaminants for 1970.'' OSHA has established for crystalline silica dust a Permissible Exposure Level which is the maximum amount to which workers may be exposed during an 8-hour work shift. NIOSH has recommended an exposure limit of 0.05 mg/m^3 as a time-weighted average for up to a 10-hour workday during a 40-hour workweek. Although the Agency has no reason to believe that chat contained in PCC would increase the levels of fine particulates, including crystalline silica, we believe the OSHA/NIOSH standards will provide adequate protection to workers from potential exposure.

OSHA has also established worker health and safety standards specific to building demolition in 29 CFR 1926 Subpart T. These standards require an engineering survey of the building prior to demolition to identify any risks and implementation of project wide dust controls. The standards also require compliance with NIOSH respirable dust standards which essentially require the use of respirators, if standards noted in 29 CFR 1910 are exceeded. Based on the Agency's review of the OSHA standards, we conclude that these regulations provide adequate protection to onsite demolition workers.

One of the Peer Reviewers noted that NIOSH and OSHA standards may not apply to county or State highway workers and that those safeguards would not actually protect workers potentially exposed to dusts during milling or demolition. The Agency has reviewed State and Federal worker health and safety laws as they apply to demolition, and does not agree that there is insufficient regulatory protection of workers. The commenter also noted that existing regulations are not being enforced. While the Agency has not been able to determine whether this allegation is accurate, it is beyond the scope of this effort to determine whether these regulations are being enforced by the states or others.

(5) The Risk From the Generation of Chat Fines During Processing Was Not Evaluated

The peer review commenters noted that the rule should include criteria addressing the handling and disposal of chat fines resulting from the wet sizing of chat. First, the Agency would note that this final rule does not require that the raw chat be washed or sized prior to being used. Therefore, any fines that are generated would not be the result of this rule. Nevertheless, the Agency evaluated the risks from exposure to fines from chat washing facilities during Superfund Site investigations at the NPL Sites in the Tri-State Mining District. The information we have shows that fines may release metals into the environment. However, the release of these metals can be effectively controlled by EPA through its oversight authority of the Tar Creek Superfund site. In addition, we believe that most chat washing will continue to be conducted at the two known commercial chat washing facilities located within the Superfund Sites. However, to the extent that other chat washing facilities become operational, we also believe that they will be adequately controlled based on our review of the air and water regulations in Oklahoma, Missouri and Kansas. (See Section III for a discussion of EPA's evaluation of the states regulatory programs to control air and water releases at asphalt plants, PCC plants and chat washing facilities.)

(6) Ecological Risks

The peer review commenters noted that there should be a more comprehensive analysis of the ecological risks from chat use. Environmental quality information presented in several studies indicated that damages to streams had been documented for the Tri-State Mining Area; however, these studies did not address encapsulated chat uses, but were from multiple sources of contamination associated with lead and zinc mining, including subsurface sources (flooded mine shafts), surface sources (chat piles, tailing sites), and smelting operations. SPLP analyses for chat encapsulated in hot mix asphalt (OU, 2005) shows that zinc concentrations, when detected, were below EPA's National Recommended Water Quality Criteria (*http://www.epa.gov/waterscience/criteria/wqcriteria.html*) for the protection of aquatic life. This study did not find detectable levels of lead or cadmium in any leachate using the SPLP method. We do not foresee that environmental conditions could occur where metals from chat used in transportation projects, that are funded, in whole or in part, using Federal funds, would reach surface waters at levels of concern either through run-off to nearby soils, which would have subsequent attenuation before reaching surface waters, or via the groundwater pathway, which would have additional attenuation and dilution in groundwater before reaching nearby receiving waters.

B. What Are the Economic Impacts?

This Part summarizes projected cost impacts, economic impacts, and benefits associated with this final rule. A brief market profile is first discussed, followed by specification of the economic baseline. Costs and economic impacts are next discussed. These estimates are presented on an annualized basis. Finally, this Part presents a qualitative discussion of potential benefits associated with this final rule.

1. Chat Market Profile

Chat is a byproduct of mining and milling operations that has been exempted from regulation as a ''hazardous waste'' under Subtitle C of

that no worker shall be permitted in any area that can adversely affect them when demolition operations are being performed.

RCRA.[17] However, it can pose risks to human health and the environment. Currently, chat in the Tri-State Mining District is found in above-ground piles of varying sizes, reflecting the different types of mining operations that occurred in each area. The total quantity of chat in the Tri-State Mining District is roughly 100 million tons. A small percentage of this total is currently used annually in road building or other beneficial use projects.

A small, but well-established market for chat in transportation applications currently exists. The preparation and use of chat is dominated by a few small operations that purchase, process, and sell chat to area hot mix asphalt plants for use as an aggregate. Approximately 95 percent of all current chat use is for aggregate in hot mix asphalt. A wide range of different projects comprise the remaining 5 percent.[18] We have no evidence there is any current use of chat in cement or Portland cement concrete.

The demand for chat as aggregate in transportation uses is price sensitive and is limited by various technical and performance standards. However, consistent demand exists as long as chat can be provided at prices that are competitive with other sources of aggregate. The key cost drivers for chat include raw material costs, processing and sizing, if conducted, and transportation. The current market price for chat, and other forms of aggregate, is approximately five dollars per ton. This estimate excludes transport cost, but includes processing and sizing, even though such operations are not required as part of this rule.

A limited number of small companies act as brokers, processors and distributors (washers and haulers) of the chat in the Tri-State Mining District. Chat haulers and washers buy chat from several owners, each typically owning only a small amount of the total quantity of chat. Chat is both privately and publicly owned, including chat piles located on land controlled by the Quapaw Tribe of Oklahoma.

Historical trends and information from regional chat suppliers suggest that the demand for chat for transportation-related uses is unlikely to change significantly over the next couple of decades. The currently viable market is well defined and transportation costs make chat economically unattractive beyond current market limits. Within the current market, rates of growth for new roads are modest (estimated at less than 2 percent per year) and population densities are low in areas where the use of chat is economically competitive. We are not able to determine what, if any, impact this rule may have on chat demand for use in asphalt concrete. Significant chat use in other applications, such as Portland cement concrete, does not appear to be viable at this time either for economic or other reasons.

2. Cost Impacts

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. Our economic assessment conducted in support of this rule evaluated compliance costs only. Social costs are not assessed due to data limitations and the lack of equilibrium modeling capabilities associated with this industry. The data applied in this analysis were the most recently available at the time of the analysis. Because our data and analytical techniques were limited, the cost impact findings presented here should be considered generalized estimates.

Our cost analysis examined the potential impact of the rule based on the use of encapsulated chat that comes from the Tri-State Mining District. Ninety-five percent of all chat that is used beneficially is used in hot mix asphalt transportation construction applications. Our cost analysis, therefore, focused on the use of chat as aggregate in hot mix asphalt. Chat may also be used for a variety of non-asphalt transportation and commercial building products.

However, available data appear to indicate that non-asphalt uses of chat from the Tri-State area generally are not common either due to economics or a lack of demand.

Our analysis indicates that the incremental cost impacts associated with this rule are approximately $210,000 per year. This estimate incorporates costs associated with certification, recordkeeping and reporting. Sampling and analysis costs, if any, for use in concrete pavement and nonresidential concrete are not included because the Agency is unaware of any such use currently taking place and further believes that such use, if it occurs, will be minimal. Additional ''expanded use'' scenarios are examined in the economic support document prepared for this action: *Assessment of the Potential Costs, Benefits, and Other Impacts of Chat Use in Transportation Projects,* December 18, 2006. This document is available in the docket established for this final rule.

3. Economic Impacts

Our findings indicate that this final rule is unlikely to result in any significant economic impacts to chat suppliers or users in the short term. However, the potential impact of this rule on chat use over the next ten to twenty years is undetermined. As a result, it is not possible to estimate regional or local economic impacts over the long term.

4. Benefits

This final rule is designed to establish standards intended to clarify and facilitate the safe use of chat in transportation applications carried out, in whole or in part, with Federal funds. The social benefits of this action are related to reduced human health and environmental damage in the Tri-State Mining District associated with the timely removal of chat from existing piles. Should there be no accelerated use of chat in transportation projects above the current annual rate, human health and environmental benefits may be equivalent to those expected under a no action baseline.

VI. State Authority

This final rule is promulgated under the authority of RCRA Section 6006. It becomes effective in all relevant States on its effective date of September 18, 2007; after that date, chat cannot be used in federally funded transportation projects except in compliance with today's regulations, regardless of current State law. At the same time, nothing in this rule restricts the authority of States, under State law, to establish different requirements or procedures for the use of chat in federally funded transportation projects. States are neither expected nor required to pick up this rule or to seek approval or authorization.

Several provisions of this final rule directly affect States. Specifically, Section 278.3(b)(2) prohibits the use of chat in Portland cement concrete or in certain other uses (in Federally funded transportation projects,) unless approved by EPA or the State environmental agency, if the State chooses to be the approving entity, where the use will occur. While the rule would allow either EPA or the relevant State agency to approve such uses, EPA ordinarily expects to defer to the State where a potential chat user requests approval. EPA would only expect to act where the State preferred not to, and in these cases, it would work in close consultation with the State. In addition,

[17] See 40 CFR 261.4(b)(7).

[18] Current other uses of chat include: component in anti-skid surfaces, sand blasting material, and waste water treatment filters. The Agency believes that additional evaluation, outside the scope of this rule, is necessary to determine the environmental suitability of using chat as sand blasting or as filter media.

Section 278.3(b)(3) provides that EPA or a State, if it chooses to do so, may approve the use of chat authorized as part of a State or Federal response action undertaken pursuant to applicable Federal or State environmental laws. In such cases, EPA expects that the State would rely on its existing cleanup regulations and procedures in approving the use.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action may raise novel legal or policy issues [3(f)(4)] arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866. Any changes made in response to OMB recommendations have been documented in the docket for this action.

This rule is projected to result in cost impacts of approximately $210,000 per year. This figure is significantly below the $100 million threshold established under part 3(f)(1) of the Order. In addition, this rule is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Thus, this rule is not considered to be an economically significant action.

We have prepared an economic assessment in support of this rule. This document is entitled: *Assessment of the Potential Costs, Benefits, and Other Impacts of Chat Use in Transportation Projects,* December 18, 2006. Findings from this document are briefly summarized under Section V. B above.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* via this preamble instead of a separate Information Collection Request (ICR) document.

The certification, reporting, and record keeping required under this rule is necessary to ensure the safe use of the product containing chat. Certification, recordkeeping and reporting requirements under this rule are not subject to confidentiality restrictions.

Since the burden associated with this rule is insignificant, a separate ICR is not necessary. The burden is projected to affect a limited number of entities. These include: three State governments (Oklahoma, Missouri, Kansas), one Native American tribe (Quapaw Tribe of Oklahoma), and no more than fifty sand and gravel companies located in the States of Oklahoma, Missouri, and Kansas (NAICS 4233202).

The burden on respondents is estimated at 3,800 hours per year, with a total annual cost ranging from $152,000 to $228,000, depending upon labor costs. Respondents would also need to read and understand the rule. The burden associated with reviewing the regulation is estimated at 100 hours, with a total annual cost estimated at $5,000. The burden on governmental entities is estimated at 380 hours per year, with total costs ranging from $15,200 to $22,800 per year. These estimates do not include costs related to a user making a case-by-case showing to EPA or a State environmental agency that a proposed use is safe and environmentally protective. Those costs are not included because the Agency believes that there will be very few such requests made in any one year. All these estimates are summarized in the Table below.

SUMMARY OF ESTIMATED BURDEN TO RESPONDENTS AND GOVERNMENT

Activity	Number of hours per project	Estimated cost per hour	Estimated number of affected projects per year	Estimated total annual burden (hours)	Estimated total annual cost
Burden to Respondents:					
Certification, Reporting, Record keeping	5.0	$40–$60	760	3,800	$152,000–$228,000
Burden to Government (affected States):					
Certification review and recordkeeping	0.5	40–60	760	380	15,200–22,800

Note: The additional burden to respondents associated with reading and understanding the regulation is estimated at 100 hours, with a total average annual cost estimated at $5,000.

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 governmental entity. 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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute. This analysis must be completed unless the agency is able to certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This section summarizes whether the rule establishing criteria for the use of chat in transportation construction projects, carried out, in whole or in part, with Federal funds, may adversely impact small entities. The market for both chat and ''virgin'' aggregate in hot mix asphalt production is mature and dominated by small businesses. In order to have a significant economic impact on a substantial number of small businesses, the criteria for chat use would have to cause a significant decrease in the quantity of chat that is used in highway applications. Our analysis indicates that the current market area is not likely to experience any significant change in the demand for chat as a result of the rule. That is, while many chat processors, distributors, and users of chat are small businesses, significant economic impacts on a substantial number of these entities are not expected.

The reader is encouraged to review our regulatory flexibility screening analysis prepared in support of this determination. This analysis is incorporated into the ''Assessment'' document, as referenced above.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written Statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written Statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The total costs of this action are estimated at $0.21 million per year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule focuses on establishing criteria for chat use in transportation construction projects, carried out, in whole or in part, with Federal funds, without affecting the relationships between Federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State governments in developing this rule. Representatives from the States of Kansas, Missouri, and Oklahoma provided valuable input.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Under Executive Order 13175, EPA may not, to the extent practicable and permitted by law, issue a regulation that has tribal implications, that imposes substantial direct compliance costs for which the Federal government does not provide funds to pay such costs, and that is not required by statute, unless EPA consults with tribal officials early in the process of developing the regulation. Similarly, to the extent practicable and permitted by law, EPA may not issue a regulation that has tribal implications and that preempts tribal law unless EPA, among other things, consults with tribal officials early in the process of developing the regulation.

EPA has concluded that this rule does not have tribal implications in that it does not have substantial direct effects as specified in the Executive Order. In particular, EPA notes that this rule does not impose substantial direct compliance costs or pre-empt tribal law. However, the Agency recognizes the significant interest that some tribes have in this rule. Specifically, some chat piles are located on Indian country lands. Allotted lands of the Quapaw Tribe of Oklahoma (Quapaw Tribe) are estimated to contain about half of the 29 chat piles located within the Picher Mining Field site. This rule is not expected to significantly change the demand for, and income from, chat use. To the extent this rule encourages the removal of chat from existing piles, there is likely to be an improvement to the environment and human health in these areas.

During the development of this final rule, the Agency carefully reviewed comments submitted on the proposal by the Quapaw Tribe. Agency personnel also consulted with representatives of

the Quapaw Tribe to assure the tribe that their concerns were given due consideration.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not require the application of technical standards (e.g., materials specification, sampling, analyses). As such, the National Technology Transfer and Advancement Act does not pertain to this action.

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 rule 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. Our analysis indicates that chat piles in the Tri-State Mining District are, in some cases, located near low-income populations. In addition, Quapaw allotted lands are located within the Picher Mining Field. Existing data on the human health and ecological impacts associated with chat suggests that these populations may be adversely affected by the presence of the chat piles. Thus, the removal of the chat from piles for transportation construction applications that are considered protective of human health and the environment would likely have a positive impact on these communities.

K. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a final 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. Prior to publication of this final rule in the **Federal Register**, we will submit all necessary information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. Under the CRA, 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).

List of Subjects in 40 CFR Parts 260 and 278

Environmental protection, Chat, Certification and recordkeeping requirements, Incorporation by reference, Indians—lands, Mine tailings, Waste.

Dated: June 5, 2007.

Stephen L. Johnson,

Administrator.

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

PART 260—[AMENDED]

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

■ 2. Section 260.11 is amended by revising the first sentence in paragraph (a) and paragraph (c)(3)(vii) to read as follows:

§ 260.11 References.

(a) When used in parts 260 through 268 and 278 of this chapter, the following publications are incorporated by reference. * * *

* * * * *

(c) * * *

(3) * * *

(vii) Method 1312 dated September 1994 and in Update III, IBR approved for part 261, appendix IX and § 278.3(b)(1).

■ 3. Part 278 is added to read as follows:

PART 278—CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS

Sec.
278.1 Definitions.
278.2 Applicability.
278.3 Criteria for use of chat in Federally funded transportation projects.
278.4 Certification and recordkeeping requirements.

Authority: 42 U.S.C. 6961 *et seq.*

§ 278.1 Definitions.

(a) *Asphalt concrete*—a layer, or combination of layers, composed of a compacted mixture of an asphalt binder and mineral aggregate.

(b) *Chat*—waste material that was formed in the course of milling operations employed to recover lead and zinc from metal-bearing ore

minerals in the Tri-State Mining District of Southwest Missouri, Southeast Kansas and Northeast Oklahoma.

(c) *Chip seal*—a material composed of aggregate placed on top of a layer of an asphalt or asphaltic liquid binder. The aggregate may be rolled into the binder.

(d) *Cold mix asphalt*—refers to an asphalt and aggregate mixture composed of binders, soaps, or other chemicals which allow its use when cold

(e) *Epoxy seal*—refers to the mixture of aggregate in epoxy binders. Epoxy seals are typically used as an anti-skid surface on bridge decking

(f) *Federal or State response action*—State or Federal response action undertaken pursuant to applicable Federal or State environmental laws and with consideration of site-specific risk assessments.

(g) *Flowable fill*—a cementitious slurry consisting of a mixture of fine aggregate or filler, water, and cementitious materials which is used primarily as a backfill in lieu of compacted earth.

(h) *Granular road base*—road base typically constructed by spreading aggregates in thin layers of 150 mm (6 inches) to 200 mm (8 inches) and compacting each layer by rolling over it with heavy compaction equipment. The aggregate base layers serve a variety of purposes, including reducing the stress applied to the sub grade layer and providing drainage for the pavement structure. The granular sub base forms the lowest (bottom) layer of the pavement structure and acts as the principal foundation for the subsequent road profile.

(i) *Hot Mix Asphalt*—a hot mixture of asphalt binder and size-graded aggregate, which can be compacted into a uniform dense mass. Hot mix asphalt also includes hot mix asphalt sub bases and hot mix asphalt bases.

(j) *Microsurfacing*—polymer-modified slurry seal.

(k) *Portland cement concrete (PCC)*—pavements consisting of a PCC slab that is usually supported by a granular (made of compacted aggregate) base or sub base.

(l) *Pozzolanic*—a siliceous material which when combined with calcium hydroxide in the presence of moisture exhibits cementitious properties.

(m) *Slurry seal*—refers to a material composed of emulsified asphalt, aggregate, and mineral fillers, such as Portland cement or lime which is applied as a thin coating on top of asphalt concrete or Portland cement concrete road surfaces.

(n) *Stabilized base*—a non-asphaltic road base composed of aggregate mixed with a pozzolanic material which increases the bearing strength of the material.

(o) *Transportation construction projects*—these activities relate to the construction of roads and highways and include bases, sub bases, road surfaces, bridges, abutments, shoulders, and embankments. They are not related to any residential use.

(p) *Tri-State Mining District*—the lead-zinc mining areas of Ottawa County, Oklahoma, Cherokee County of southeast Kansas and Jasper, Newton, Lawrence, and Barry Counties of southwest Missouri.

(q) *Warm mix asphalt*—refers to a mixture of an asphalt binder with aggregate, paraffin or esterfied wax, and mineral additives that allow its use at temperatures much lower than hot mix asphalt.

§ 278.2 Applicability.

These requirements apply to chat from the Tri-State Mining District used in transportation construction projects carried out, in whole or in part, using Federal funds.

§ 278.3 Criteria for use of chat in Federally funded transportation projects.

Chat can be used in transportation construction projects carried out, in whole or in part, using Federal funds if:

(a) The chat is used in hot, warm or cold mix asphalt, in slurry seal, microsurfacing, or in epoxy seal; or

(b) The chat is used in Portland cement concrete, granular road base, flowable fill, stabilized road base or chip seal if, on a case by case basis either:

(1) Synthetic Precipitation Leaching Procedure (SPLP) tests are conducted on the proposed material using EPA SW–846 Method 1312, incorporated by reference in § 260.11 of this chapter, and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 μg/l; or

(2) EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not cause an exceedance of the National Primary Drinking Water Standards for lead and cadmium in potential drinking water sources and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 μg/l in surface water; or

(c) The use of chat has been authorized pursuant to a State or Federal response action.

§ 278.4 Certification and recordkeeping requirements.

(a) *Certification.* For chat used under the jurisdiction of the U.S. Department of Interior, Bureau of Indian Affairs, the EPA certification below is not applicable. In other jurisdictions, the acquirer shall:

(1) Submit a signed, written certification to the environmental regulatory agency in the State where the chat is to be used within 30 days of the date of acquisition. The certification shall contain the following:

(i) Location of origin of the chat;

(ii) Amount of chat acquired; and

(iii) Certification Statement: I certify under penalty of law that the chat used in this transportation project will meet EPA criteria found in § 278.3.

(2) *Transfer.* If the chat is sold or otherwise transferred to another party, the acquirer shall provide a copy of the certification to the new owner of the chat. The new owner shall submit a certification according to paragraph (a)(1) of this section. The new certification supersedes all previous certifications.

(3) *Recordkeeping.* The acquirer of chat, and any other person that receives the chat, will maintain copies of all of the following for three years; a copy of the certification following transmittal to the State department(s) of the environment, and, as appropriate; any SPLP testing results; or any site-specific risk assessments.

(b) [Reserved]

[FR Doc. E7–13544 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 72, No. 137
Wednesday, July 18, 2007

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–86]

Sherwood Martinelli; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–50–86) submitted by Sherwood Martinelli. The petitioner requested that the NRC amend its regulations to provide financial protection for individuals harmed by releases of nuclear material following an incident or attack at a nuclear facility, and to require licensees to pay for satellite communication systems for nuclear power plant communities to ''protect human health and the environment.'' The petitioner also requested that nuclear facilities licensed by the NRC or the Federal government provide adequate funding to enable every family living within 10 miles of a nuclear facility to build, stock, and maintain a personal family shelter to allow families to shelter in place during releases of nuclear material following an incident or attack at a nuclear facility.

ADDRESSES: Copies of the petition for rulemaking and NRC's letter to the petitioner may be examined at the NRC Public Document Room (PDR), Public File Area Room O–1 F21, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking Web site.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301-415–7163; e-mail: *MTL@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

The petitioner requested that the NRC amend its regulations to provide financial protection for individuals harmed by releases of nuclear material following an incident or attack at a nuclear facility, and to require licensees to pay for satellite communication systems for nuclear power plant communities to ''protect human health and the environment.'' The petitioner also requested that nuclear facilities licensed by the NRC or the Federal government provide adequate funding to enable every family living within 10 miles of a nuclear facility to build, stock, and maintain a personal family shelter to allow families to shelter in place during releases of nuclear material following an incident or attack at a nuclear facility.

The petitioner also requested that the NRC amend its regulations so that anyone living within 10 miles of a licensed nuclear facility is able to demand an Independent Safety Assessment (ISA), which would include public review of onsite security and offsite evacuation plans for that licensee. The petitioner also sought other types of relief related to security issues at nuclear power plants.

A notice of receipt of this petition was not published in the **Federal Register**.

Reasons for Denial

The NRC is denying this petition because the NRC has determined that PRM–50–86 requests the NRC to take actions that exceed the NRC's authority, requests that the NRC address issues that the NRC has already considered in previous rulemakings, and fails to adequately support its requests to revise NRC regulations.

The petition requests the NRC to modify its regulations to require nuclear facilities licensed by the NRC or the Federal Government to provide adequate funding to enable every family living within 10 miles of a nuclear facility to build, stock, and maintain a personal family shelter to allow families to shelter in place during releases of nuclear material following an incident or attack at a nuclear facility. The NRC cannot grant this request, in part because the NRC is not authorized by Congress to make financial payments to individuals. Further, the petition does not establish that requiring licensees to pay for these shelters would be necessary, in light of existing NRC requirements on emergency preparedness, to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The petition also asks that NRC regulations be revised to require licensees to pay for satellite communication systems for nuclear power plant communities to ''protect human health and the environment.'' The petition does not demonstrate how requiring licensees to pay for these satellite communication systems would provide, in light of existing NRC requirements on emergency preparedness, reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The petition requests that NRC rules be changed so that anyone living within 10 miles of a licensed nuclear facility is able to demand an ISA, which would include public review of onsite security and offsite evacuation plans for that licensee. The NRC already conducts detailed, objective inspections of licensed research and test reactors, operating power reactors, and fuel facilities. The NRC also performs assessments under a program called the Reactor Oversight Process (ROP) at all operating power reactor facilities on a continuous basis. These assessments measure performance in seven fundamental areas to ensure safe plant operation. The ROP, as currently implemented, effectively incorporates the inspection elements of the 1996 Maine Yankee ISA. The NRC believes the ROP and NRC's regulatory framework effectively examine the same key aspects of plant safety as an ISA, but

with a better focus on potentially risk-significant problems.

The request for public review of onsite security plans cannot be granted because public review of these plans is not permissible. Allowing the details of these plans to be made public could aid adversaries. However, information concerning emergency plans is publicly available. Residents within a radius of approximately 10 miles from a nuclear power plant receive emergency information materials annually, including information about protective actions such as evacuation and sheltering. For more information concerning emergency plans, including public inspection of these plans, a resident should contact their local emergency management organization.

The petition also seeks revisions to NRC regulations because the petitioner claims that the Price-Andersen Act , the structures of corporate organizations, and NRC regulations do not adequately provide financial protection for individuals harmed by releases of nuclear material following an incident or attack at a nuclear facility. This claim challenges a statutory framework that the NRC is not authorized to change. Further, the petition does not explain why the current NRC regulations do not assure that the public will receive prompt financial compensation under available indemnity and underlying financial protection for damage resulting from the hazardous properties of radioactive materials or radiation.

The petition seeks other relief related to security issues at nuclear power plants. The petition does not provide significant new information or arguments that were not previously considered by the Commission in its final rule on the Design Basis Threat, which was published in the **Federal Register** on March 19, 2007 (72 FR 12705), and became effective on April 18, 2007.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 12th day of July 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–13924 Filed 7–17–07; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 24

Guides for Select Leather and Imitation Leather Products; Corrections

AGENCY: Federal Trade Commission.

ACTION: Request for public comments; correction.

SUMMARY: The Federal Trade Commission published a document in the **Federal Register** on May 23, 2007 (72 FR 28906) requesting public comments on the Commission's Guides for Select Leather and Imitation Leather Products (''Leather Guides''). Inadvertently, the **ADDRESSES** Block of the **Federal Register** Notice did not state that if the Notice appeared at *http://www.regulations.gov,* members of the public could file an electronic comment through that Web site, as well as by accessing the following Web site: *https://secure.commentworks.com/ftc-leatherguides,* and following the instructions on the web-based form.

FOR FURTHER INFORMATION CONTACT: Donald S. Clark, Secretary of the Commission, at (202) 326–2514.

SUPPLEMENTARY INFORMATION: This is a summary of the FTC's Erratum. The **ADDRESSES** Block in the May 23, 2007 Notice is amended to add the following two sentences at the end of the first paragraph in the **ADDRESSES** Block: ''If this notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.''

Donald S. Clark,

Secretary.

[FR Doc. E7–13833 Filed 7–17–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Naval Support Activity, Panama City, FL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to establish ten restricted areas at Naval Support Activity (NSA), Panama City (PC), Florida. NSA, Panama City, and its major tenant command, the Naval Surface Warfare Center (NSWC), have been recognized as one of the lead research, development, test and evaluation laboratories of the U.S. Navy. In addition, the Naval Diving and Salvage Training Center (NDSTC) relocated from the Washington Navy Yard to NSA PC and now hosts a consolidated training for the U.S. Army Corps of Engineers, U.S. Coast Guard, the Navy's satellite dive schools, the U.S. Marine Corps and the U.S. Air Force. As such, a large majority of military dive training is now concentrated at NSA, PC. The proposed restricted areas in Panama City waters meet strict military training parameters that cannot be duplicated elsewhere. Military training in and around St. Andrews Bay has existed in harmony with local boat traffic and development since 1945. NSA, PC requests to formalize these ongoing activities within the waters of St. Andrews Bay in efforts to maximize public safety and to preserve current military training vital to the Global War on Terror and to all service military readiness.

DATES: Written comments must be submitted on or before August 17, 2007.

ADDRESSES: You may submit comments, identified by docket number COE–2007–0017, by any of the following methods:

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

E-mail: david.b.olson@usace.army.mil. Include the docket number COE–2007–0017 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW, Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2007–0017. All comments received will be included in the public docket without change and may be made available on-line at *http://regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as

part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

Consideration will be given to all comments received within 30 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Ms. Teresa Zar, U.S. Army Corps of Engineers, Jacksonville District, Panama City Regulatory Field Office at 850–763–0717 ext 26.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend the regulations in 33 CFR part 334 by establishing ten separate restricted areas.

Procedural Requirements

a. *Review Under Executive Order 12866.* The proposed rules are issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the economic impact of the proposed restricted areas would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. These proposed rules, if adopted, will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* The Corps expects that these proposed regulations will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* These proposed rules do not impose an enforceable duty among the private sector and, therefore, are not a Federal private sector mandate and are not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by these rules.

List of Subjects in 33 CFR, Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.761 to read as follows:

§ 334.761 Naval Support Activity Panama City; St. Andrews Bay; restricted areas.

(a) *The areas*—(1) *Area AP–1.* Bounded by a line drawn in the direction of : latitude 30°10′00″ N, longitude 085°44′37″ W; latitude 30°10′00″ N, longitude 085°43′17″ W; latitude 30°09′51″ N, longitude 085°43′17″ W; latitude 30°09′50″ N, longitude 085°44′37″ W. 1.259 nm @ 185°T from center of Hathaway Bridge to NW corner; 1.659 nm @ 139°T to NE corner; 1.788 nm @ 143°T to SE corner; 1.426 nm @ 183°T to SW corner.

(2) *Area BA–1.* Bounded by a line drawn in the direction of: latitude 30°11′14″ N, longitude 085°44′59″ W; latitude 30°11′13″ N, longitude 085°44′32″ W; latitude 30°10′31″ N, longitude 085°44′32″ W; latitude 30°10′32″ N, longitude 085°44′59″ W @ 0.432 nm @ 268°T from center of Hathaway Bridge to NW corner; 63.8 yds @ 180°T to NE corner; 0.726 nm @ 180°T to SE corner; 0.825 nm @ 208°T to SW corner.

(3) *Area BA–2.* Bounded by a line drawn in the direction of: latitude 30°11′13″ N, longitude 085°44′ 32″ W; latitude 30°11′7″ N, longitude 085°44′0″ W; latitude 30°10′32″ N, longitude 085°44′0″ W; latitude 30°10′31″ N, longitude 085°44′32″ W. 63.8 yds @ 180°T from center of Hathaway Bridge to NW corner @ 0.489 nm @ 107°T to NE corner; 0.861 nm @ 147°T to SE corner; 0.726 nm @ 180°T to SW corner.

(4) *Area BA–3.* Bounded by a line drawn in the direction of: latitude 30°10′32″ N, longitude 085°44′59″ W; latitude 30°10′32″ N, longitude 085°44′9″ W; latitude 30°10′00″ N, longitude 085°44′9″ W; latitude 30°10′ 00″ N, longitude 085°44′40″ W. 0.825 nm @ 208°T from center of Hathaway Bridge to NW corner @ 0.797 nm @ 156°T to NE corner; 1.303 nm @ 165°T to SE corner; 1.266 nm @ 185°T to SW corner.

(5) *Area BA–4.* Bounded by a line drawn in the direction of: latitude 30°10′32″ N, longitude 085°44′9″ W; latitude 30°10′32″ N, longitude 085°42′35 W; latitude 30°10′0″ N, longitude 085°42′35″ W; latitude 30°10′00″ N, longitude 085°44′9″ W. 0.797 nm @ 156°T from center of Hathaway Bridge to NW corner; 1.835 nm @ 113°T to NE corner; 2.106 nm @ 127°T to SE corner; 1.303 nm @ 165°T to SW corner.

(6) *Area BA–5.* Bounded by a line drawn in the direction of: latitude 30°08′41″ N, longitude 085°41′25″ W; latitude 30°08′8″ N, longitude 085°40′48″ W; latitude 30°07′0″ N, longitude 085°42′29″ W; latitude 30°07′31″ N, longitude 085°43′9″ W. 3.734 nm @ 134°T from center of Hathaway Bridge to NW corner; 4.484 nm @ 134°T to NE corner; 4.616 nm @ 157°T to SE corner; 3.927 nm @ 162°T to SW corner.

(b) *The restrictions.* (1) For the purposes of this section, ''military security zones'' are areas established by safety vessels that accompany each training exercise and ward off private boat traffic by offering them navigational advice to remain clear of the exercise.

(2) *Area AP–1.* In the area described in paragraph (a)(1) of this section, non-residents (i.e., boat owners who do not own property south of the area

described in paragraph (a)(1) of this section) and their vessels may not enter or remain within the restricted area from 0700 hrs to 0400 hrs. Residents and their vessels may not enter or remain within military security zones established in the restricted area during training events. All other civilian water-borne activities (fishing, trolling, waterskiing, jet-skiing, etc.) are prohibited in the restricted area during training activities.

(3) *Areas BA–1 through BA–5.* In the areas described in paragraphs (a)(2) through (a)(6) of this section, no person or vessel may enter or remain within military security zones established in the restricted areas during training events. All other civilian water-borne activities (fishing, trolling, waterskiing, jet-skiing, etc.) are prohibited in the restricted areas during training activities.

(c) *Enforcement.* The regulations in this section shall be enforced by the Officer in Charge, Naval Support Activity Panama City, Panama City Beach Florida, and such agencies as he/she may designate.

3. Add § 334.762 to read as follows:

§ 334.762 Naval Support Activity Panama City; North Bay and West Bay; restricted areas.

(a) *The areas*—(1) *Area NB–1.* Bounded by a line drawn in the direction of: latitude 30°12′16″ N, longitude 085°44′14″ W; latitude 30°12′16″ N, longitude 085°43′1″ W; latitude 30°11′16″ N, longitude 085°44′14″ W; latitude 30°11′17″ N, longitude 085°44′49″ W. 1.046 nm @ 014°T from center of Hathaway Bridge to NW corner; 1.662 nm @ 053°T to NE corner; 0.262 nm @ 087°T to SE corner; 0.248 nm @ 278°T to SW corner.

(2) *Area NB–2.* Bounded by a line drawn in the direction of: latitude 30°14′0″ N, longitude 085°44′14″ W; latitude 30°14′0″ N, longitude 085°41′51″ W; latitude 30°12′16″ N, longitude 085°43′1″ W; latitude 30°12′16″ N, longitude 085°44′14″ W. 2.762 nm @ 005°T from center of Hathaway Bridge to NW corner; 3.584 nm @ 040°T to NE corner; 1.662 nm @ 053°T to SE corner; 1.046 nm @ 014°T to SW corner.

(3) *Area NB–3.* Bounded by a line drawn in the direction of: latitude 30°16′10″ N, longitude 085°46′52″ W; latitude 30°17′ ″ N, longitude 085°45′34″ W; latitude 30°14′56″ N, longitude 085°43′45″ W; latitude 30°14′ 1″ N, longitude 085°44′ 59″ W. 5.313 nm @ 338°T from center of Hathaway Bridge to NW corner; 5.852 nm @ 351°T to NE corner; 3.742 nm @ 010°T to SE corner; 2.802 nm @ 352°T to SW corner.

(b) *The restrictions.* (1) In the areas described in paragraphs (a)(1) through (a)(3) of this section, no person or vessel may enter or remain within military security zones established in the restricted area during training events. For the purposes of this section, ''military security zones'' are areas established by safety vessels that accompany each training exercise and ward off private boat traffic by offering them navigational advice to remain clear of the exercise. All other civilian water-borne activities (fishing, trolling, waterskiing, jet-skiing, etc.) are prohibited in the restricted areas during training activities.

(c) *Enforcement.* The regulations in this section shall be enforced by the Officer in Charge, Naval Support Activity Panama City, Panama City Beach Florida, and such agencies as he/she may designate.

4. Add § 334.763 to read as follows:

§ 334.763 Naval Support Activity Panama City; Gulf of Mexico; restricted area.

(a) *The area.* Bounded by a line drawn in the direction of: latitude 30°10′29″ N, longitude 085°48′20″ W; latitude 30°07′58″ N, longitude 085°44′44″ W; latitude 30°05′24″ N, longitude 085°47′29″ W; latitude 30°07′55″ N, longitude 085°51′5″ W. 4.921 nm @ 312°T from north jetty to St. Andrews Bay, (Colregs demarcation line) to NW corner; 0.944 nm @ 324°T to NE corner; 3.451 nm @ 238°T to SE corner; 6.098 nm @ 277°T to SW corner.

(b) *The restrictions.* In the area described in paragraph (a)(2) of this section, no person or vessel may enter or remain within military security zones established in the restricted area during training events. For the purposes of this section, ''military security zones'' are areas established by safety vessels that accompany each training exercise and ward off private boat traffic by offering them navigational advice to remain clear of the exercise. All other civilian water-borne activities (fishing, trolling, waterskiing, jet-skiing, etc.) are prohibited in the restricted areas during training activities.

(c) *Enforcement.* The regulations in this section shall be enforced by the Officer in Charge, Naval Support Activity Panama City, Panama City Beach Florida, and such agencies as he/she may designate.

Dated: July 13, 2007.

Lawrence A. Lang,

Acting Chief, Operations, Directorate of Civil Works.

[FR Doc. E7–13933 Filed 7–17–07; 8:45 am]

BILLING CODE 3710–92–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 07–101; FCC 07–86]

Proposal to Allocate Spectrum and Adopt Rules to License Vehicle-Mounted Earth Stations in Certain Ku-band Frequencies Allocated to the Fixed-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission seeks comment on whether to license Vehicle-Mounted Earth Stations as an application of the Fixed-Satellite Service in the conventional and extended Ku-band frequencies. The Commission initiates this proceeding in response to a petition for rulemaking filed by General Dynamics SATCOM Technologies, Inc. General Dynamics asks the Commission to amend parts 2 and 25 of the rules to allocate spectrum for use with VMES in the FSS in the Ku-band uplink at 14.0–14.5 GHz and Ku-band downlink at 11.7–12.2 GHz on a primary basis, and in the extended Ku-band downlink at 10.95–11.2 GHz and 11.45–11.7 GHz on a non-protected basis, and to adopt Ku-band VMES licensing and service rules modeled on the Commission's rules for Ku-band Earth Stations on Vessels. The Notice of Proposed Rulemaking seeks comment on the proposed adoption of co-primary allocation for VMES applications in the conventional Ku-band frequencies, and also seeks comment on service rules for VMES, possibly modeled on the current ESV rules. The NPRM observes that some of the broader applications of VMES, involving use, by the general public, of ultra-small antennas on cars and trucks, raise additional technical questions with respect to compliance with the Commission's Ku-band interference avoidance requirements. The NPRM therefore seeks comment on whether the broad commercial use, by the general public, of ultra-small antennas on vehicles traversing throughout the United States raises the potential for harmful interference to other FSS licensees or Federal government space research service and radio astronomy service operations, and, if so, whether there are technical rules that the Commission could adopt to mitigate against such harms.

DATES: Comments are due on or before August 17, 2007 and reply comments are due on or before September 4, 2007. Public and agency comments on the

Initial Paperwork Reduction Act of 1995 analysis are due September 17, 2007.

ADDRESSES: You may submit comments, identified by IB Docket No. 07–101, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to the Commission at 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. The Commission's mail contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. All filings must be addressed to the Commission's Secretary at Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paul Locke, Policy Division, International Bureau at (202) 418–0765. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in IB Docket No. 07–101, FCC 07–86, adopted May 9, 2007 and released on May 15, 2007. The full text of the NPRM is available for public inspection and copying during regular business hours at the Commission's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com.*

Pursuant to the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in the NPRM. The text of the IRFA is set forth in Appendix C of the NPRM. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

In addition, the Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 17, 2007. Comments should address: (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 estimates; (c) ways to enhance 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Paperwork Reduction Act Requirements

OMB Control Number: 3060–XXXX.

Title: Vehicle-Mounted Earth Stations (VMES).

Form No.: Not applicable.

Type of Review: New Collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 15 respondents; 15 responses.

Estimated Time per Response: 2 hours (average).

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, and on occasion and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits.

Estimated Total Annual Burden: 240 hours.

Estimated Total Annual Cost: $15,000.

Privacy Act Impact Assessment: No.

Nature and Extent of Confidentiality: The Commission does not provide assurances of confidentiality to entities submitting their filings and applications. However, entities may request confidential treatment of their applications and filings under 47 CFR 0.459 of the Commission's rules. With regard to certifications filed pursuant to part 2 of the Commission's rules, parties receive minimal exemption from the Freedom of Information Act (FOIA).

Needs and Uses: The purpose of this new information collection is to address the Paperwork Reduction Act (PRA) requirements proposed in the Commission's NPRM (FCC 07–86) to establish rules for the licensing of the VMES service. In the NPRM, the Commission proposes new information collection requirements applicable to potential VMES licensees. The Commission proposes that potential VMES operators submit applications (FCC Form 312) and exhibits thereto to the Commission to demonstrate that they comply with the Commission's legal and/or engineering rules. (**Note:** FCC Form 312 is approved by the Office of Management and Budget under OMB Control Number 3060–0678. There are additional and ongoing rulemakings that may require modification to FCC Form 312. Because the Commission intends to modify FCC Form 312 only after all the applicable rulemakings have been completed, there may be a period of time during which FCC Form 312 may not be altered to accommodate potential VMES applications. In the interim, potential VMES applicants would utilize FCC Form 312 and submit attachments providing the relevant information and certifications reflected any adopted rules). Additionally, the Commission proposes to apply data logging requirements, requiring network operators to maintain information on the satellites that each terminal uses, the operating frequencies and bandwidths used, the time of day, the location, and a point of contract within the United States with the authority and capability to mute the potential VMES transmitters. The potential VMES operator must maintain the information for a year and make it available to appropriate entities within 24 hours of request. The Commission also seeks comment on requiring an automatic transmitter identification systems (ATIS) for each satellite uplink transmission. Without the information collected through the Commission's

proposed VMES licensing procedures, it may not be feasible to identify sources of harmful interference and to ensure, if needed, that the interfering transmissions are ceased.

Summary of Notice of Proposed Rulemaking

A. Background

With the NPRM, the Federal Communications Commission (Commission) seeks comment on whether to license VMES as an application of the FSS in the conventional and extended Ku-band frequencies.

In its petition for rulemaking (Petition), General Dynamics asks the Commission to amend parts 2 and 25 of the rules to allocate spectrum for use with VMES in the FSS in the Ku-band uplink at 14.0–14.5 GHz and Ku-band downlink at 11.7–12.2 GHz on a primary basis, and in the extended Ku-band downlink at 10.95–11.2 GHz and 11.45–11.7 GHz on a non-protected basis, and to adopt Ku-band VMES licensing and service rules modeled on the Commission's rules for Ku-band ESVs.

As the Petition urges, the NPRM seeks comment on the proposed adoption of a co-primary allocation for VMES applications in the conventional Ku-band frequencies, and also seeks comment on service rules for VMES, possibly modeled on the current ESV rules. The NPRM discusses and seeks comment on rules and procedures to license VMES networks for operation only over GSO FSS satellites in the Ku-band.

Earth stations on mobile land vehicles currently operate as Land Mobile Satellite Service (LMSS) applications, and not as FSS applications, in the conventional Ku-band. In the Ku-band uplinks, LMSS operates on a secondary, and not a primary, basis. A primary allocation for VMES would provide protection from interference to VMES terminals as well as give VMES equal status in coordinating emissions from VMES terminals with adjacent FSS systems, as if VMES terminals were FSS earth stations.

Certain commenters on the Petition propose to promote VMES terminals that use smaller antennas and less accurate antenna pointing systems than those that General Dynamics currently uses for the VMES system it has been operating since November 2004 pursuant to special temporary authority and experimental authority. We have concerns that some classes of proposed VMES terminals would not operate compatibly in the Commission's Ku-band two-degree satellite spacing environment for the FSS. The NPRM seeks comment on how to differentiate compatible and non-compatible VMES terminals. In addition, we invite comment on whether we should treat applications that may not be able to meet the VMES requirements that we would adopt, but that otherwise might be able to engineer their systems to meet Ku-band FSS interference avoidance requirements, as applications for LMSS systems that might be licensed under the existing secondary LMSS allocation in the 14.0–14.5 GHz FSS uplink band and as non-conforming in the 11.7–12.2 GHz downlink band, with specific license conditions to protect FSS licensees and their customers from harmful interference.

We also seek comment on licensing and service rules for VMES terminals if they are granted primary allocation status.

B. Allocation Issues

In asking for comment on whether we should grant primary status to VMES, or classes of VMES, in the conventional Ku-band, we observe that VMES, like ESV, is a mobile system, but with significant differences. We seek comment on these differences in the context of evaluating whether VMES, or classes of VMES, can operate compatibly in the FSS two-degree spacing environment. The significant identified differences include:

Antenna Size. The Petition suggests that, although General Dynamics proposes to provide VMES for U.S. military applications, there will be commercial applications for this technology. Commenters suggest that the Commission should develop rules that would permit large-scale deployment of mobile broadband systems to the public using ultra-small antennas. Both military and commercial VMES applications would use antennas smaller than those typically found on VSATs or ESVs. The original two-degree FSS VSAT interference rules were predicated on the use of antennas with a diameter of 1.2 meters or greater (i.e., 3.9 feet or larger), operating from fixed locations. ESVs typically use antennas with a diameter on the order of 1.2 meters. General Dynamics currently is using antennas as small as 0.45 meters (17.7 inches) and supporters of the commercial applications of VMES are in favor of licensing even smaller antennas. The ultra-small antennas operating in a mobile environment envisioned for large-scale commercial deployment of VMES have a greater potential of causing interference to adjacent satellites than the antennas currently authorized for the band and would lack the interference rejection qualities of the larger antennas.

Antenna Tracking Systems. ESV operators are required to use antenna systems that accurately track the wanted satellite as the ship moves, pitches and rolls. General Dynamics uses very precise, and very expensive, tracking systems for its military VMES antennas. Some proponents of commercial applications would lower the pointing accuracy requirements for VMES, resulting in lower-cost tracking systems and, potentially, increasing the level of interference to other FSS satellites.

Ubiquity. ESVs are likely to be used only by relatively large vessels, capable of carrying the large ESV dishes, and are geographically limited to operating on waterways and in port. VMESs have been placed on vehicles capable of off-road travel and would have access to practically all of the United States.

Tracking Accuracy. Because of the size of the vessels on which ESVs are mounted, ESVs undergo smaller accelerations than earth stations on mobile land vehicles, making it easier for the ESV antenna tracking system to track the wanted satellite. In fact, General Dynamics concedes that it is impossible to construct a VMES antenna tracking system that will meet the 0.2 degree antenna pointing requirement under all possible conditions.

Quantity. If applications of VMES are permitted for use by the general public, the number of VMES terminals that potentially could be operated is significantly larger than the number of ESV systems.

We seek comment on the relevance of these differences between VMESs and ESVs to the question of whether we should grant primary status for VMES as an application of the FSS. Additionally, we ask commenters to consider other factors, not listed, that may be relevant.

We discuss each Ku-band separately.

11.7–12.2 GHz Band. We seek comment on whether to establish a new non-Federal footnote for the 11.7–12.2 GHz downlink band to reflect that VMES terminals may operate with FSS space stations. Currently, in this band, there is no allocation in the U.S. Table of Frequency Allocations for the Mobile Satellite Service (MSS), including LMSS, and domestic downlink signals operate under ITU Radio Regulation 4.4 (non-interference and non-protection) in the band.

10.95–11.2 GHz and 11.45–11.7 GHz Bands. We seek comment on whether VMES operations in these extended Ku-bands should be permitted on a non-protected basis with respect the Fixed Service (FS). The FS uses these bands

and ESV operators, for example, must accept interference from all current and future FS operations in the bands. Because VMES downlink operations would not interfere with current or future FS operations, and because VMESs would not receive protection from the FS in these bands, we would propose to make the determination that VMESs operating domestically in these bands would not be likely to interfere with or restrict other authorized operations in the bands.

14.0–14.2 GHz Band. Space research services (SRS) are allocated to this band on a secondary basis. We recognize the importance of protecting these facilities from receiving harmful interference. We seek comment on the feasibility of allowing VMES operations within a 125 kilometer protection zone around operational National Aeronautics and Space Administration (NASA) space research Tracking and Data Relay Satellite Systems (TDRSS) facilities. We propose, as a condition of the VMES license, to prohibit VMES operators from operating in the band within 125 kilometers of the two existing TDRSS sites. We solicit comment on whether we should allow VMES operators to coordinate their proposed operations to resolve any potential harmful interference concerns regarding SRS facilities. VMES operators would need to complete coordination prior to operating within 125 kilometers of the two existing TDRSS sites. Should NASA seek to provide similar protection to future TDRSS sites, the National Telecommunications and Information Administration (NTIA) should notify the Commission's International Bureau (Bureau) that a TDRSS site is nearing operational status. The Bureau then would issue a notice requiring all Ku-band VMES operators to cease operations in the band within 125 kilometers of the new site until they had coordinated with the new site. We solicit comment on which technical measures should be incorporated into VMES terminals to assist operators in meeting any coordination obligations. We seek comment on how the coordination process should work and whether VMES licensees should go directly to NASA or work through the Commission. We would expect the coordination to be conducted on an equal basis between NASA and the VMES operator, even though the SRS is a secondary allocation.

14.2–14.4 GHz Band. We seek comment on whether to allow VMES operations to communicate with FSS space stations in the band. The band is an exclusive non-Federal band allocated on a primary basis to FSS for uplink operations and on a secondary basis to the MSS.

14.4–14.5 GHz Band. We seek comment on the feasibility of coordination between VMES and Radio Astronomy Service (RAS) sites to preclude harmful interference to the RAS as observations are performed. Specifically, we seek comment on adopting license conditions that would require VMES licensees planning to travel in the vicinity of certain radio observatories to coordinate their proposed operations to resolve any potential interference concerns. We seek comment on how the coordination process would work and whether VMES licensees should go directly to the National Science Foundation (NSF) or work through the Commission. Additionally, we seek comment on technical measures to be incorporated into terminals to assist with coordination and ask whether unwanted emissions from VMES terminals need to be regulated to protect RAS stations.

Proposed Footnotes to U.S. Table of Frequency Allocations. We propose to add the following footnotes to the U.S. Table of Frequency Allocations set out in 47 CFR 2.106:

NGxxx In the bands 10.95–11.2 GHz and 11.45–11.7 GHz (space-to-Earth), Vehicle-Mounted Earth Stations (VMES) as regulated under 47 CFR part 25 may be authorized to communicate with space stations of the fixed-satellite service but must accept interference from stations of the fixed service operating in accordance with the Commission's Rules.

NGyyy In the bands 11.7–12.2 GHz (space-to-Earth) and 14.0–14.5 GHz (Earth-to-space), Vehicle-Mounted Earth Stations (VMES) as regulated under 47 CFR part 25 are an application of the fixed-satellite service and may be authorized to communicate with space stations of the fixed-satellite service on a primary basis.

We seek comment on the proposed footnotes.

C. Technical and Operational Issues

ESV Rules as Possible Model for VMES. We seek comment on whether, given the significant differences between ESVs and VMES, the ESV rules, as applied to VMES, would provide sufficient protection to the FSS. We seek comment on applying 47 CFR 25.222 and related rules to VMES terminals communicating with FSS networks. The use of ultra-small antennas proposed by some commenters implies the use of FSS earth stations with broad beam widths and reduced side-lobe isolation that, in turn, raises the potential for increased interference power being received by other FSS satellites. We seek comment on whether VMES systems are sufficiently similar in operation to ESV systems to support adoption of the ESV rules to VMES without weakening the Commission's two-degree satellite spacing environment.

We ask whether it is reasonable to structure service rules for VMES that use an EIRP-density envelope that is lower than that used for VSATs and ESVs. For example, would a rule requiring a one-dB reduction in the EIRP-density envelope, or a certification from adjacent satellite operators, be reasonable for VMES applications? Is there a reason to use a larger or smaller reduction than one db in EIRP-density to protect FSS neighboring satellites?

Proposed Deviations from ESV Rules. We also seek comment on VMES service rules that certain commenters on the Petition suggest should deviate from the ESV model. For example, we ask if adopting a ''fraction of the antenna beam width'' approach, proposed by some commenters, seems reasonable and, if so, how we should determine the fraction that would apply. Should adoption of this approach be limited to peak EIRP-densities from a single terminal or to the aggregate emissions from multiple, co-frequency terminals and, if so, what should that value be? We seek technical descriptions and typical link-budgets from commenters, to indicate the types of modulation and random access techniques, and the types and quality of services, that might be expected to be supplied by very low-gain, broad-beam antennas. We also seek technical comment on antenna technologies that would protect adjacent satellites without the need for stringent antenna pointing accuracies.

In response to suggested revisions to the ESV power-density rules, as applied to VMES, to accommodate VMES networks using aggregate system power control, we seek comment on the desirability of adopting rules for variable data rates, and thus variable power-density, spread-spectrum VMES systems. Should the Commission change the 10*log(N) rule, as applied to VMES? Commenters should address the specific changes to the rules that would be required to allow the efficient use of variable power-density spread-spectrum systems while still ensuring that the systems meet the EIRP-density envelope in the aggregate.

We propose to await the results of an ongoing proceeding streamlining the part 25 rules rather than seek additional comment in this proceeding on the use of contention tables, as proposed by commenters.

Data Logging Requirements. We seek comment on General Dynamics' proposal that we not apply the ESV data logging requirements to VMES. We seek comment on how, if at all, the use of VMES terminals in the Ku-band might suggest a different approach from the data logging rule applied to ESV terminals in the Ku-bands.

Threshold Antenna Size Downlink Protections. We seek comment on a commenter's proposal to amend 47 CFR 25.209 to set a threshold antenna size, in the 11.7–12.2 GHz downlink band, above which a VMES allocation would be primary and receive appropriate interference protection and below which it would be secondary and thus less protected. What would be an appropriate threshold size and how would this threshold requirement compare with the existing requirement in 47 CFR 25.209?

Power Densities in Directions Other than the GSO Plane. We seek comment on adopting, for VMES antennas as we did for ESVs operating in the conventional Ku-band, a three-degree starting angle for the EIRP envelope in all directions other than along the Geo-stationary Orbit (GSO). We ask whether we should modify the current ESV non-GSO plane EIRP-density envelopes to accommodate small VMES antennas. We seek comment on the potential for interference to and from possible NGSO FSS systems as well as the possible trade-offs between relaxing off-axis EIRP-density limits in directions away from the GSO plane, and the types, sizes and costs of antenna technology under existing versus related power-density limits.

Radiation Hazard Requirements. We ask commenters to describe what radiation hazards concerns may exist and what steps might be taken to resolve any potential concerns. We ask for comment on how exposure concerns and necessary rules for military applications, such as those proposed by General Dynamics, may differ from VMES use as a general commercial application. We seek comment on whether to require cautionary labeling for all VMES terminals and whether we should recommend professional installation for subscriber transceiver antennas.

Equipment Certification. We would propose to certify VMES terminals pursuant to our part 2 rules to ensure that they comply with the technical rules adopted for the service. We seek comment on this and other procedures that commenters may consider warranted, asking commenters to explain why other procedures would serve the public interest better than certification.

Limitations on the Use of VMES. We seek comment on our concern that the aggregation of emissions from ultra-small terminals may increase the risk of harmful interference to other FSS users, including adjacent satellites farther than six degrees from the target satellite. We seek comment on whether the use of ultra-small antennas potentially could expose FSS satellites farther away from the target satellite to the same or higher level of interference power than satellites directly adjacent to the target satellite and, if this scenario is likely, whether we should adopt rules designed to prevent such potential interference concerns. Should we propose an EIRP-density envelope that is different from the envelope for ESVs? Should a different EIRP envelope apply if VMES pointing restrictions are based on some fraction of the antenna beam width? Are there other methods by which we might ensure that VMES use of the 14.0–14.5 GHz band would not cause harmful interference to adjacent FSS satellites, including those farther than six degrees from the target satellite? For example, should we propose to limit the use of VMES only to commercial contracts for government uses? Finally, should the Commission apply an automatic transmitter identification system (ATIS) to VMES terminals? ATIS transmits encoded subcarrier messages that assist with identifying a source of interference. Which characteristics of the signal should be identified?

Blanket Licensing. We would propose to require that an applicant provide a point of contact for maintaining information about the frequencies that each individual vehicle uses and then to issue a blanket authorization for an applicant's system of VMES terminals. In addition, we seek comment on whether to provide for the licensing of individual earth stations, using the same technical criteria applied to antennas in a blanket-licensed VMES network. We ask for comment on specific rule revisions and modifications to FCC Form 312 to accommodate applications for VMES systems.

ALSAT Authority. We seek comment on whether we should authorize Ku-band VMES operators to operate with any U.S.-license satellite and non-U.S. satellites on the Permitted Space Station List using the parameters consistent with earth stations, or whether we instead should limit VMES access only to individual satellites. We would propose that ALSAT authority not be available to those VMES applicants that must coordinate with adjacent satellite operators, especially if the VMES terminals exceed the proposed off-axis EIRP-density requirements.

License Terms. We seek comment on licensing VMES operations for a term of fifteen years, similar to the license terms for other licensed networks of earth stations.

Ex Parte Presentations

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules as well.

Paperwork Reduction Act

The NPRM contains proposed new and modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due September 17, 2007. Comments should address: (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 estimates; (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

A copy of any comments on the information collections contained herein should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Jasmeet

Seehra, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Jasmeet_K._Seehra@omb.eop.gov*, or via fax at 202–395–5167.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed Satellite Service, Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 88 of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

In the NPRM the Commission makes proposals and seeks information on measures to provide a level of regulatory certainty to government, space research, radio astronomy, and fixed satellite service operators regarding operations of Vehicle-Mounted Earth Stations (VMES). As discussed in greater detail below, the Commission seeks comment on rules and procedures to license VMES for operation in the Ku-band similar to the Commission's current licensing rules for Earth Stations on Vessels (ESVs) that operate in the Ku-band, with appropriate modifications. The record established in the proceeding will allow the Commission to determine the effect of authorizing VMES terminals and will facilitate the development of any future rules for VMES. Any future rules would be designed to support the deployment of VMES terminals to the benefit of the American public without adversely affecting the operation and continued growth of incumbent radio services. In this regard, the objective is to create a licensing program that ensures incumbent radio services protection against harmful interference.

B. Legal Basis

The NPRM is adopted pursuant to sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308.

C. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

Satellite Telecommunications. The SBA has developed a small business size standard for Satellite Telecommunications Carriers. This category ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' According to Census Bureau data for 2002, there were 371 firms in the category that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, 26 firms had annual receipts of $10 million to $24,999,990, and 38 firms had annual receipts of $25 million or more. Thus, under this size standard, the majority of firms can be considered small.

A second category for international service providers, called ''Other Telecommunications,'' ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million, 15 firms had annual receipts of $10 million to $24,999,999, and 14 firms had annual receipts of $25 million or more. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

Space Stations (Geostationary). Commission records reveal that there are approximately 15 space station licensees authorized for use in the Ku-band. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition cited above, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

Fixed Satellite Transmit/Receive Earth Stations. Currently there are approximately 2,532 operational fixed-satellite transmit/receive earth stations authorized for use in the Ku-band. The Commission does not request or collect annual revenue information, and thus is unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category

and size standard, the majority of firms can, again, be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The NPRM seeks comment on whether to expand the applicability of the current ESV rules to VMES. The proposed VMES rules, if adopted, would require satellite telecommunications operators to establish a database for tracking the location of VMES remote earth stations. This database would assist investigations of interference claims. The NPRM seeks comment on this proposal, including the effectiveness and utility of the proposal, and seeks comment regarding possible alternatives. The proposed rules, if adopted, also would require VMES operators to name a point of contact to maintain information about location and frequencies used by VMES terminals. Such information would assist in investigating interference claims. The Commission does not expect significant costs associated with these proposals, if adopted. Therefore, we do not anticipate that the burden of compliance would be greater for smaller entities.

The NPRM seeks comment on possible methods for coordinating VMES operations with space research service and radio astronomy operations.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires that, to the extent consistent with the objectives of applicable statutes, the analysis shall discuss significant alternatives such as: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities.

This NPRM solicits comment on alternatives for more efficient processing of VMES applications and simplification of VMES procedures, for example, by migrating from non-conforming use licensing to a licensing method that would provide for licenses with terms of fifteen years. The NPRM also seeks comment on streamlining the application process for VMES operations by permitting blanket licensing of multiple VMES terminals in a single application, as an alternative to requiring all VMES terminals to be licensed individually. Adoption of some of these proposals would simplify the application process for VMES and establish licensing terms consistent with other satellite-based services, such as ESV. Thus, adoption of the proposed rules should reduce the costs associated with obtaining and maintaining authority to operate a VMES network.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments in response to this NPRM no later than on or before August 17, 2007. Reply comments to these comments may be filed no later than on or before September 4, 2007. All pleadings are to reference IB Docket No. 07–101. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Parties are strongly encouraged to file electronically. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Parties should transmit one copy of their comments to the docket in the caption of this rulemaking. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties choosing to file by paper must file an original and four copies of each filing in IB Docket No. 07–101. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's mail contractor, Vistronix, Inc. will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Comments submitted on diskette should be on a 3.5 inch diskette formatted in an IBM-compatible format using Word for Windows or compatible software. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, IB Docket No. 07–101), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file.

All parties must file one copy of each pleading electronically or by paper to each of the following: (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM*; (2) Howard Griboff, International Bureau, 445 12th Street, SW., Washington, DC 20554, e-mail *Howard.Griboff@fcc.gov;* (3) Paul Locke, International Bureau, 445 12th Street, SW., Washington, DC 20554, e-mail *Paul.Locke@fcc.gov*; (4) Kathleen Collins, International Bureau, 445 12th Street, SW., Washington, DC 20554, e-mail *Kathleen.Collins@fcc.gov.*

Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM*. The pleadings also will be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554 and through the ECFS,

accessible on the Commission's World Wide Web site, *http://www.fcc.gov*.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with § 1.49 and all other applicable sections of the Commission's rules. All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission. We also strongly encourage that parties track the organization set forth in this NPRM in order to facilitate our internal review process.

Commenters who file information that they believe is proprietary may request confidential treatment pursuant to § 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, FCC 99–262, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of an FOIA exemption.

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this Notice of Proposed Rulemaking is *adopted*.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center *shall send* a copy of this Notice of Proposed Rulemaking, including the initial regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects in 47 CFR Parts 2 and 25

Telecommunications, Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 25 to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106 as follows:

a. Revise pages 45, 46 and 47 of the Table.

b. In the list of Non-Federal Government footnotes, add footnotes NGxxx and NGyyy in numerical order.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6212–01–P

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION Amateur 5.479 5.480	10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION G32 5.479 US58 US108	10-10.45 Radiolocation Amateur 5.479 US58 US108 NG42	Private Land Mobile (90) Amateur (97)
10.45-10.5 RADIOLOCATION Amateur Amateur-satellite 5.481			10.45-10.5 RADIOLOCATION G32 US58 US108	10.45-10.5 Radiolocation Amateur Amateur-satellite US58 US108 NG42 NG134	
10.5-10.55 FIXED MOBILE Radiolocation	10.5-10.55 FIXED MOBILE RADIOLOCATION		10.5-10.55 RADIOLOCATION US59		Private Land Mobile (90)
10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation			10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482			10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US265 US277	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED US265 SPACE RESEARCH (passive) US277	
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483			10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246 US355		
10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile		10.7-11.7 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US211 US355 NG104 NG182 NGxxx	Satellite Communications (25) Fixed Microwave (101)
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* * * * *

NON-FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NGxxx In the bands 10.95–11.2 GHz and 11.45–11.7 GHz (space-to-Earth), Vehicle-Mounted Earth Stations (VMES) as regulated under 47 CFR part 25 may be authorized to communicate with space stations of the fixed-satellite service but must accept interference from stations of the fixed service operating in accordance with the Commission's rules.

NGyyy In the bands 11.7–12.2 GHz (space-to-Earth) and 14.0–14.5 GHz (Earth-to-space), Vehicle-Mounted Earth Stations (VMES) as regulated under 47 CFR part 25 are an application of the fixed-satellite service and may be authorized to communicate with space stations of the fixed-satellite service on a primary basis.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

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

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

4. Amend § 25.115 by revising paragraph (a)(2)(iii) to read as follows:

§ 25.115 Application for earth station authorizations.

(a) * * *

(2) * * *

(iii) The earth station is not an ESV or a VMES.

* * * * *

5. Amend § 25.130 by revising the introductory text of paragraph (a) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

(a) Applications for a new or modified transmitting earth station facility shall be submitted on FCC Form 312, and associated Schedule B, accompanied by any required exhibits, except for those earth station applications filed on FCC Form 312EZ pursuant to § 25.115(a). All such earth station license applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter. Additional filing requirements for Earth Stations on Vessels are described in §§ 25.221 and 25.222 of this part. Additional filing requirements for Vehicle-Mounted Earth Stations are described in § 25.XXX of this part. In addition, applicants not required to submit applications on Form 312EZ, other than ESV or VMES applicants, must submit the following information to be used as an ''informative'' in the public notice issued under § 25.151 as an attachment to their application:

* * * * *

6. Amend § 25.132 by revising paragraph (b)(3) to read as follows:

§ 25.132 Verification of earth station antenna performance standards.

(b) * * *

(3) Applicants seeking authority to use an antenna that does not meet the standards set forth in § 25.209(a) and (b), pursuant to the procedure set forth in § 25.220 or subject to rules in § 25.XXX, are required to submit a copy of the manufacturer's range test plots of the antenna gain patterns specified in paragraph (b)(1) of this section.

* * * * *

7. Amend § 25.201 by adding the definition of ''Vehicle-Mounted Earth Station (VMES)'' to read as follows:

§ 25.201 Definitions.

* * * * *

Vehicle-Mounted Earth Station (VMES). A VMES is an earth station, operating from a motorized vehicle that travels primarily on land, that receives from and transmits to fixed-satellite space stations and operates pursuant to the requirements set out in § 25.XXX of this part.

8. Amend § 25.202 by adding paragraph (a)(9) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a) * * *

(9) The following frequencies are available for use by Vehicle-Mounted Earth Stations (VMESs):

10.95–11.2 GHz (space-to-Earth)

11.45–11.7 GHz (space-to-Earth)

11.7–12.2 GHz (space-to-Earth)

14.0–14.5 GHz (Earth-to-space)

VMESs shall be authorized as set forth in § 25.XXX of this chapter.

* * * * *

9. Amend § 25.203 by revising paragraphs (a), (b), the introductory text in paragraph (c) and paragraphs (d) and (k) to read as follows:

§ 25.203 Choice of sites and frequencies.

(a) Sites and frequencies for earth stations, other than ESVs or VMESs, operating in frequency bands shared with equal rights between terrestrial and space services, shall be selected, to the extent practicable, in areas where the surrounding terrain and existing frequency usage are such as to minimize the possibility of harmful interference between the sharing services.

(b) An applicant for an earth station authorization, other than an ESV or a VMES, in a frequency band shared with equal rights with terrestrial microwave services shall compute the great circle coordination distance contour(s) for the proposed station in accordance with the procedures set forth in § 25.251. The applicant shall submit with the application a map or maps drawn to appropriate scale and in a form suitable for reproduction indicating the location of the proposed station and these contours. These maps, together with the pertinent data on which the computation of these contours is based, including all relevant transmitting and/or receiving parameters of the proposed station that are necessary to assess the likelihood of interference, an appropriately scaled plot of the elevation of the local horizon as a function of azimuth, and the electrical characteristics of the earth station antenna(s), shall be submitted by the applicant in a single exhibit to the application. The coordination distance contour plot(s), horizon elevation plot, and antenna horizon gain plot(s) required by this section may also be submitted in tabular numerical format at 5° azimuthal increments instead of graphical format. At a minimum, this exhibit shall include the information listed in paragraph (c)(2) of this section. An earth station applicant shall also include in the application relevant technical details (both theoretical calculations and/or actual measurements) of any special techniques, such as the use of artificial site shielding, or operating procedures or restrictions at the proposed earth station which are to be employed to reduce the likelihood of interference, or of any particular characteristics of the earth station site which could have an effect on the calculation of the coordination distance.

(c) Prior to the filing of its application, an applicant for operation of an earth station, other than an ESV or a VMES, shall coordinate the proposed frequency usage with existing terrestrial users and with applicants for terrestrial station authorizations with previously filed applications in accordance with the following procedure:

* * * * *

(d) An applicant for operation of an earth station, other than an ESV or a VMES, shall also ascertain whether the great circle coordination distance contours and rain scatter coordination

distance contours, computed for those values of parameters indicated in § 25.251 (Appendix 7 of the ITU RR) for international coordination, cross the boundaries of another Administration. In this case, the applicant shall furnish the Commission copies of these contours on maps drawn to appropriate scale for use by the Commission in effecting coordination of the proposed earth station with the Administration(s) affected.

* * * * *

(k) An applicant for operation of an earth station, other than an ESV or a VMES, that will operate with a geostationary satellite or non-geostationary satellite in a shared frequency band in which the non-geostationary system is (or is proposed to be) licensed for feeder links, shall demonstrate in its applications that its proposed earth station will not cause unacceptable interference to any other satellite network that is authorized to operate in the same frequency band, or certify that the operations of its earth station shall conform to established coordination agreements between the operator(s) of the space station(s) with which the earth station is to communicate and the operator(s) of any other space station licensed to use the band.

10. Amend § 25.204 by revising the introductory text for paragraph (a) and by adding paragraph (j) to read as follows:

§ 25.204 Power limits.

(a) In bands shared coequally with terrestrial radio communication services, the equivalent isotropically radiated power transmitted in any direction towards the horizon by an earth station, other than an ESV or a VMES, operating in frequency bands between 1 and 15 GHz, shall not exceed the following limits except as provided for in paragraph (c) of this section:

* * * * *

(j) Within 125 km of the Tracking and Data Relay System Satellite (TDRSS) sites identified in § 25.XXX(a)(11) of this chapter, VMES transmissions in the 14.0–14.2 GHz (Earth-to-space) band shall not exceed an EIRP spectral density towards the horizon of 12.5 dBW/MHz, and shall not exceed an EIRP towards the horizon of 16.3 dBW.

11. Amend § 25.205 by adding paragraph (c) to read as follows:

§ 25.205 Minimum angle of antenna elevation.

* * * * *

(c) VMESs making a special showing requesting angles of elevation less than 5° measured from the horizontal plane to the direction of maximum radiation pursuant to paragraph (a) of this section must still meet the EIRP and EIRP density towards the horizon limits contained in § 25.204(j) of this chapter.

12. Section 25.XXX is added to read as follows:

§ 25.XXX Blanket Licensing provisions for Vehicle-Mounted Earth Stations (VMESs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Satellites in the Fixed-Satellite Service.

(a) All applications for licenses for VMESs receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), and 11.7–12.2 GHz (space-to-Earth) frequency bands, and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, to geostationary satellites in the fixed-satellite service shall provide sufficient data to demonstrate that the VMES operations meet the following criteria, which are ongoing requirements that govern all VMES licensees and operations in these bands:

(1) The off-axis EIRP spectral density for co-polarized signals, emitted from the VMES in the plane of the geostationary satellite orbit as it appears at the particular earth station location (*i.e.*, the plane determined by the focal point of the antenna and the line tangent to the arc of the geostationary satellite orbit at the position of the target satellite), shall not exceed the following values:

$15 - 25\log(\theta) - 10*\log(N)$ dBW/4kHz for $1.25° \leq \theta \leq 7.0°$

$-6 - 10*\log(N)$ dBW/4kHz for $7.0° < \theta \leq 9.2°$

$18 - 25\log(\theta) - 10*\log(N)$ dBW/4kHz for $9.2° < \theta \leq 48°$

$-24 - 10*\log(N)$ dBW/4kHz for $48° < \theta \leq 180°$

where (θ) is the angle in degrees from the axis of the main lobe. For a VMES network using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For a VMES network using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(2) In all other directions, the off-axis EIRP spectral density for co-polarized signals emitted from the VMES shall not exceed the following values:

$18 - 25\log(\theta) - 10*\log(N)$ dBW/4kHz for $1.25° \leq \theta \leq 48.0°$

$-24 - 10*\log(N)$ dBW/4kHz for $48.0° < \theta \leq 180°$

where θ and N are defined as set forth in paragraph (a)(1) of this section.

(3) For $\theta > 7.0°$, the values given in paragraphs (a)(1) of this Section may be exceeded by no more than 10% of the sidelobes, provided no individual sidelobe exceeds the criteria given by more than 3 dB.

(4) In all directions, the off-axis EIRP spectral density for cross-polarized signals emitted from the VMES shall not exceed the following values:

$5 - 25\log(\theta) - 10*\log(N)$ dBW/4kHz for $1.8° \leq \theta \leq 7.0°$

$-16 - 10*\log(N)$ dBW/4kHz for $7.0° < \theta \leq 9.2°$

where (θ) and N are defined as set forth in paragraph (a)(1) of this section.

(5) For non-circular VMES antennas, the major axis of the antenna will be aligned with the tangent to the geostationary satellite orbital arc at the target satellite point, to the extent required to meet specified off-axis EIRP criteria.

(6) A pointing error of less than 0.2°, between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna.

(7) All emissions from the VMES shall automatically cease within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna exceeds 0.5°, and transmission will not resume until such angle is less than 0.2°.

(8) There shall be a point of contact in the United States, with phone number and address included with the application, available 24 hours a day, 7 days a week, with authority and ability to cease all emissions from the VMES.

(9) A VMES that exceeds the radiation guidelines of section 1.1310 of this chapter, Radiofrequency radiation exposure limits, must provide, with its environmental assessment, a plan for mitigation of radiation exposure to the extent required to meet those guidelines.

(10) A VMES receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) frequency bands, and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band shall operate with the following provisions:

(i) For each VMES transmitter a record of the vehicle location (*i.e.*, latitude/longitude), transmit frequency, channel bandwidth, and satellite used shall be time annotated and maintained for a period of not less than one year. Records will be recorded at time

intervals no greater than every 20 minutes while the VMES is transmitting. The VMES operator will make this data available upon request to a coordinator, fixed-satellite system operator, NTIA, or the Commission within 24 hours of the request.

(ii) VMES operators shall control all VMESs by a Hub earth station located in the United States.

(11) Operations of VMESs in the 14.0–14.2 GHz (Earth-to-space) frequency band within 125 km of the NASA TDRSS facilities on Guam (latitude 13°36′55″ N, longitude 144°51′22″ E) or White Sands, New Mexico (latitude 32°20′59″ N, longitude 106°36′31″ W and latitude 32°32′40″ N, longitude 106°36′48″ W) are subject to coordination with NASA. When NASA seeks to provide similar protection to future TDRSS sites that have been coordinated through the National Telecommunications and Information Administration (NTIA) Interdepartment Radio Advisory Committee (IRAC) Frequency Assignment Subcommittee process, NTIA will notify the Commission that the site is nearing operational status. Upon public notice from the Commission, all Ku-band VMES operators must cease operations in the 14.0–14.2 GHz band within 125 km of the new TDRSS site until they have coordinated with the new site. After coordination, VMES operations will then again be permitted to operate in the 14.0–14.2 GHz band within 125 km of the new TDRSS site, subject to any operational constraints developed in the coordination process.

(12) Operations of VMESs in the 14.47–14.5 GHz (Earth-to-space) frequency band within: 45 km of the radio observatory on St. Croix, Virgin Islands (latitude 17°46′ N, longitude 64°35′ W); 125 km of the radio observatory on Mauna Kea, Hawaii (latitude 19°48′ N, longitude 155°28′ W); 90 km of the Arecibo Observatory on Puerto Rico (latitude 18°20′46″ N, longitude 66°45′11″ W); and 160 km of the radio observatories listed in US203 as observing in the 14.47–14.5 GHz band are subject to coordination with the National Science Foundation (NSF).

(13) In the 10.95–11.2 GHz (space-to-Earth) and 11.45–11.7 GHz (space-to-Earth) frequency bands a VMES shall not claim protection from interference from any authorized terrestrial stations to which frequencies are either already assigned, or may be assigned in the future.

(14) VMES antennas licensed for reception of radio transmissions from space stations in the fixed-satellite service in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth) and 11.7–12.2 GHz (space-to-Earth) bands for which they have equal status with respect to other fixed-satellite service applications are protected from harmful interference caused by other space stations only to the degree to which an earth station employing an antenna conforming to the referenced patterns defined in § 25.209(a) and (b) of the rules is protected from radio interference.

(b) Applications for VMES operation in the 14.0–14.5 GHz (Earth-to-space) to geostationary satellites in the fixed-satellite service must include, in addition to the particulars of operation identified on Form 312 and associated Schedule B, the following data for each earth station antenna type:

(1)(i) A series of EIRP density charts or tables at the maximum EIRP density listed in Schedule B, calculated for a production earth station antenna, based on measurements taken on a calibrated antenna range at 14.25 GHz, with the off-axis EIRP envelope set forth in paragraphs (a)(1) through (a)(4) of this section, as follows:

(A) Showing off-axis co-polarized EIRP spectral density in the azimuth plane, at off-axis angles from minus 10° to plus 10° and from minus 180° to plus 180°.

(B) Showing off-axis co-polarized EIRP spectral density in the elevation plane, at off-axis angles from 0° to plus 30°.

(C) Showing off-axis cross-polarized EIRP spectral density in the azimuth plane, at off-axis angles from minus 10° to plus 10°.

(D) Showing off-axis cross-polarized EIRP spectral density in the elevation plane, at off-axis angles from minus 10° to plus 10°; or

(ii) A certification, in Schedule B, that the VMES antenna conforms to the gain pattern criteria of § 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off-axis EIRP spectral density envelope set forth in paragraphs (a)(1) through (a)(4) of this section will be met.

(2) The Multiple Access technique being employed and the value of N.

(3) A certification from the antenna manufacturer countersigned by the applicant that the antenna complies with the requirements in paragraphs (a)(6) and (a)(7) of this section.

(4) The contact information pursuant to paragraph (a)(8) of this section.

(5) The mitigation plan pursuant to paragraph (a)(9) of this section.

(6) Indication of whether the VMES will operate in the regions indicated in paragraph (a)(11) or (a)(12) of this section.

(7) For the hub station, as required pursuant to paragraph (a)(10)(ii) of this section, the call sign for a previously authorized earth station, the call sign of a pending earth station application, or the technical information in Schedule B, pursuant to § 25.115, if the earth station is to be licensed concurrently with the VMES terminals. The call sign of hub station is to be listed in the remote control section of the Form 312 Schedule B.

13. Amend § 25.271 by revising paragraph (b), the introductory text for paragraph (c) and paragraph (f) to read as follows:

§ 25.271 Control of transmitting stations.

* * * * *

(b) The licensee of a transmitting earth station, other than an ESV or a VMES, licensed under this part shall ensure that a trained operator is present on the earth station site, or at a designated remote control point for the earth station, at all times that transmissions are being conducted. No operator's license is required for a person to operate or perform maintenance on facilities authorized under this part.

(c) Authority will be granted to operate a transmitting earth station, other than an ESV or a VMES, by remote control only on the conditions that:

* * * * *

(f) Rules for control of transmitting ESVs are provided in §§ 25.221 and 25.222 and rules for control of transmitting VMESs are provided in § 25.XXX.

[FR Doc. E7–13718 Filed 7–17–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07–42; FCC 07–18]

Implementation of Section 612 of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992 and Section 616 of the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on proposed rules and guidance to

implement sections 612 and 616 of the Communications Act. In the context of its review of recent merger transactions and comments filed in its Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, the Commission determined to review the program carriage complaint processes and initiate a notice of proposed rulemaking regarding leased access rules.

DATES: Comments for this proceeding are due on or before September 4, 2007; reply comments are due on or before September 21, 2007.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–42, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Katie Costello, *Katie.Costello@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, FCC 07–18, adopted on March 2, 2007, and released on June 15, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document seeks comment on potential revised and new information collection requirements. The Commission will invite the general public and the Office of Management and Budget (OMB) to comment at a later date on any rules developed as a result of this proceeding that require the collection of information, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will publish a separate notice seeking public and agency comments, which should address: (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 estimates; (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we will seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking (''NPRM''), in light of issues raised in recent merger transactions and comments filed in the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, 71 FR 66946–02, we review the Commission's leased access, 47 CFR sections 76.970 through 76.977, and program carriage, 47 CFR sections 76.1300 through 76.1302, complaint processes. We initiate this review in order to provide guidance and further implement Section 612 of the Communications Act of 1934, as amended (the Communications Act), 47 U.S.C. 532, which requires a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the operator, and Section 616 of the Communications Act, 47 U.S.C. 536, which prohibits a cable operator or other multichannel video programming distributor (''MVPD'') from requiring a financial interest in any program service as a condition for carriage of such service, from coercing a programmer to grant exclusive carriage rights, or from engaging in conduct that unreasonably restrains the ability of an unaffiliated programming vendor to compete fairly by discriminating against such vendor on the basis of affiliation or nonaffiliation.

II. Commercial Leased Access Rules

2. The commercial leased access (leased access) requirements are set forth in Section 612 of the Communications Act. The leased access rules require a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the operator. The statutory framework for commercial leased access was first established by the Cable Communications Policy Act of 1984. Congress established leased access set-aside requirements in proportion to a system's total activated channel capacity.

3. In the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), Congress broadened Section 612's explicit statutory purpose to include the promotion of competition in the delivery of diverse sources of video programming, and required the Commission: (a) To determine the maximum reasonable rates that a cable operator may establish for commercial use of designated channel capacity; (b) to establish reasonable terms and conditions for such use; and (c) to establish procedures for the expedited resolution of disputes concerning rates or carriage. Congress also required that the Commission's rules not adversely affect the operation, financial condition, or market development of the cable system.

4. The Commission adopted a maximum rate formula for full-time carriage on programming tiers based on the average implicit fee that other programmers are implicitly charged for carriage to permit the operator to recover its costs and earn a profit. The Commission also adopted a maximum rate for a la carte services based on the highest implicit fee that other a la carte services implicitly pay, and a prorated rate for part-time programming.

5. The Commission seeks comment on the current status of leased access programming and on the following issues: Do programmers actually use leased access channels? To what extent are they able to use the set-aside channels? How many leased access channels do cable operators provide?

Which programmers are using those channels? Are programmers using the channels on a full-time or part-time basis? For what purposes are leased access channels used? Do cable operators turn down requests for leased access? If so, why? To what extent and for what purposes do the cable operators use the channels for themselves? Does the cable operators' option to use the channels contribute to programmers' lack of use of the set-aside channels? Are the terms in leased access agreements the same or similar to those that the cable operator has with its programmers? Do cable operators impose different requirements regarding, for example, insurance or termination provisions? If so, why? The Commission also seeks comment on the effectiveness of leased access enforcement, specifically on the costs associated with the complaint or other dispute resolution processes and whether there should be a defined time period for cable operators to respond to leased access requests or other aspects of the enforcement process. Regarding the Commission's rules that allow programmers to file complaints to challenge a cable operator's rates before the Commission, the Commission seeks comment on these issues: To what extent do programmers make use of the Commission's process to challenge rates that they believe violate the Commission's regulations? Is the process too burdensome? Is it effective? Should there be changes to the complaint process, such as an expedited complaint process before the Commission? The Commission's rules require a cable operator to respond to a programmer's request for rate information within 15 calendar days. The Commission seeks comment on whether cable operators are responsive to programmer's requests and whether they include all required information.

6. The Commission also seeks comment on its rate formula for leased access, such as specific methodologies that the Commission should consider and how such methodologies would better serve Congress' statutory objectives in a legally sustainable way.

7. The Commission's leased access rules involve calculations based on activated channels and location. Because of the development of digital signal processing and signal compression technologies, the number of video services carried on a cable system may no longer be a simple calculation and may change dynamically over time depending, for instance, on the degree of compression and whether the programming is carried in a standard or high definition digital format. The Commission seeks comment on whether and how the digital transition affects channel capacity and channel count for purposes of the calculation of carriage obligations and average rates; whether, consistent with changes in technology, cable operators have updated their terms of access to facilities, such as allowing programmers to submit video to the operator via the Internet.

8. The Commission requests comment on whether leased access programmers should have the ability to request carriage on a specific tier and whether there is evidence that cable operators seek to place leased access programming on digital tiers or other less popular tiers, when leased access programmers would prefer the basic tier, whether cable operators have acted reasonably in regard to placing leased access channels at specific channel locations what specific reform measures should the Commission consider? The Commission seeks comment on which service tier leased access programs appear, and on which channel within the tier do cable operators place the programming and whether leased access rules apply to video-on-demand (VOD) or other technologies that do not fit a traditional ''tier''.

9. The Commission seeks comment on other ways that advances in technology or marketplace developments should affect the leased access rules, in particular, whether and how the deployment of advanced digital services (e.g., interactive electronic programming guides, addressable digital set-top boxes, VOD), should inform its review. The Commission seeks comment on any other issues that would properly inform its leased access inquiry.

III. Program Carriage Rules

10. Section 616 of the Communications Act directs the Commission to establish regulations governing program carriage agreements and related practices between cable operators or other MVPDs and video programming vendors. The Commission's program carriage rules prohibit a cable operator or other MVPD from requiring a financial interest in any program service as a condition for carriage of such service, from coercing a programmer to grant exclusive carriage rights, or from engaging in conduct that unreasonably restrains the ability of an unaffiliated programming vendor to compete fairly by discriminating against such vendor on the basis of affiliation or nonaffiliation.

11. In addition to establishing rules governing program carriage, the Commission has established procedures for the review of program carriage complaints and has established appropriate penalties and remedies. These procedures generally provide for resolution of a complaint on the basis of a complaint, answer, and reply. However, the Commission has recognized that the staff may be unable in some cases to resolve carriage agreement complaints on the sole basis of a written record. In such cases, if the staff determines that the complainant has established a prima facie case but that disposition of the complaint would require the resolution of factual disputes or other extensive discovery, the staff is to notify the parties that they have the option of choosing Alternative Dispute Resolution (ADR) or an adjudicatory hearing before an Administrative Law Judge (ALJ). In terms of appropriate relief for violations of the program carriage rules, the Commission has stated that the appropriate relief will be determined on a case-by-case basis, and that appropriate remedies and sanctions may include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission.

12. The Commission seeks comment on whether and how its processes for resolving carriage disputes should be modified. Currently, the Commission's rules provide that any complainant alleging a violation of Section 616(a)(3)'s prohibition on discrimination must demonstrate that the alleged discrimination is on the basis of affiliation or nonaffiliation of a vendor, and that the effect of the conduct that prompts the complaint is to unreasonably restrain the ability of the complainant to compete fairly. If, after reviewing the pleadings and supporting documentation filed by the parties, the Commission staff finds that the complainant has established a prima facie case under Section 76.1301(c), the staff may direct an ALJ to hold a hearing, issue a recommended decision on the facts underlying the discrimination claim and a recommended remedy, if necessary, and then return the matter to the Commission. The Commission seeks comment on these procedures, and, in particular, whether the elements of a prima facie case should be clarified.

13. The Commission has established timelines for the resolution of individual program carriage complaints. The Commission seeks comment on the effectiveness of this mechanism and whether similar changes or additional time limits would improve the existing process. For instance, whether specific time limits on the Commission, cable operators, or others would promote a

speedy and just resolution of these disputes.

14. The Commission seeks comment on whether it should adopt rules to address the complaint process; whether the Commission should adopt additional rules to protect programmers from potential retaliation if they file a complaint or whether the existing penalties for frivolous program carriage complaints are appropriate or should be modified.

15. Independent programmers assert that many cable operators require them to negotiate for carriage on a system-by-system basis, even while they negotiate national carriage agreements with other programmers. The Commission seeks comment on whether it should adopt rules that expressly allow independent programmers to seek nationwide access directly from multiple system cable operators and, if so, how such a process would operate.

16. The Commission seeks comment on any other issues that would properly inform its program carriage inquiry.

IV. Arbitration

17. The Commission seeks comment on the application of arbitration procedures to resolve leased access and program carriage disputes. Should the Commission establish arbitration procedures specifically for these types of complaints? If so, what procedures should be established? Should such procedures be elective or mandatory, and who should bear the costs of arbitration? What standard of review should the Commission employ in reviewing an arbitration decision if arbitration is required or otherwise used?

V. Procedural Matters

18. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

19. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before 45 days after this *Notice of Proposed Rulemaking* is published in the **Federal Register**, and reply comments on or before 65 days of publication. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

20. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM*. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

VI. Ordering Clauses

21. *It is ordered* that, pursuant to the authority contained in Sections 4(i), 303, 612 and 616 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 532 and 536, *notice is hereby given* of the proposals described in this Notice of Proposed Rulemaking.

22. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Initial Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (the RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact of the policies and rules proposed in this Notice of Proposed rulemaking (Notice) on a substantial number of small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice indicated on the first page of this document. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Regulatory Approaches

24. The focus of the leased access and program carriage provisions contained in Sections 612 and 616 of the Communications Act of 1934, as amended, adopted as part of the Cable

Television Consumer Protection and Competition Act of 1992, was to promote competition and diversity in the video programming marketplace and prevent cable systems, other MVPDs and affiliated programmers from preventing fair competition in video programming distribution through various practices. This proceeding requests comments on proposed changes to the Commission's rules to further enhance the Congressional objectives and respond to complaints that the rules are ineffective. Ultimately, these policies and rules are geared to the benefit of independent programmers, many of which may be small entities.

Legal Basis

25. The authority for the action proposed in the rulemaking is contained in Section 4(i), 303, 612 and 616 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 532 and 536.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

26. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

27. *Cable and Other Program Distribution*. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, subscription television services and open video systems. According to Census Bureau data for 1997, there were 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We note, however, that the rules at issue in this Notice only apply at this time to cable operators, and not other MVPD providers.

28. *Cable System Operators (Rate Regulation Standard)*. The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

29. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

30. *Direct Broadcast Satellite (''DBS'') Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with $12.5 million or less in annual receipts. Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DIRECTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. A third operator, Rainbow DBS, is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of $12.5 million, and thus does not qualify as a small business. The fourth DBS operator, Dominion Video Satellite, Inc. (''Dominion''), offers religious (Christian) programming and does not report its annual receipts. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

31. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems*. PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Currently, there are approximately 135 members in the Independent Multi-Family Communications Council (IMCC), the

trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately 1.1 million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCOs qualify as small entities.

32. *Home Satellite Dish (''HSD'') Service*. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, between June 2003 and June 2004, HSD subscribership fell from 502,191 subscribers to 335,766 subscribers, a decline of more than 33 percent. The Commission has no information regarding the annual revenue of the four C-Band distributors.

33. *Wireless Cable Systems*. Wireless cable systems use the Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'') frequencies in the 2 GHz band to transmit video programming and provide broadband services to subscribers. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As previously noted, the SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $12.5 million in annual receipts, appears applicable to MDS, ITFS and LMDS. In addition, the Commission has defined small MDS and LMDS entities in the context of Commission license auctions.

34. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, we estimate that there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

35. While SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

36. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

37. *Open Video Systems (''OVS'')*. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2003, BSPs served approximately 1.4 million subscribers, representing 1.49 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority, with approximately eight percent operating with an OVS certification. Serving approximately 460,000 of these subscribers, Affiliates of Residential Communications Network, Inc. (''RCN'') is currently the largest BSP and 11th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

38. *Program Producers and Distributors.* The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (NAICS Code 51211), Motion Picture and Video Tape Distribution (NAICS Code 42199), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71132, 51229, 53249). These SBA definitions provide that a small entity in the cable

television programming industry is an entity with $21.5 million or less in annual receipts for NAICS Codes 56131, 51211, 42199, and 51212, and $5 million or less in annual receipts for NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71131, 71132, 51229, and 53249. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (NAICS Code 51211), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (NAICS Codes 42199 and 51212), and 1007 of these firms had $16.999 million or less in annual receipts and 1013 of these firms had $24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 51229, and 53249), and 5627 of these firms had $4.999 million or less in annual receipts.

39. Each of these NAICS categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

40. A ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.

41. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

42. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

43. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

Description of Proposed Reporting, Recordkeeping and Other Compliance Requirements

44. The NPRM seeks comment on a range of potential changes to existing reporting, recordkeeping or other compliance requirements. Regarding the Commission's rules implementing Section 612 of the Communications Act, the NPRM seeks comment on all aspects of the commercial leased access rules, as well as dispute resolution procedures. Similarly, regarding the Commission's rules implementing Section 616 of the Communications Act, the NPRM seeks comment on whether and how the Commission's dispute resolution and other rules should be modified.

Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered

45. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The NPRM seeks comment on the Commission's rules implementing Sections 612 and 616 of the Communications Act, as amended.

While most of the leased access and program carriage complaints have been filed against large entities or affiliates of large entities, some small entities may be affected by any rule changes. Therefore, this NPRM invites comment on issues that may impact some small entities. In addition, this NPRM seeks comment on whether the Commission's rules and their enforcement are successful in promoting competition and diversity in the video programming marketplace and preventing cable systems and other MVPDs from preventing fair competition in video programming distribution through various practices. Those policies and rules are designed to promote and protect the interests of independent programmers in the video distribution marketplace and many of the programmers will qualify as small entities. In the event that the Commission modifies its rules in this proceeding, it will explain the steps that it has taken to minimize significant impacts on small entities and the significant alternatives that it has considered.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

46. None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–13827 Filed 7–17–07; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 72, No. 137

Wednesday, July 18, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 12, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Standard Reinsurance Agreement Plan of Operations.

OMB Control Number: 0563–0069.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Section 1508(k) authorizes the Federal Crop Insurance to provide reinsurance to approved insurance providers that insure producers of any agricultural commodity under one or more acceptable plans. The Standard Reinsurance Agreement is a financial agreement between FCIC and the company to provide subsidy and reinsurance on eligible crop insurance. The Plan of Operation provides the information the insurer is required to file for the initial and each subsequent reinsurance year.

Need and Use of the Information: FCIC uses the information as a basis for the approval of the insurer's financial and operational capability of delivering the crop insurance program and for evaluating the insurer's performance regarding implementation of procedures for training and quality control. If the information were not collected, FCIC would not be able to reinsure the crop business.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 40,276.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 144,264.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. E7–13837 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0018]

Oregon State University; Availability of an Environmental Assessment for Controlled Release of Genetically Engineered Populus Species and Hybrids

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed controlled field release of genetically engineered (transgenic) clones of *Populus* species and hybrids. The purpose of this controlled field release is to examine the effects of the genetic constructs on the intended traits—reproductive sterility, reduced stature, reduced light response, and modified lignin content. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments received on or before August 17, 2007.

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

- *Federal eRulemaking Portal:* Go to: *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0018 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instruction 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.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0018.

Reading Room: You may read the environmental assessment (EA) and any comments we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. The EA is available on the Internet at: *http://www.aphis.usda.gov/brs/aphisdocs/06_25001r_ea.pdf.*

Other Information: Additional information about APHIS and its

programs is available on the Internet at: *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–7324. To obtain copies of the environmental assessment, contact Ms. Cynthia Eck, Document Control Officer, at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On September 7, 2006, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 06–250–01r) from Oregon State University, in Corvallis, OR, for a controlled field release of genetically engineered *Populus alba* and *Populus* hybrids. A previous environmental assessment (EA) was prepared for a subset of trees in this release under Permit 95–031–01R. Under that permit, trees engineered with sterility constructs were allowed to flower. Since the researcher intends to add more trees to the permit and allow these additional trees to flower, a new EA has been prepared that updates the previous EA.

Permit application 06–250–01r describes 95 genetic constructs that can be categorized into reproductive sterility genes, genes affecting stature or light response, genes aimed to modify tree chemistry, and activation tagging mutants aimed at the development of ''experimental domesticates.'' These DNA sequences were introduced into *Populus* plants using disarmed *Agrobacterium tumefaciens* and also contain regulatory sequences from the plant pests cauliflower mosaic virus, tobacco mosaic virus, *Aspergillus nidulans,* and *Agrobacterium tumefaciens.* The subject *Populus* plants are considered regulated articles under the regulations in 7 CFR part 340 because they were created using donor sequences from plant pests.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release of these *Populus* plants, an EA has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA may be viewed on the *http://Regulations.gov* Web site or in our reading room (see **ADDRESSES** above) and are available from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 12th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13922 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0102]

Notice of Availability of a Pest Risk Analysis for the Importation of Eggplant and Okra From Ghana Into all Areas of the United States and the Importation of Peppers From Ghana Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of eggplant and okra from Ghana into all areas of the United States and the importation of peppers from Ghana into the continental United States. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of eggplant, okra, and peppers from Ghana. We are making the pest risk analysis available for review and comment.

DATES: We will consider all comments we receive on or before September 17, 2007.

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

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select Docket No. APHIS–2007–0102 to submit or view public comments and to view supporting and related materials available electronically. 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.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0102, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0102.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–46, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to

prevent plant pests from being introduced into and spread within the United States.

In a final rule published in the Rules and Regulations section of today's issue of the **Federal Register** (see ''Revision of Fruits and Vegetables Import Regulations,'' Docket No. APHIS–2005–0106), we establish a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in § 319.56–4(b) of the regulations. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of 319.56–3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of Ghana to allow the importation of eggplant and okra from Ghana into all areas of the United States and the importation of peppers from Ghana into the continental United States. We have completed pest risk assessments to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on that pest risk assessment, have prepared a risk management analysis to identify phytosanitary measures that could be applied to the commodities to mitigate the pest risk. We have concluded that eggplant and okra can be safely imported into all areas of the United States and peppers can be safely imported into the continental United States from Ghana using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the import status of eggplant, okra, and peppers from Ghana in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of eggplant and okra into all areas of the United States and peppers from Ghana into the continental United States subject to the requirements specified in the risk management analysis.

Done in Washington, DC, this 12th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13911 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0100]

Notice of Availability of a Pest Risk Analysis for the Importation of Husked, Silk-Free Baby Corn From Kenya Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of husked, silk-free baby corn from Kenya. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of husked, silk-free baby corn from Kenya. We are making the pest risk analysis available for review and comment.

DATES: We will consider all comments we receive on or before September 17, 2007.

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

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select Docket No. APHIS–2007–0100 to submit or view public comments and to view supporting and related materials available electronically. 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.
- *Postal Mail/Commercial Delivery*: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0100, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0100.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56–46, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

In a final rule published in the Rules and Regulations section of today's issue of the **Federal Register** (see ''Revision of Fruits and Vegetables Import Regulations,'' Docket No. APHIS–2005–

0106), we establish a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in § 319.56–4(b) of the regulations. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of Kenya to allow the importation of husked, silk-free baby corn from Kenya into the continental United States. We have completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on that pest risk assessment, have prepared a risk management analysis to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk. We have concluded that husked, silk-free baby corn can be safely imported into the continental United States from Kenya using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the import status of husked, silk-free baby corn from Kenya in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of husked, silk-free baby corn from Kenya into the continental United States subject to the requirements specified in the risk management analysis.

Done in Washington, DC, this 12th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13913 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0099]

Notice of Availability of a Pest Risk Analysis for the Importation of Peeled Baby Carrots From Kenya Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of peeled baby carrots from Kenya. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of peeled baby carrots from Kenya. We are making the pest risk analysis available for review and comment.

DATES: We will consider all comments we receive on or before September 17, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select Docket No. APHIS–2007–0099 to submit or view public comments and to view supporting and related materials available electronically. 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.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0099, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0099.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56 through 319.56–46, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

In a final rule published in the Rules and Regulations section of today's issue of the **Federal Register** (see ''Revision of Fruits and Vegetables Import Regulations,'' Docket No. APHIS–2005–0106), we establish a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in § 319.56–4(b) of the regulations. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United

States and comply with all applicable provisions of § 319.56–3;

• The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;

• The fruits or vegetables are treated in accordance with 7 CFR part 305;

• The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or

• The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of Kenya to allow the importation of peeled baby carrots from Kenya into the continental United States. We have completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on that pest risk assessment, have prepared a risk management analysis to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk. We have concluded that peeled baby carrots can be safely imported into the continental United States from Kenya using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the import status of peeled baby carrots from Kenya in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of peeled baby carrots from Kenya into the continental United States subject to the requirements specified in the risk management analysis.

Done in Washington, DC, this 12th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13914 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0101]

Notice of Availability of a Pest Risk Analysis for the Importation of Ribes Species Fruits From South Africa into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of *Ribes* species fruits (i.e., currants and gooseberries) from South Africa. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of *Ribes* species fruits from South Africa. We are making the pest risk analysis available for review and comment.

DATES: We will consider all comments we receive on or before September 17, 2007.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select Docket No. APHIS–2007–0101 to submit or view public comments and to view supporting and related materials available electronically. 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.

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0101.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56–46, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

In a final rule published in the Rules and Regulations section of today's issue of the **Federal Register** (see ''Revision of Fruits and Vegetables Import Regulations,'' Docket No. APHIS–2005–0106), we establish a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in § 319.56–4(b) of the regulations. These measures are:

• The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3;

• The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;

• The fruits or vegetables are treated in accordance with 7 CFR part 305;

• The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or

• The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of South Africa to allow the importation of *Ribes* species fruits (i.e., currants and gooseberries) from South Africa into the continental United States. We have completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on that pest risk assessment, have prepared a risk management analysis to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk. We have concluded that *Ribes* species fruits can be safely imported into the continental United States from South Africa using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the import status of *Ribes* species fruits from South Africa in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of *Ribes* species fruits from South Africa into the continental United States subject to the requirements specified in the risk management analysis.

Done in Washington, DC, this 12th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13912 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest; Butte and Plumas Counties, CA; Watdog Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplement to the Environmental Impact Statement.

SUMMARY: The Forest Service will prepare a supplement to the final Environmental Impact Statement to document and clarify the analysis of environmental effects.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)4). The draft supplemental environmental impact statement is expected to be issued in August 2007 and the final supplemental environmental impact statement is expected in November 2007.

ADDRESSES: Plumas National Forest, 159 Lawrence Street, PO Box 11500, Quincy, CA 95971; Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA 95965.

FOR FURTHER INFORMATION CONTACT: John Zarlengo, Project Leader, Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA 95965; (530) 534–6500.

SUPPLEMENTARY INFORMATION: The notice of intent to prepare a draft environmental impact statement for this project appeared in the **Federal Register** on February 10, 2005. The Notice of Availability for the Draft Environmental Impact Statement appeared on June 24, 2005. A Final Environmental Impact Statement and Record of Decision were issued on September 15, 2005. The legal notice of the Record of Decision appeared in the Feather River Bulletin on September 28, 2005. The decision was appealed and later withdrawn by the Responsible Official on December 20, 2005. The notice of intent to prepare a draft supplement to the environmental impact statement for this project appeared in the **Federal Register** on March 29, 2006. The Notice of Availability for the Draft Supplement to the Environmental Impact Statement appeared on September 1, 2006. A supplement to the Final Environmental Impact Statement and record of decision was prepared on March 30, 2007. The decision was appealed and then reversed after review, on June 26, 2007.

Purpose and Need for Action

The purpose and need remain the same as was described in the FEIS. The purpose of and need for the project has several elements: (1) Implement fuels reduction by proposing defensible fuel profile zone (DFPZ) treatments to provide for fire resiliency and improved fire fighter safety; (2) Implement group selection provisions of the HFQLG Act providing for shifting existing conditions towards desired conditions of an uneven-aged (all-aged), multistory, fire-resilient forest and contributing toward community stability; (3) Provide for reduced impacts of the transportation system on forest resources by implementing road relocation or improvements as part of project access. The purpose and need includes the following restoration opportunities: (1) Promote a more natural forest ecosystem with a higher abundance of hardwoods and create openings around existing California black oaks to stimulate natural regeneration; and (2) Provide for healthy aquatic and riparian ecosystems by implementing restoration projects to improve fish passage in streams and restore selected streams and meadows.

Proposed Action

The proposed action and alternatives will remain the same as described in the FEIS. These alternatives include varied levels of fuel treatments, group selection timber harvest, and transportation system improvement.

Responsible Official

Chris Knopp, Acting Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, CA 95971.

Nature of Decision To Be Made

Based on the supplement, the responsible official will decide whether to implement the project based on an alternative in the FEIS or not implement the project at this time.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft supplemental environmental impact statement will be prepared for comment. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplemental environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplemental environmental impact statement stage but that are not raised until after completion of the final supplemental environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Comments may also address the adequacy of the draft supplemental environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 3, 2007.

Maria T. Garcia,

Deputy Forest Supervisor.

[FR Doc. 07–3479 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, ID, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Deterimination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Tuesday, July 24, 2007 in Grangeville, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on July 24 will be held at the Super 8 Motel in Grangeville, Idaho, beginning at 10 a.m. (PST). Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935–2513.

Dated: July 10, 2007.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 07–3477 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

Lassen Resource Advisory Committee, Susanville, CA, USDA Forest Service.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Tuesday, August 8 and Wednesday, August 9 in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meetings on August 8 and 9 will begin at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. These meetings will be dedicated to hearing presentations from project proponents on Tuesday and voting on Wednesday for funding through the ''Secure Rural Schools and Self Determination Act of 2000,'' commonly known as Payments to States. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Terri Frolli, Acting District Ranger, Designated Federal Officer, at (530) 257–4188; or Public Affairs Specialist, Leona Rodreick, at (530) 252–6605.

Laurie Tippin,

Forest Supervisor.

[FR Doc. 07–3478 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, August 15, 2007. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held August 15, 2007 at 6 p.m.

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center Learning Room (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *lkolund@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lynn Kolund, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 11, 2007.

Forrest Cole,

Forest Supervisor.

[FR Doc. 07–3489 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–11–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning a new Progress Reporting Module designed to collect demographic information from federal grantees. These reports will be submitted by grantees that receive Corporation funding through the Corporation's AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and Senior Corps RSVP competitions. Completion of the Progress Report is required as a condition of these awards.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by September 17, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Learn and Serve America; Attention Amy Borgstrom, Associate Director for Policy, Room 9515; 1201 New York Avenue, NW., Washington, DC., 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930, or by e-mail at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The demographic reporting module will be completed by grantees of the Corporation's AmeriCorps State and National, AmeriCorps VISTA, and Senior Corps RSVP programs. The purpose of the information collection is to elicit accurate information from Corporation grantees in order to assess impacts and respond to requests for information from stakeholders.

Current Action

The Corporation seeks to employ a new reporting module focused on categories of volunteers identified as key targets in the Corporation's strategic plan. This reporting module will be added to existing reporting questions that are program specific, and have their own OMB approval numbers and expiration dates.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Demographic reporting module.

OMB Number: None.

Agency Number: None.

Affected Public: Current/prospective recipients of AmeriCorps State and National, VISTA, and Senior Corps RSVP funding.

Total Respondents: 1,894.

Frequency: Annually, with exceptions.

Average Time Per Response: Averages 5 hours.

Estimated Total Burden Hours: 9,470 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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

Dated: July 12, 2007.

Kristin McSwain,

Director, AmeriCorps State and National.

[FR Doc. E7–13938 Filed 7–17–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.*: interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at: *Munira.Mwalimu@ed.gov* no later than July 27, 2007. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: August 2–4, 2007.

Times

August 2

Committee Meetings

Assessment Development Committee: Closed Session—8:30 a.m. to 4 p.m.

Executive Committee: Open Session—4:30 p.m. to 5 p.m.; Closed Session—5 p.m. to 6 p.m.

August 3

Full Board: Open Session—8:30 a.m. to 9 a.m..; Closed Session—12:15 p.m. to 1:45 p.m.; Open Session—1:45 p.m. to 4:30 p.m.

Committee Meetings

Assessment Development Committee: Open Session—9:15 a.m. to 12:15 p.m.

Joint Session: Committee on Standards, Design and Methodology and the Reporting and Dissemination Committee: Closed Session—9:15 a.m. to 10 a.m.

Committee on Standards, Design and Methodology: Open Session—10 a.m. to 12:15 p.m.

Reporting and Dissemination Committee: Open Session—10 a.m. to 12:15 p.m.

August 4

Nominations Committee: Closed Session—7:45 a.m. to 8:15 a.m.

Full Board: Open Session—9 a.m. to 12 p.m.

Location: The Ritz Carlton Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On August 2, 2007, the Assessment Development Committee will meet in closed session from 8:30 a.m. to 4 p.m. to review secure science pilot items for grades 4, 8, and 12 for the 2009 National Assessment of Educational Progress (NAEP) Science Pilot. The meeting must be conducted in closed session as disclosure of proposed test items for the science pilot would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On August 2, the Executive Committee will meet in closed session from 5 p.m. to 6 p.m. for the following briefing and discussions:

(1) The Committee will receive independent government cost estimates from the Associate Commissioner of the National Center for Education Statistics, for options affecting operations under contracts covering the 2008–2012 assessment years. The discussion of independent government cost estimates is necessary for ensuring that NAEP contracts meet congressionally mandated goals and adhere to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and will provide an advantage to bidders attending the meeting. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of the NAEP release activities, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

(2) The Committee will discuss Governing Board staff reappointments and the nomination of the Vice Chair of the Board for the one-year term beginning October 1, 2007. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On August 3, the full Board will meet in open session from 8:30 a.m. to 9 a.m. The Board will approve the agenda, receive the Executive Director's report, and hear an update on the work of the National Center for Education Statistics (NCES). The Board's standing committees will meet from 9:15 a.m. to 12:15 p.m.

The Assessment Development Committee will meet in open session on August 3 from 9:15 a.m. to 12:15 p.m. The Committee on Design and Methodology and the Reporting and Dissemination Committee will meet in a joint closed session on August 3 from 9:15 a.m. to 10 a.m. to receive a briefing on secure data on participation, and inclusion and accommodation rates for the 2007 NAEP assessments (Writing at grades 8 and 12 and reading and mathematics at grades 4 and 8). The NAEP reports will not be released until the fall of 2007. The meeting must therefore be conducted in closed session as premature disclosure of data would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On August 3, the full Board will meet in closed session from 12:15 p.m. to 1:45 p.m. to receive a briefing on results of the 2006 NAEP 12th Grade Economics Report Card. The Governing Board will be provided with embargoed data on the report that cannot be discussed in an open meeting prior to their official release. The meeting must therefore be conducted in closed session as premature disclosure of data would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On August 3 from 1:45 p.m. to 3:15 p.m. the Board will receive a panel presentation on NAEP Trendline Issues. From 3:30 p.m. to 4:30 p.m., the Board will discuss and take action on the NAEP 2011 Writing Specifications and Background Variables.

On August 4, the Nominations Committee will meet in closed session from 7:45 a.m. to 8:15 a.m. to review and discuss confidential information regarding nominees received for Board vacancies for terms beginning on October 1, 2007. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on August 4 from 9 a.m. to 12 noon. From 9 a.m. to 10 a.m., the Board will receive a briefing on NAEP Validity. Board actions on policies and Committee reports are scheduled to take place between 10:15 a.m. and 12 p.m., upon which the August 4, 2007 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

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/index.html.* 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: July 12, 2007.

Charles E. Smith,

Executive Director, U.S. Department of Education, National Assessment Governing Board.

[FR Doc. E7–13919 Filed 7–17–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Climate Change Science Program Product Development Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Climate Change Science Program Product Development Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, August 8, 2007, 1 p.m. to 5 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Anjuli S. Bamzai (301–903–0294; *anjuli.bamzai@science.doe.gov*) Designated Federal Officer, Climate Change Science Program Product Development Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, Climate Change Research Division, SC–23.3/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/cpdac/announcement.html.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To continue discussions on drafting the Climate Change Science Program (CCSP) Synthesis and Assessment Product related to climate modeling. This activity is being conducted at the request of the Department of Energy, in accordance with the CCSP Guidelines for Producing the CCSP Synthesis and Assessment Products.

Tentative Agenda Items:

Wednesday, August 8, 1 p.m.–5 p.m.:

- Presentation on 3.1 to resolve issues raised by both the peer and public review.
- Discussion by the CPDAC to decide whether the revisions on 3.1 are adequate and meet their approval.
- List of changes for 3.1, if any, for final concurrence by CPDAC.
- Public comment (10 minute rule).

Public Participation: The half day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Anjuli Bamzai at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provisions will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review at *http://www.science.doe.gov/ober/CPDAC/minutes_;_presentations.html.*

Issued in Washington, DC, on July 12, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–13923 Filed 7–17–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–519–000]

Carolina Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2007.

Take notice that on July 6, 2007, Carolina Gas Transmission Corporation (CGT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective August 6, 2007.

CGT states that the purpose of this filing is to make various non-rate revisions to its tariff to establish prearranged and interim services, enhance shipper service and flexibility, clarify certain provisions and provide for miscellaneous administrative revisions.

CGT further states that copies of the filing have been served on each of its customers and affected state commissions.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13867 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–340–002]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

July 9, 2007.

Take notice that on July 3, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Sixth Revised Sheet No. 390, with effective date of January 1, 2008.

Columbia states that it is submitting this substitute revised tariff sheet to correct a typo that was discovered in its June 26, 2007 Compliance Filing in the above-referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13851 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–518–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 9, 2007.

Take notice that on July 3, 2007 Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 487, with an effective date of August 2, 2007.

Columbia states that it is revising Section 48 of the General Terms and Conditions of its tariff (Offsystem Pipeline Capacity) to address how limitations imposed by the offsystem capacity provider may affect service provided by Columbia on the offsystem capacity pursuant to the terms and conditions of its Tariff.

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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13853 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–410–000]

Equitrans, L.P.; Notice of Application

July 6, 2007.

Take notice that on June 27, 2007 Equitrans, L.P. (Equitrans), 225 North Shore Drive, Pittsburgh, Pennsylvania, 15212, filed in Docket No. CP07–410–001, an application pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon, approximately 71.57 miles of 8-inch diameter pipeline, two (2) appurtenant compressor stations and related facilities in Allegheny, Cambria, Indiana and Westmoreland Counties, Pennsylvania, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's website 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 (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to David K. Dewey, Vice President & General Counsel, Equitrans, L.P., 225 North Shore Drive, Pittsburgh, Pennsylvania, 15212, telephone (412) 395–2566, fax (412) 395–3311

Pursuant to § 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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental 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: 5 p.m. Eastern Time on July 27, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13820 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–414–000; CP07–415–000; CP07–416–000]

Golden Triangle Storage, Inc. Notice of Applications

July 9, 2007.

Take notice that on June 29, 2007 and as supplemented on July 6, 2007 Golden Triangle Storage, Inc. (Golden Triangle), 1200 Smith Street, Suite 900, Houston, Texas 77002, pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations, filed an abbreviated application for certificates of public convenience and necessity, seeking authority to develop and operate a two-cavern salt dome natural gas storage facility located near Beaumont in Jefferson and Orange Counties, Texas; to provide open-access firm and interruptible storage and hub services in interstate commerce at market-based rates under 18 CFR part 284, subpart G; and to undertake the limited construction and operation activities permitted under 18 CFR part 157, subpart F. 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 ''e-Library'' 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 or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to David Schultz, Project Manager, Golden Triangle Storage, Inc., 1200 Smith Street, Suite 900, Houston, TX 77002, phone: (832) 397–3739, e-mail: *goldentrianglestorage@aglresources.com.*

The Golden Triangle Storage Project consists of developing two natural gas storage caverns in the Spindletop salt dome, developing up to five salt brine disposal wells, installing a 16-inch freshwater pipeline, installing a 16-inch brine disposal pipeline, installing a leaching plant, installing 14,205 horsepower of compression, and installing approximately 8.9 miles of 24-inch header pipeline and six associated meter stations and pipeline interconnects. Golden Triangle says that the facilities will ultimately provide an estimated 16 billion cubic feet (Bcf) of high deliverability, multi-cycle working storage capacity in two stages of development. In the first stage, Golden Triangle will solution mine each of the storage caverns to a volume of 8.2 million barrels for a working storage capacity or about 6 Bcf per cavern, and then place the caverns in commercial service, the first in late 2010 and the second in early 2013. Thereafter, in the second stage, through use of a partial cavern refilling solution mining technique, Golden Triangle proposes to gradually enlarge each of the caverns over a 10–12 year period to a potential maximum volume of up to 12.5 million barrels for a working storage capacity of 8 Bcf per cavern (16 Bcf in total). Golden Triangle seeks Commission certificate authorizations for both caverns and both stages of cavern development at this time.

Golden Triangle says that the need for the Project's services has already been confirmed by the market. In response to a non-binding open season held in May 2007, Golden Triangle received bids representing about three and a half times the initial 6 Bcf working gas capacity of Cavern 1 from a diverse group of potential customers, including marketers, producers and other entities. Golden Triangle is now negotiating

precedent agreements with the highest bidders for longterm, firm service contracts. Once it concludes negotiations, Golden Triangle says it will file its executed precedent agreements as a supplement to this application.

Golden Triangle proposes to offer open access firm and interruptible storage and hub services and requests authority to charge market-based rates for its proposed services, which it says is consistent with the requirements of the Commission's *Alternative Ratemaking Policies.* The proposed terms and conditions for Golden Triangle's services are included in the *pro forma* tariff included in Exhibit P of the application.

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.

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 proceeding for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 285.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: July 23, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13852 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–8–002]

Guardian Pipeline, L.L.C., Notice of Amendment

July 10, 2007.

Take notice that on July 2, 2007, Guardian Pipeline, L.L.C. (Guardian), filed in Docket No. CP07–8–002, an amendment to its October 13, 2006 application pursuant to section 7 (c) of the Natural Gas Act (NGA) in which it requested authorization to site, construct, and operate facilities consisting of approximately 118 miles of new mainline, two electric compressor stations, seven meter stations and appurtenant facilities resulting in 537,200 Dth/d of incremental firm capacity on Guardian's existing pipeline system and 437,200 Dth/d of firm capacity on the expansion facilities. The amended application is reflected in Guardian's June 6, 2007 filing that proposes route variations between MPs 88.0 and 98.2, moving two meter stations, and construction of short branch lines between those meter stations and Wisconsin Public Service Corporation's proposed interconnecting pipeline facilities, all as more fully set forth in the amended application which is on file with the Commission and open to public inspection. The Commission staff will determine if this amendment will have an effect on the schedule for the environmental review of this project. If necessary, a Notice of Schedule for Environmental Review will be issued within 90 days of this Notice. The instant filing may be also 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 (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to Patricia Anderson, GM, Rates and Regulatory Affairs, ONEOK Partners GP, LLC, 100 W. Fifth Street, 12th Floor, Tulsa, Oklahoma 74103; phone: (918) 588–7729; e-mail: *panderson@oneok.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental 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.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on July 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13860 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–516–000]

Iroquois Gas Transmission System, L.P.; Notice of Filing

July 10, 2007.

Take notice that on June 29, 2007, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its schedules which reflect revised calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period January 1, 2007 through June 30, 2007.

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 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.

Intervention and Protest Date: 5 p.m. Eastern Time July 18, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13856 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP99–176–137

Natural Gas Pipeline Company; Notice of Negotiated Rate Filing

July 10, 2007.

Take notice that on June 29, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing Amendment No. 8 dated May 23, 2007, to Rate Schedule FTS Service Agreement dated May 5, 1995, between Natural and Nicor Gas Company (Nicor).

Natural states that the Amendment reflects changes to the primary receipt points in Exhibit A of the Rate Schedule FTS Service FTS Service Agreement to be effective July 1, 2007.

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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13863 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–521–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2007.

Take notice that on July 9, 2007, Northern Border Pipeline Company (Northern Border) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 8, 2007:

Nineteenth Revised Sheet No. 99A
Seventh Revised Sheet No. 405
Eighth Revised Sheet No. 407
Eighth Revised Sheet No. 423
Ninth Revised Sheet No. 425
Fifth Revised Sheet No. 429A
Fifth Revised Sheet No. 429C
Fifth Revised Sheet No. 434
Sixth Revised Sheet No. 436
Sixth Revised Sheet No. 443
Fourth Revised Sheet No. 456
Sixth Revised Sheet No. 457
Fifth Revised Sheet No. 461
Fourth Revised Sheet No. 466
Fifth Revised Sheet No. 468
Fifth Revised Sheet No. 472
Fifth Revised Sheet No. 473
Fourth Revised Sheet No. 479
Sixth Revised Sheet No. 484
First Revised Sheet No. 486
Fourth Revised Sheet No. 488

Northern Border states that the purpose of this filing is to make minor housekeeping changes to Northern Border's Tariff.

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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13861 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–454–001]

Northern Natural Gas Company; Notice of Compliance Filing

July 10, 2007.

Take notice that Northern Natural Gas Company (Northern), on July 2, 2007, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of June 18, 2007:

Substitute 1 Revised Sheet No. 54B
Sixth Revised Sheet No. 308

Northern states that it is filing the above-referenced tariff sheets to comply with the Commission Order in Docket RP07–454–000 issued on June 15, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13864 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–520–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2007.

Take notice that on July 6, 2007, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of August 6, 2007:

43 Revised Sheet No. 66A
Eleventh Revised Sheet No. 66B
Third Revised Sheet No. 66B.01
Second Revised Sheet No. 66B.02

Original Sheet No. 66B.03
Ninth Revised Sheet No. 66D

Northern states that it is filing the above-referenced tariff sheets to submit a Rate Schedule PDD service agreement for Commission acceptance as a non-conforming and negotiated rate agreement.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13868 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–381–001]

Ozark Gas Transmission, L.L.C.; Notice of Amendment

July 6, 2007.

Take notice that on July 2, 2007 Ozark Gas Transmission, L.L.C. (Ozark), 1437 S. Boulder, Suite 1500, Tulsa, Oklahoma, 74119, filed in Docket No. CP07–381–001, to amend its pending application in Docket No. CP07–381–000, pursuant to section 7(c) of the Natural Gas Act (NGA), to amend the certificate granted to Ozark by the Commission in Docket Nos. CP98–265–000, CP98–266–000, CP98–267–000, CP98–268–000, and CP98–269–000. Specifically, Ozark seeks to increase the maximum certificated capacity of its pipeline system from 330,000 Mcf/d to 400,000 Mcf/d, instead of the originally requested 420,000 Mcf/d, as more fully set forth in the application on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at: *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to David A. Harrell, Director, Regulatory Affairs, Ozark Gas Transmission, L.L.C., 1437 S. Boulder, Suite 1500, Tulsa, Oklahoma, 74119, telephone (918) 398–2123, fax (918) 398–2165, e-mail *dharrell@ozarkgastransmission.com.*

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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental 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: 5 p.m. Eastern Time on July 27, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13821 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1065–000]

Public Service Company of New Mexico; Notice of Filing

July 6, 2007.

Take notice that on June 21, 2007, Public Service Company of New Mexico (PNM), pursuant to section 205 of the Federal Power Act and Part 35 of the Commission's regulations, submits three agreements in order to provide for an additional point of interconnection between PNM's transmission facilities and those of the City of Farmington, New Mexico at Farmington's Hogback Station.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 17, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13822 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–029]

Rockies Express Pipeline LLC; Notice of Tariff Filing and Negotiated Rate

July 10, 2007.

Take notice that on July 6, 2007, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective July 7, 2007:

Twenty-Fourth Revised Sheet No. 22
Eleventh Revised Sheet No. 24

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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13866 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–388–003]

Southern Natural Gas Company; Notice of Amendment

July 10, 2007.

Take notice that on July 6, 2007, Southern Natural Gas Company (Southern), filed in Docket No. CP05–388–003, an application pursuant to section 7(c) of the Natural Gas Act (NGA) a petition to amend the June 15, 2006 Commission Order (115 FERC ¶ 61,328 (2006)) issuing Southern a certificate to construct and operate its Cypress Pipeline Project. Specifically, to support the authorized Phase II services, Southern proposes to install an electric driven compressor unit rather than a gas driven compressor unit at the previously authorized Compressor Station No. 2 in Glynn County, Georgia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The instant filing may be

also 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 (866) 208–3676 or TTY, (202) 502–8659.

Southern asserts that the proposed change will not materially modify the nature, scope, or impact of the Cypress Pipeline Project and that the amount of capacity and horsepower will remain the same.

Any questions regarding the application should be directed to David Hendrickson, Associate General Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7114.

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 below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 0426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental 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.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on July 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13869 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–502–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

July 10, 2007.

Take notice that on July 5, 2007, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, substitute revised tariff sheets, as listed on Appendix B to the filing, to become effective August 1, 2007.

Texas Eastern states that these substitute revised tariff sheets are being filed in substitution for those corresponding tariff sheets filed on June 29, 2007 as a part of Texas Eastern's semi-annual Electric Power Cost tracking filing to be effective August 1, 2007, in order to correct an inadvertency which occurred in the preparation of the originally filed tariff sheets.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13865 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–411–000]

Texas Eastern Transmission, LP; Notice of Application

July 11, 2007.

Take notice that on June 29, 2007, Texas Eastern Transmission, LP (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP07–411–000, an application pursuant to section 7of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, seeking (1) authorization to install, construct, own, operate and maintain certain pipeline facilities, consisting primarily of the installation of approximately 3.79 miles of 20-inch diameter pipeline and a meter and regulating station (the Cedar Bayou Lateral Project), and (2) an initial rate for firm service on the Cedar Bayou Lateral under Rate Schedule MLS–1, all as more fully set forth in the application which is on file with the Commission

and open to public inspection. This filing is accessible online 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.

Specifically, Texas Eastern states that the facilities are required to enable Texas Eastern to provide up to 360,000 Dth/d of Rate Schedule MLS–1 firm transportation service to the Cedar Bayou Power plant owned by NRG Energy, Inc. (NRG). Texas Eastern states that although a project of this scope would otherwise qualify for construction under the blanket certificate procedures, proposing an initial rate under Rate Schedule MLS–1 requires a section 7(c) application. Texas Eastern states that the capital cost used to calculate the Cedar Bayou Lateral Project cost of service is $16,514,000.

Any questions regarding this application should be directed to Garth Johnson, Director, Certificates & Reporting, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, at (713) 627–5415.

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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. 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.

Comment Date: 5 p.m. Eastern Time on August 1, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13871 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–245–024; RP06–569–003]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

July 10, 2007.

Take notice that on July 3, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

Transco states that the filing is being made in compliance with the Commission's order issued on June 7, 2007, in Docket Nos. RP01–245–019, RP01–245–021, RP01–245–022, and RP06–569–001.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13859 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–412–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

July 11, 2007.

Take notice that on June 29, 2007, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP07–412–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, for an order permitting and approving the abandonment by sale to Apache Corporation (Apache) and LLOG Exploration Offshore, Inc. (LLOG) of Transco's Mustang Island 757 Line, a 2.73-mile, 8-inch diameter pipeline and appurtenances extending from Apache's production platform in Mustang Island Block 757, offshore Texas, to Apache's production platform in Mustang Island Block 762, offshore Texas, and Transco's Mustang Island 762 line, a 2.61 mile,12-inch diameter pipeline and appurtenances extending from Mustang Island Block 762 to Mustang Island Block 758A, offshore Texas. Transco's application also requests a finding that, upon transfer to Apache and LLOG, the facilities will be exempt from the Commission's jurisdiction under section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible online 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.

Any questions regarding this application should be directed to Ingrid Germany, Certificates & Tariffs, P.O. Box 1396, Houston, Texas 77251, at (713) 215–4015.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. 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.

Comment Date: 5 p.m. Eastern Time on August 1, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13872 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–14–000]

SFPP, L.P., Calnev Pipe Line LLC, Operating Limited Partnership D, Kinder Morgan Energy Partners, L.P., Kinder Morgan Management LLC, Kinder Morgan General Partner, Inc., Knight Holdeo, LLC, SFPP, L.P.; Notice of Complaint

July 10, 2007.

Take notice that on July 5, 2007, pursuant to Rule 206 of the Rules and Practice and Procedure and Sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d and 824e, BP West Coast Products LLC and Chevron Products Company filed a formal complaint against SFPP, L.P. and Calnev Pipe Line LLC and their respective affiliates and owners, challenging their compliance with the Commission's Cash Management Plan regulations and renewing a prior motion for payment of reparations.

Complainants state that copies of the Complaint were served on SFPP, L.P. and Calnev Pipe Line LLC.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 July 25, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13857 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–13–000]

Nexen Marketing U.S.A., Inc. Complainant, v. Belle Fourche Pipeline Company, Respondent; Notice of Complaint

July 9, 2007.

Take notice that on July 5, 2007, Nexen Marketing U.S.A., Inc. (Nexen) filed a formal complaint against Belle Fourche Pipeline Company (Belle Fourche) pursuant to Rule 206 of the Rules of Practice and Procedure of the Commission's regulations, 18 CFR 343.2; 385.206, the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, sections 1(4), 1(5), 1(6), 2, 3(1), 15(1), and 16 of the Interstate Commerce Act , 49 U.S.C. App. 1(4), 1(5), 2, 3(1), 8, 9, 13, 15, and 16 (1984); and section 1803 of the Energy Policy Act of 1992 (EPAct).

Nexen alleges that the Transportation Services Agreement (TSA) that Belle Fourche transmitted to prospective shippers on June 27, 2007, violates the Interstate Commerce Act, is discriminatory, unjust and unreasonable and unlawfully abrogates shipper rights. Nexen requests that the Commission order Belle Fourche to desist from shipping any crude oil on its Expansion Pipeline from Baker, MT to Alexander, ND on the basis of the terms and conditions of the TSA that Belle Fourche transmitted to shippers for signature on June 27, 2007; determine that sections 4.01, 5.05, 6.02, 8.01(a) and 8.02, Article VII, VIII(a) and XIX and Attachment D of the Belle Fourche TSA are unlawful and unenforceable; order Belle Fourche to pay Nexen any refunds, reparations, or damages, plus interest, that the Commission determines are appropriate; resolve this complaint on an expedited basis; and grant Nexen such other, different or additional relief as the Commission may determine to be appropriate.

Nexen certifies that copies of the complaint were served on the Belle Fourche contact as listed on its TSA.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 July 25, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13855 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EL07–81–000]

NSTAR Electric Company v. ISO New England Inc.; Notice of Complaint

July 10, 2007.

Take notice that on July 9, 2007, pursuant to Rule 206 of the Rules and Practice and Procedure and Sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d and 824e, NSTAR Electric Company (NSTAR) filed a formal complaint against ISO New England Inc. (ISO–NE) concerning the interrelationship of Hydro Quebec Interconnection Capacity Credits (''HQICCs'') and capacity imports that may bid into the Forward Capacity Market (FCM) during the transition period from the current installed capacity (ICAP) market to the FCM.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 July 30, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13858 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

July 10, 2007.

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

Docket Numbers: ER01–2741–004; ER02–237–007; ER07–734–001; ER07–407–001.

Applicants: Plains End, LLC; J. Aron & Company; Plains End II, LLC; High Prairie Wind Farm II, LLC.

Description: J Aron & Co, Plains End, LLC, Plains End II, LLC and High Prairie Wind Farm, LLC submits a notice of non-material change in status, in compliance with Order 652.

Filed Date: 06/29/2007.

Accession Number: 20070703–0076.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER03–345–009.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits a Semi-Annual Status Report on Load Response Programs for the period October 2006 through March 2007.

Filed Date: 06/29/2007.

Accession Number: 20070703–0075.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–43–002.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits its responses to the 1/30/07 deficiency letter issued its request to cancel the 1968 Purchase and Transmission Agreement etc.

Filed Date: 06/29/2007.

Accession Number: 20070703–0077.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–740–001.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Co submits their compliance filing consisting of power supply agreement with Hope Water and Light Commission.

Filed Date: 06/29/2007.

Accession Number: 20070702–0057.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–741–001.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Co submits the Power Supply Agreement for requirements service dated 12/13/06 with City of Bentonville, Arkansas in compliance with FERC's 5/31/07 letter order.

Filed Date: 06/29/2007.

Accession Number: 20070703–0114.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–752–002; ER07–753–002; ER07–754–002; ER07–755–002; ER07–756–002.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits Substitute First Revised Sheet 2, under FERC Electric Tariff, Volume 11 for the City of Burlingame etc amending the weekly cap.

Filed Date: 06/28/2007.

Accession Number: 20070703–0115.

Comment Date: 5 p.m. Eastern Time on Thursday, July 19, 2007.

Docket Numbers: ER07–883–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Service Agreement for Network Integration Transmission Service with Kansas City Power and Light Company.

Filed Date: 06/29/2007.

Accession Number: 20070703–0113.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–886–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits the Network Operating Agreement to their 5/11/07 filing of an executed service agreement with Kansas Electric Power Coop, Inc.

Filed Date: 06/29/2007.

Accession Number: 20070702–0059.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–913–001.

Applicants: Atlantic City Electric Company.

Description: Atlantic City Electric Company submits Substitute First Sheet 298B et al. to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 06/29/2007.

Accession Number: 20070703–0116.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1077–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits clarifications re the amendment to the ISO Tariff and the June 2007 Congestion Revenue Rights Credit Policy Amendment.

Filed Date: 06/29/2007.

Accession Number: 20070703–0060.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1097–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits counterpart signature pages of the New England Power Pool Agreement.

Filed Date: 06/29/2007.

Accession Number: 20070702–0056.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1098–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits an unexecuted services agreement for Network Integration Transmission Service Agreement with Grand River Dam Authority.

Filed Date: 06/29/2007.

Accession Number: 20070702–0063.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1099–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits an unexecuted service agreement for Network Transmission Service with Western Farmers Electric Cooperative Inc.

Filed Date: 06/29/2007.

Accession Number: 20070702–0062.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1101–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc et al. submit a limited revision to the Forward Capacity Market, Market Rules conditionally accepted by FERC on 4/16/07 to extend stakeholder process etc.

Filed Date: 06/29/2007.

Accession Number: 20070703–0023.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1102–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits agreements for Network

Integration Transmission Service under PJM Open Access Transmission Tariff and notices of cancellation for 2 NITSAs that has been superseded.

Filed Date: 06/29/2007.

Accession Number: 20070703–0022.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1103–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation dba National Grid submits a power purchase agreement, dated 6/30/98 with Indeck-Oswego Limited Partnership.

Filed Date: 06/29/2007.

Accession Number: 20070703–0021.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1104–000.

Applicants: Fitchburg Gas and Electric Light Company.

Description: Fitchburg Gas and Electric Light Company submits its data and schedules used to calculate its annual transmission revenue requirement for Non-PTF Local Network Transmission Services etc.

Filed Date: 06/29/2007.

Accession Number: 20070703–0020.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1105–000.

Applicants: Cedar Creek Wind Energy, LLC.

Description: Cedar Creek Wind Energy LLC submits an application for authorization to make wholesale sales of energy and capacity and ancillary services at negotiated, market-based rates.

Filed Date: 06/29/2007.

Accession Number: 20070703–0019.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1106–000.

Applicants: ArcLight Energy Marketing, LLC.

Description: ArcLight Energy Marketing, LLC submits its application for order accepting market-based tariff, granting waivers and blanket authorization and request for expedited action.

Filed Date: 06/29/2007.

Accession Number: 20070703–0018.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1107–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits its Annual Informational Filing which consists of the annual update to the formula rates in Schedule 21–CMP of the ISO–NE Transmission, Markets, and Services Tariff etc.

Filed Date: 06/29/2007.

Accession Number: 20070703–0017.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1108–000.

Applicants: American Electric Power Service Corp.

Description: AEP Operating Companies submits and requests acceptance of an original Interconnection and Local Delivery Service Agreement with the City of Dover, Ohio designated as Service Agreement 1677.

Filed Date: 06/29/2007.

Accession Number: 20070703–0016.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1109–000.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corporation agent for Ohio Power Company et al. submits and requests acceptance of a ninth revision to the Interconnection and Local Delivery Service Agreement etc.

Filed Date: 06/29/2007.

Accession Number: 20070703–0015.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1110–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service with Brea Power Partners, LP.

Filed Date: 06/29/2007.

Accession Number: 20070703–0014.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1111–000.

Applicants: Appalachian Power Company.

Description: Appalachian Power Company submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service (including Appendices A through C) dated 6/28/07 with American Electric Power Service Corp et al.

Filed Date: 06/29/2007.

Accession Number: 20070703–0013.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1112–000.

Applicants: BE Allegheny LLC.

Description: Application of BE Allegheny LLC for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 06/29/2007.

Accession Number: 20070703–0073.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1113–000.

Applicants: BE CA LLC.

Description: BE CA, LLC's application for order accepting rates as designated as Original Sheet 1 et al to FERC Electric Tariff, Original Volume 1 for filing & granting waivers and blanket approvals.

Filed Date: 06/29/2007.

Accession Number: 20070703–0074.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1114–000.

Applicants: BE Cleco LLC.

Description: Application of BE Cleco LLC for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 06/29/2007.

Accession Number: 20070703–0062.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1115–000.

Applicants: BE Coloquitt LLC.

Description: Application of BE Colquitt LLC for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 06/29/2007.

Accession Number: 20070703–0063.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1116–000.

Applicants: BE Ironwood LLC.

Description: Application of BE Ironwood LLC for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 06/29/2007.

Accession Number: 20070703–0064.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1117–000.

Applicants: BE KJ LLC.

Description: Application of BE KJ LLC for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 06/29/2007.

Accession Number: 20070703–0065.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1118–000.

Applicants: BE Rayle LLC.

Description: Application of BE Rayle LLC for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 06/29/2007.

Accession Number: 20070703–0066.

Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1119–000.

Applicants: BE Red Oak LLC.

Description: Application of BE Red Oak LLC for order accepting rates for filing and granting waivers and blanket approvals under ER07–1119.

Filed Date: 06/29/2007.

Accession Number: 20070703–0067.
Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1120–000.
Applicants: BE Satilla LLC.
Description: Application of BE Satilla LLC for order accepting rates for filing and granting waivers and blanket approvals.
Filed Date: 06/29/2007.
Accession Number: 20070703–0068.
Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1121–000.
Applicants: BE Tenaska LLC.
Description: Application of BE Tenaska LLC for order accepting rates for filing and granting waivers and blanket approvals.
Filed Date: 06/29/2007.
Accession Number: 20070703–0069.
Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1122–000.
Applicants: BE Walton LLC.
Description: Application of BE Waltlon LLC for order accepting rates for filing and granting waivers and blanket approvals.
Filed Date: 06/29/2007.
Accession Number: 20070703–0070.
Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1123–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revised sheets to the Laguna Bell-Vermon Interconnection Service Agreement with the City of Vernon, CA designated Rate Schedule 472.
Filed Date: 06/29/2007.
Accession Number: 20070703–0071.
Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1124–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corporation dba National Grid submits its Notice of Cancellation of the Amended and Restated Power Sales Agreement with Fulton Cogeneration Associates LP.
Filed Date: 06/29/2007.
Accession Number: 20070703–0072.
Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Docket Numbers: ER07–1127–000.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin Public Service Corp notifies FERC that its Service Agreement 9 dated 10/26/05 w/Washington Island Electric Cooperative under FERC Electric Tariff, Fifth Revised Vol 1 has been terminated effective 6/1/07.
Filed Date: 06/29/2007.
Accession Number: 20070705–0195.
Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

Take notice that the Commission received the following public utility holding company filings:
Docket Numbers: PH07–25–000.
Applicants: Ecofin Holdings Limited.
Description: FERC–65A Exemption Notification of Status of Ecofin Holdings Ltd as Passive Investors under PH07–25.
Filed Date: 06/29/2007.
Accession Number: 20070629–4023.
Comment Date: 5 p.m. Eastern Time on Friday, July 20, 2007.

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

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

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

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

Kimberly D. Bose,
Secretary.
[FR Doc. E7–13818 Filed 7–17–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–208–000]

Rockies Express Pipeline LLC; Notice of Overflight and Limited Site Visit for the Proposed Rockies Express-East Pipeline Project

July 6, 2007.

The staff of the Federal Energy Regulatory Commission (Commission) is issuing this notice to announce the date and location of an overflight and site visit for the proposed Rockies Express-East Pipeline Project. The Commission staff will be preparing an environmental impact statement (EIS) for Rockies Express Pipeline LLC's project in Missouri, Illinois, Indiana, and Ohio. The planned facilities would consist of about 637.8 miles of pipeline and 7 new compressor stations. The EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The helicopter overflight will be held on July 17 and 18, 2007. The July 19, 2007 site visit first focuses on the proposed pipeline crossing location of the following resources in Ohio, as time allows:

- Hamilton Compressor Station site;
- Little Miami Scenic State Park;
- Caesar Creek Wildlife Area;
- Deer Creek State Park;
- Big Darby Creek;
- Perry State Forest;
- Blue Rock State Forest; and
- Barnesville Reservoir.

Anyone interested in participating in the site visit on July 19, 2007, should meet at the Hampton Inn at 2093 S. Hamilton Road in Columbus, Ohio at 7 a.m. Participants must provide their own transportation. Because of the length of the project other site visits will be announced in the future.

This event is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/*

EventsList.aspx along with other related information. For additional information, please contact the Commission's Office of External Affairs at (202) 502–8004.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13819 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP07–395–000]

Wyoming Interstate Company, Ltd. (WIC); Notice of Intent to Prepare an Environmental Assessment for the Proposed Medicine Bow Expansion Project and Request for Comments on Environmental Issues

July 11, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of constructing and operating Wyoming Interstate Company, Ltd.'s (WIC) proposed Medicine Bow Expansion Project.

The proposed Medicine Bow Expansion Project includes installation of one 24,930-horsepower (hp) turbine compressor unit with ancilliary facilities at the existing Douglas Compressor Station in Converse County, Wyoming, located on its Medicine Bow Pipeline System. The added compressor unit would enable WIC to create 330,000 dekatherms per day of additional capacity on its Medicine Bow Lateral System. WIC requests the Commission to grant its request by November 1, 2007 for a targeted in-service date of June 1, 2008.

A map depicting WIC's proposed facilities is provided in Appendix 1.[1]

Construction would take place completely within the fenced-in compressor station site on about 8 acres. Operation of these facilities would require the permanent use of approximately 1.37 acres of industrial land.

The Environmental Assessment Process

The National Environmental Policy Act (NEPA) requires the Commission to consider the environmental impacts of a proposed project whenever it considers the issuance of a Certificate of Public Convenience and Necessity as has been requested by WIC. NEPA also requires the Commission to undertake a process to identify and address concerns the public may have about proposed projects. This process is commonly referred to as ''scoping''. The main goal of the ''scoping'' process is to identify public concerns and then address them in the environmental assessment. By this Notice of Intent, the Commission requests public comments on environmental issues that should be addressed in the environmental assessment.

The Commission's staff will prepare an environmental assessment that will discuss the potential environmental impacts resulting from the proposed project under the following general headings:

- Geology and Soils.
- Water Resources and Wetlands.
- Fisheries, Vegetation and Wildlife.
- Threatened and Endangered Species.
- Air Quality and Noise.
- Land Use.
- Cultural Resources.
- Pipeline safety and reliability.

The Commission's staff will also evaluate possible alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts to the identified environmental resources.

Upon completion of the staff's environmental assessment and depending on the issues identified and/or comments received during the ''scoping'' process, the EA may be published and mailed to federal, state and local government agencies; elected officials; environmental and public interest groups; affected landowners; other interested parties; local libraries and newspapers; and the Commission's official service list for this proceeding. A 30-day comment period would be allotted for review of the EA if it is published. Staff would consider all comments submitted concerning the EA before making their recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Federal, state, or local agencies wishing to participate in the development of the environmental assessment may request ''cooperating agency'' status. Cooperating agencies are encouraged to participate in the scoping process and provide us with written comments concerning the proposed project. Cooperating agencies are also welcome to suggest format and content changes that will make it easier for them to adopt the EA; however, we will decide what modifications will be adopted in light of our production constraints. Agencies wanting to participate as a cooperating agency should send a letter describing the extent to which they would like to be involved in the development of this EA. Please submit these letters as indicated in the public participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your comments and concerns will be addressed in the EA and considered by the Commission. The more specific your comments, the more useful they will be. Generally, comments are submitted regarding the potential environmental effects, reasonable alternatives and measures to avoid or lessen environmental impact.

This notice and request for environmental comments is being sent to affected landowners; federal, state and local government representatives and agencies; environmental and public interest groups; other interested parties in this proceeding; and local libraries and newspapers. We encourage government representatives to notify their constituents of this notice and to encourage their comments concerning this proposed project.

To ensure that your comments are properly recorded, please mail them to our office on or before August 10, 2007. When filing comments please:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments to the attention of Gas Branch 2, DG2E; and Reference Docket No. CP07–032–000 on the original and both copies.

Please note that the Commission encourages the electronic filing of comments. To file electronic comments online please see the instructions[2] on the Commission's Web site at *www.ferc.gov.* When filing electronic comments, prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Please note before you can file electronic comments with the

[1] The appendices referenced in this notice will not being printed in the **Federal Register**. Copies are available on the Commission's Web site (excluding maps) at *www.ferc.gov* or from the Commission's Public Reference Room—(202) 502–8371.

[2] 18 Code of Federal Regulations 385.2001(a)(1)(iii).

Commission you will need to create a free online account.

Environmental Mailing List

An effort has been made to send this notice to all individuals, organizations, and government entities that might be interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, landowners whose property may be used temporarily for project purposes, and landowners with homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you would like to remain on the environmental mailing list for this proposed project, please return the Mailing List Retention Form found in Appendix 2. If you do not comment on this project or return this form, you will be taken off of the staff's environmental mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, an ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372) or through the Commission's ''eLibrary'' which can be found online at *www.ferc.gov.* For assistance with the Commission's ''eLibrary'', the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.*

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *www.ferc.gov/esubscribenow.htm.*

If applicable, public meetings or site visits associated with this proposed project will be posted on the Commission's calendar which can be found online at *www.ferc.gov/EventCalendar/EventsList.aspx.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13873 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2628–057]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License to Transfer Interests in Project Lands.

b. *Project Number:* 2628–057.

c. *Date Filed:* February 15, 2007.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Harris Hydroelectric Project No. 2628.

f. *Location:* The project is located on the Tallapoosa River in Clay, Cleburne, and Randolph Counties, Alabama. The proposed action will be in Jackson County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. R. Michael Akridge, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291, phone: (205) 257–1401.

i. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at telephone (202) 502–8132.

j. *Deadline for filing comments and or motions:* August 10, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners 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 intervener 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 proposes to transfer ownership of approximately 284 acres of land, consisting of two parcels, located within the project boundary and contained within the James D. Martin Wildlife Management Area (WMA) in Jackson County, Alabama. Fee-title to the parcels will be conveyed to Russell Family Farms, LLP. In exchange for the transfer of ownership of the two parcels, the licensee will receive fee-title to approximately 286 acres of land, consisting of two parcels, located within the WMA and adjacent to other lands owned by the licensee. The licensee proposes the transfer of ownership in order to acquire portions of an access road that are not currently on its property.

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 (P–2628) 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 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, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–2628–057). 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. E7–13862 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–13–000]

Conference on Enforcement; First Notice of Conference on Enforcement

July 11, 2007.

The Federal Energy Regulatory Commission plans to hold a conference on November 16, 2007, at its Washington, DC headquarters, 888 First Street, NE., to examine the implementation of its enforcement authority as expanded by the Energy Policy Act of 2005).[1]

The purpose of this notice is to advise the public of the date. More information on the starting and ending times, the topics to be explored, and the number and composition of the panels will be provided in subsequent notices.

All interested parties are invited, and there is *no* registration fee to attend.

The conference will not be transcribed but will be web cast. A free web cast of this event will be available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its web cast. The Capitol Connection provides technical support for the web casts and offers access to the meeting via phone bridge for a fee. If you have any questions, you may *visit www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Questions about the conference, at this time may be directed to Susan J. Court, Director of the Office of Enforcement, by e-mail at *Susan.Court@ferc.gov* or by phone at 202–502–8100.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13870 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 12, 2007.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 19, 2007, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note—** Items listed on the agenda may be deleted without further notice.

FOR FURTHER INFORMATION CONTACT: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items, struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at: *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

921ST—MEETING; REGULAR MEETING

[July 19, 2007, 10 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.

[1] Pub. L. 109–58, 119 Stat. 594 (2005).

921ST—MEETING; REGULAR MEETING—Continued

[July 19, 2007, 10 a.m.]

Item No.	Docket No.	Company
	Electric	
E–1	PL07–1–000	FPA Section 203 Supplemental Policy Statement.
E–2	RM07–15–000	Cross-Subsidization Restrictions on Affiliate Transactions.
E–3	RM07–21–000	Blanket Authorization Under FPA Section 203.
E–4	RM06–22–000	Mandatory Reliability Standards for Critical Infrastructure Protection.
E–5	RM06–16–003	Mandatory Reliability Standards for the Bulk-Power System.
E–6	RM06–16–001	Mandatory Reliability Standards for the Bulk-Power System.
E–7	Omitted.	
E–8	Omitted.	
E–9	ER07–577–000, ER07–577–001, EL07–79–000.	Midwest Independent Transmission System Operator, Inc.
E–10	ER06–18–007, ER06–18–008	Midwest Independent Transmission System Operator, Inc.
E–11	Omitted.	
E–12	ER06–185–008	New York Independent System Operator, Inc.
E–13	ER02–2560–007	Louisville Gas & Electric Company and Kentucky Utilities Company.
E–14	EC07–66–000, EC07–66–001, EL07–45–000, EL07–45–001.	Entergy Gulf States, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc.
	EC07–88–000	Entergy Gulf States, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc.
E–15	EL05–19–002	Golden Spread Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc. and Roosevelt County Electric Cooperative, Inc. v. Southwestern Public Service Company.
	ER05–168–001	Southwestern Public Service Company.
E–16	EL07–16–001	Long Island Power Authority v. New York Independent System Operator, Inc.
E–17	EL04–49–001	Quachita Power, LLC v. Entergy Louisiana, Inc. and Entergy Services, Inc.
	Miscellaneous	
M–1	RM07–16–000	Filing Via the Internet.
	Gas	
G–1	PL07–2–000	Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity.
G–2	Omitted.	
G–3	IN07–7–001, IN07–18–001	Nornew Energy Supply, Inc.
G–4	CP05–150–005, CP05–150–006	Hardy Storage Company, LLC.
G–5	Omitted.	
G–6	RP06–408–000	Reliant Energy Service, Inc. and CenterPoint Energy Resources Corp. v. Kern River Gas Transmission Company.
G–7	RP07–139–000, RP07–139–001	Algonquin Gas Transmission, LLC.
G–8	RP07–149–000	Gulf South Pipeline Company.
G–9	OR07–10–000	Calnev Pipe Line LLC.
G–10	OR07–5–000	ExxonMobil Oil Corporation v. Calnev Pipe Line, L.L.C., Kinder Morgan GP Inc. and Kinder Morgan Inc.
	OR07–7–000, OR07–7–001	Tesoro Refining and Marketing Company v. Calnev Pipe Line, L.L.C.
	Hydro	
H–1	P–2602–005, P–2602–007	Duke Energy Carolinas, LLC.
H–2	P–12685–000	Don L. Hansen.
H–3	P–2426–204	California Department of Water Resources and the City of Los Angeles.
	Certificates	
C–1	CP07–98–000	Southern Natural Gas Company.
C–2	CP07–101–000	National Fuel Gas Supply Corporation.
C–3	CP06–335–002, CP96–810–008	Maritimes & Northeast Pipeline, L.L.C.

A free webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to: *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated

overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13850 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–517–000]

West Texas Gas, Inc.; Notice of Gas Cost Reconciliation Report

July 9, 2007.

Take notice that on July 2, 2007, West Texas Gas, Inc. (WTG) tendered for filing its annual purchased gas cost reconciliation for the period ending April 30, 2007.

Under Section 19, any difference between WTG's actual purchased gas costs and its spot market-based pricing mechanism is refunded or surcharged to its two jurisdictional customers annually, with interest. WTG states that the report indicates that WTG under-collected its actual costs by $98,098 during the reporting period.

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 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.

Intervention and Protest Date: 5 p.m. Eastern Time July 16, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13854 Filed 7–17–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2007–0559, FRL–8440–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Renewal of Information Collection Request for the Implementation of the Oil Pollution Act Facility Response Plan Requirements; EPA ICR Number 1630.09; OMB Control Number 2050–0135

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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 November 30, 2007. 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 September 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2007–0559, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* EPA Docket Center (EPA/DC), Docket ID No. EPA–HQ–SFUND–2007–0559, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions. Direct your comments to Docket ID No. EPA–HQ–SFUND–2007–0559. 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.* 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 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: Lori Lee, Office of Solid Waste and Emergency Response, Office of Emergency Management, Environmental Protection Agency, Mail Code: 5104A, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8006; fax number: 202–564–2501; e-mail address: *lee.lori@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–SFUND–2007–0559 which is available for online viewing at *www.regulations.gov*, or in person viewing at the Office of Emergency Prevention, Preparedness, and Response Oil Program Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Emergency Prevention, Preparedness, and Response Oil

Program Docket is 202–566–2426. 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 public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the 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 a subset of facilities that are required to have a spill prevention, control, and countermeasure (SPCC) plan under the Oil Pollution Prevention regulation (40 CFR part 112) that, because of their location, could reasonably be expected to cause ''substantial harm'' to the environment by discharging oil into or on the navigable waters or adjoining shorelines. Owners and operators of these facilities must prepare and submit to EPA a facility response plan. The criteria for a ''substantial harm'' facility, which are detailed in 40 CFR 112.20(b)(1) and (f), include:

- Oil transfers over water and a total oil storage capacity greater than or equal to 42,000 gallons; or
- Total oil storage capacity greater than or equal to one million gallons and either inadequate secondary containment, proximity to fish and wildlife or sensitive environments, proximity to public drinking water intakes, or oil discharge greater than or equal 10,000 gallons in the last five years; or
- Other factors considered by the Regional Administrator.

The specific private industry sectors subject to this action include, but are not limited to: (1) Petroleum Bulk Stations and Terminals (NAICS 42271); (2) Electric Power Generation, Transmission, and Distribution (NAICS 2211); (3) Heating Oil Dealers (NAICS 3112); (4) Transportation, Pipelines, and Marinas (NAICS 482–486/488112–48819/4883/48849/492/71393); (5) Grain and Oilseed Milling (NAICS 3112); (6) Manufacturing (NAICS 31–33); (7) Warehousing and Storage (NAICS 493); (8) Crude Petroleum and Natural Gas Extraction (211111); and (9) Other Commercial Facilities (miscellaneous).

Title: Renewal of Information Collection Request for the Implementation of the Oil Pollution Act Facility Response Plan Requirements (40 CFR Part 112).

ICR Numbers: EPA ICR No. 1630.09, OMB Control No. 2050–0135.

ICR Status: This ICR is currently scheduled to expire on November 30, 2007.

Abstract: The authority for EPA's facility response plan requirements is derived from section 311 of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR 112.20 and 112.21. All facility response plan (FRP) reporting and recordkeeping activities are mandatory. No amendments were made to the FRP regulation since submission of the current ICR approval (November 30, 2004). While EPA recently finalized amendments to the SPCC rule (71 FR 77266 (December 26, 2006) and 72 FR 27443 (May 16, 2007)) these amendments are not expected to impact the number of facilities subject to FRP requirements, nor are they expected to substantively affect the burden of complying with FRP requirement.

Purpose of Data Collection

A facility-specific response plan will help an owner or operator identify the necessary resources to respond to an oil spill in a timely manner. If implemented effectively, the FRP will reduce the impact and severity of oil spills and may prevent spills because of the identification of risks at the facility. Although the facility owner or operator is the primary data user, EPA also uses the data in certain situations to ensure that facilities comply with the regulation and to help allocate response resources. State and local governments may also use the data to assist in local emergency preparedness planning efforts.

EPA reviews all submitted FRPs and must approve FRPs for those facilities whose discharges may cause ''significant and substantial harm'' to the environment. EPA approval is needed in order to ensure that facilities believed to pose the highest risk have planned for adequate resources and procedures to respond to a spill. (See 40 CFR 112.20(f)(3) for further information about the criteria for ''significant and substantial harm.'')

Response Plan Certification. Under section 112.20(e), the owner or operator of a facility subject to SPCC requirements in 40 CFR part 112 but that does not meet the ''substantial harm'' criteria in section 112.20(f)(1) must complete and maintain at the facility the certification form contained in Appendix C to part 112.

Response Plan Preparation. Under section 112.20(a) or (b), the owner or operator of a facility that meets the ''substantial harm'' criteria in section 112.20(f)(1) must prepare and submit to the EPA Regional Administrator a facility response plan (FRP) following section 112.20(h). Such a facility may be a newly constructed facility or may be an existing facility that meets paragraph (f)(1) as a result of a planned change (paragraph (a)(2)(iii)) or an unplanned

change (paragraph (a)(2)(iv)) in facility characteristics. Under paragraph (c), the owner or operator may be required to amend the FRP.

Response Plan Maintenance. Under section 112.20(g), the owner or operator must periodically review the FRP to ensure consistency with the National Oil and Hazardous Substances Pollution Contingency Plan and Area Contingency Plans. Under section 112.20(d), the facility owner or operator must revise and resubmit revised portions of the FRP after material changes at the facility. FRP changes that do not result in a material change in response capabilities shall be provided to the Regional Administrator as they occur. Periodic drills and exercises are required to test the effectiveness of the FRP.

Recordkeeping. Under section 112.20(e), an owner or operator who determines that the FRP requirements do not apply must certify and retain a record of this determination. An owner or operator who is subject to the requirements must keep the FRP at the facility (section 112.20(a)), keep updates to the FRP (section 112.20(d)(1) and (2)), and log activities such as discharge prevention meetings, response training, and drills and exercises (section 112.20(h)(8)(iv)).

Consultations

For the current ICR (approved on November 30, 2004), EPA consulted with nine owners or operators of FRP facilities to assess the reasonableness of the hour and dollar burden estimates. Interviews revealed that the burden was comparable to the burden estimate that EPA had used in earlier ICR (as recent as May 2, 2001), which had relied on existing industry-related sources of burden and cost information, combined with input from EPA regional staff and best professional judgment. Further, the 2004 consultations did not identify significant sources of burden not captured in earlier renewal ICR (such as unaccounted for recordkeeping costs or other time-consuming tasks associated with FRP regulatory compliance). For this renewal, EPA again contacted nine regulated facilities (of different sizes and types) to verify the reasonableness of its hour and dollar burden estimates. EPA recognizes that the information from the interviews with nine individuals are not statistically representative of the burden experienced by all FRP facilities. Nevertheless, the results of the consultations suggest that EPA's burden estimates adequately capture industry practices. This renewal ICR, therefore, does not change the hour burden estimates used in the 2004 renewal ICR. The burden cost is adjusted to reflect increases in wage rates.

Number of Regulated Facilities

Since approval of the current ICR (November 30, 2004), EPA has collected detailed information on the facilities that have prepared and submitted an FRP to EPA. EPA compiled a national inventory of FRP facilities from data maintained by each of EPA's ten regional offices. The inventory was updated in April 2007 and comprises 4,132 plan holders. While prior ICR were developed based on an assumed share of the estimated number of SPCC facilities, this renewal instead uses the more detailed inventory as baseline for the number of FRP facilities affected by this ICR.

Burden Statement: A national inventory of FRP plan holders compiled by EPA in the Spring of 2007 indicate that owners and operators of 4,132 facilities had developed and are maintaining FRPs. Information available about individual plan holders, however, shows that 161 FRP facilities were owned and operated by the federal government (e.g., military installations). These federal facilities are excluded from the burden estimate analysis, given that they are not considered ''persons'' under the Paperwork Reduction Act. Consequently, the burden analysis uses 3,971 as the number of existing facilities that are maintaining an FRP as of 2007.

The number of active FRP facilities represents approximately 0.7 percent of the 596,186 facilities EPA estimates are currently subject to 40 CFR part 112. EPA estimates that approximately 296 new FRP-regulated facilities will initiate operations during the three-year period covered by this ICR and will develop FRPs. The number of plan holders represents approximately 0.5 percent of the 18,541 new facilities EPA estimates will become subject to 40 CFR part 112 each year. Conversely, another 18,445 facilities (99.5 percent of the 18,541 facilities subject to 40 CFR part 112) will complete the certification form indicating that they are not ''substantial harm'' facilities.

The hour burden and dollar cost estimates capture the variety of facility types and sizes among those that are subject to the FRP requirements. Because the costs of compliance activities associated with FRPs depend on the physical and operating characteristics of the facility, EPA developed the burden estimate based on six categories of facilities defined by their total storage capacity and operational characteristics. Total storage capacity categories were defined as: (1) Facilities with a total storage capacity greater than 42,000 gallons but less than or equal to one million gallons; and (2) facilities with a total storage capacity greater than one million gallons. While facilities with oil storage capacity between 1,320 gallons and 42,000 gallons may be subject to 40 CFR part 112, they are not subject to FRP requirements and need only to maintain the certification form. The FRP facility type categories were based on how oil is used at a facility. Facilities were classified as using oil in one of three ways: Storage/Consumption facilities that consume oil as a raw material or end-use product; Storage/Distribution facilities market and distribute oil as a wholesale or retail product; and Production facilities pump oil from the ground as part of exploration or production activities. While rule requirements do not vary between these three types of facilities, they are assumed to have different configuration, equipment, and operational characteristics that may affect the FRP burden.

The total hour burden to the entire regulated community over the three-year period covered by the renewal ICR is approximately 1,307,230 hours, or 435,743 hours annually. Exhibit 1 displays the average annual respondent burden for each burden category; certification, preparation, maintenance. The average public reporting and recordkeeping burdens to a newly regulated facility where the owners or operators are not required to prepare FRPs (i.e., facilities where the owner or operators certify that they do not meet the ''substantial harm'' criteria) are estimated at 0.4 hours per year. The average annual reporting and recordkeeping burdens to a newly regulated facility where the owners or operators are required to prepare FRPs (i.e., first-year costs for plan development) are estimated at 240.1 hours per year. The average annual reporting and recordkeeping burdens to a facility where the owners or operators maintain FRPs (i.e., subsequent year costs for annual plan maintenance) are estimated at 99.7 hours.

EXHIBIT 1.—RECORDKEEPING AND REPORTING BURDEN FOR AFFECTED FACILITIES

	Total average annual burden (hours)	Number of facilities per year (respondents)	Average annual burden per respondent (hours)
Certification	7,372	18,445	0.4
Preparation	23,057	96	240.1
Maintenance	405,314	4,064	99.7

Capital costs are incurred by respondents that must prepare an FRP for the first time. The total capital cost to comply with the FRP information collection requirements is $89,098 over the three-year period covered by the renewal ICR, or $29,699 per year. This includes one-time startup costs such as telephone calls, postage, photocopying, and other costs related to the preparation and submission of an FRP. O&M costs are considered to be negligible since it is expected that facility owners and operators will incur no additional costs due to hard copy storage of their FRPs (e.g., placed on existing shelves or in existing file cabinets) or electronic storage (e.g., saved on a facility(s existing computer hard drive or network).

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.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 199,250 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's current inventory of facilities that have submitted and are maintaining an FRP as per 40 CFR part 112. While there have been no changes in the regulation that affected per facility regulatory burden, the number of facilities currently subject to FRP requirements is lower than had been estimated for the current ICR, resulting in a lower aggregate burden.

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: July 12, 2007.

Deborah Y. Dietrich,

Director, Office of Emergency Management, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response.

[FR Doc. E7–13898 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FR–8440–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Citizens Against Ruining the Environment (''Plaintiff'') in the U.S. District Court for the Northern District of Illinois: *Citizens Against Ruining the Environment* v. *Johnson,* No. 06–6915 (N.D. IL). Plaintiff filed a deadline suit to compel the Administrator to respond to an administrative petition dated November 23, 2005 seeking EPA's objection to CAA Title V operating permits for two (2) electrical generating stations in the State of Illinois known as the Will County Generating Station and the Joliet Generating Station. Under the terms of the proposed consent decree, EPA has agreed to respond to the Plaintiff(s petition within five (5) business days after the entry of this decree, and the Plaintiff has agreed to dismiss the suit with prejudice. In addition, EPA has agreed to pay the Plaintiff a specified amount in settlement for attorneys' fees and litigation costs in this matter. EPA responded to the petition on June 14, 2007.

DATES: Written comments on the proposed consent decree must be received by August 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–0550, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to: *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Paul Versace, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–0219; fax number (202) 564–5603; e-mail address: *versace.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking a response to an administrative petition dated November 23, 2005 to object to CAA Title V permits for two (2) electrical

generating stations in the State of Illinois known as the Will County Generating Station and the Joliet Generating Station. Under the proposed consent decree, EPA has agreed to respond to the Plaintiff's petition within five (5) business days after the entry of this decree and to pay a specified amount in settlement of the Plaintiff's claims for attorneys' fees and other litigation costs. The consent decree becomes an order of the Court upon entry, and, consistent with the terms of the consent decree, the case shall be dismissed with prejudice after EPA takes final action on Plaintiff's petition and resolves Plaintiff's claims for litigation costs. On June 14, 2007, EPA took final action on Plaintiff's CAA Title V petition regarding permits for two (2) electrical generating stations in the State of Illinois known as the Will County Generating Station and the Joliet Generating Station.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2007–0550) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at: *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail ''e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

Dated: July 11, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–13908 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8440–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by People of the State of Illinois *ex rel.* Lisa Madigan, Attorney General of the State of Illinois (''Plaintiff'') in the U.S. District Court for the Northern District of Illinois Eastern Division: *People of the State of Illinois ex rel. Lisa Madigan* v. *Johnson*, No. 1:06cv06909 (N.D. IL). Plaintiff filed a deadline suit to compel the Administrator to respond to an administrative petition dated November 28, 2005 seeking EPA's objection to CAA Title V operating permits proposed by the Illinois Environmental Protection Agency for five (5) electrical generating stations in the State of Illinois known as the Fisk Generating Station, the Crawford Generating Station, the Joliet Generating Station, the Will County Generating Station and the Powerton Generating Station. Under the terms of the proposed consent decree, EPA has

agreed to respond to Plaintiff's petition within five (5) business days after the entry of this decree, and the Plaintiff has agreed to dismiss the suit with prejudice. In addition, EPA has agreed to pay Plaintiff a specified amount in settlement for attorneys' fees and litigation costs in this matter. EPA responded to the petition on June 20, 2007.

DATES: Written comments on the proposed consent decree must be received by August 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–0552, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Paul Versace, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–0219; fax number (202) 564–5603; e-mail address: *versace.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking a response to an administrative petition dated November 28, 2005 to object to CAA Title V permits proposed by the Illinois Environmental Protection Agency for five (5) electrical generating stations in the State of Illinois known as the Fisk Generating Station, the Crawford Generating Station, the Joliet Generating Station, the Will County Generating Station and the Powerton Generating Station. Under the proposed consent decree, EPA has agreed to respond to the Plaintiff's petition within five (5) business days after the entry of this decree and to pay a specified amount in settlement of Plaintiff's claims for attorneys' fees and other litigation costs. The consent decree becomes an order of the Court upon entry, and, consistent with the terms of the consent decree, the case shall be dismissed with prejudice after EPA takes final action on Plaintiff's petition and resolves Plaintiff's claims for litigation costs. On June 20, 2007, EPA took final action on Plaintiffs' CAA Title V petition regarding permits for five (5) electrical generating stations in the State of Illinois known as the Fisk Generating Station, the Crawford Generating Station, the Joliet Generating Station, the Will County Generating Station and the Powerton Generating Station.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2007–0552) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov*. You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail)

system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 11, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–13901 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8440–9]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by American Lung Association of Metropolitan Chicago, Citizens Against Ruining the Environment, Environment Illinois, Environmental Law & Policy Center, Little Village Environmental Justice Organization, and the Sierra Club (collectively ''Plaintiffs'') in the U.S. District Court for the Northern District of Illinois: *American Lung Association of Metropolitan Chicago, et al.* v. *Johnson*, No. 06–6933 (N.D. IL). Plaintiffs filed a deadline suit to compel the Administrator to respond to an administrative petition dated November 25, 2005 seeking EPA's objection to CAA Title V operating permits for two (2) electrical generating stations in the State of Illinois known as the Fisk Generating Station and the Crawford Generating Station. Under the terms of the proposed consent decree, EPA has agreed to respond to the Plaintiffs' petition within five (5) business days after the entry of this decree, and the Plaintiffs have agreed to dismiss the suit with prejudice. In addition, EPA has agreed to pay the Plaintiffs a specified amount in settlement for attorneys' fees and litigation cost in this matter. EPA responded to the petition on June 14, 2007.

DATES: Written comments on the proposed consent decree must be received by August 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–0551, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Paul Versace, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–0219; fax number (202) 564–5603; e-mail address: *versace.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking a response to an administrative petition dated November 25, 2005 to object to CAA Title V permits for two (2) electrical generating stations in the State of Illinois known as the Fisk Generating Station and the Crawford Generating Station. Under the proposed consent decree, EPA has agreed to respond to the Plaintiffs' petition within five (5) business days after the entry of this decree and to pay a specified amount in settlement of the Plaintiffs' claims for attorneys' fees and other litigation costs. The consent decree becomes an order of the Court upon entry, and, consistent with the terms of the consent decree, the case shall be dismissed with prejudice after EPA takes final action on Plaintiffs' petition and resolves Plaintiffs' claims for litigation costs. On June 14, 2007, EPA took final action on the Plaintiffs' CAA Title V petition regarding permits for two (2) electrical generating stations in the State of Illinois known as the Fisk Generating Station and the Crawford Generating Station.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2007–0551) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket

materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 11, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–13902 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8441–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sierra Club in the U.S. District Court for the District of Columbia: *Sierra Club* v. *Johnson,* No. 1:07CV00414 (RWR) (D. D.C.). On February 28, 2007, Sierra Club filed a deadline suit to compel the Administrator to respond to a petition dated June 12, 2006, seeking EPA's objection to a CAA Title V operating permit issued by the Kentucky Division of Air Quality to the Hugh L. Spurlock Station, operated by the East Kentucky Power Cooperative, Inc. Under the terms of the proposed consent decree, EPA has agreed to respond to Sierra Club's petition by August 31, 2007. The consent decree allows Sierra Club sixty (60) days following entry of the decree by the Court to file a motion for costs of litigation (including attorneys' fees).

DATES: Written comments on the proposed consent decree must be received by August 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–0598, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kristi Smith, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–3068; fax number: (202) 564–5603; e-mail address: *smith.kristi@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

On June 12, 2006, Sierra Club submitted a petition to the Administrator of the Environmental Protection Agency pursuant to CAA section 505(b)(2), requesting that he object to issuance of a Title V operating permit by the Kentucky Division of Air Quality to the Hugh L. Spurlock Station, operated by the East Kentucky Power Cooperative, Inc. Under the terms of the proposed consent decree, EPA shall grant or deny Sierra Club's petition no later than August 31, 2007. The consent decree allows Sierra Club sixty (60) days following entry of the decree by the Court to file a motion for costs of litigation (including attorneys' fees). The consent decree becomes an order of the Court upon entry, and, consistent with the terms of the consent decree, the case shall be dismissed with prejudice after EPA has fulfilled its obligation and Sierra Club's claims for litigation costs have been resolved.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2007–0598) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov*. You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 11, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–13903 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIROMENTAL PROTECTION AGENCY

[FRL–8441–3]

Clean Air Act Operating Permit Program; Petition to Object to Title V Permit for Reliant Portland Generating Station, Upper Mount Bethel Township, Northampton County, PA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: Pursuant to section 505(b)(2) of the Clean Air Act (CAA) and 40 CFR 70.8(d), the EPA Administrator signed an order dated June 20, 2007, denying a petition to object to a state operating permit proposed to be issued by the Pennsylvania Department of Environmental Protection (PADEP) to Reliant Energy Mid-Atlantic Power Holdings, LLC for its Portland Generating Station in Northampton County, Pennsylvania. This order constitutes final action on the petition filed by the New Jersey Department of Environmental Protection (NJDEP), dated July 21, 2006, requesting that the Administrator object to the issuance of the proposed title V permit. Pursuant to section 505(b)(2) of the CAA, any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the CAA.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region III, Air Protection Division (APD), 1650 Arch St., Philadelphia, Pennsylvania 19103. The final order is also available electronically at the following Web site: *http://www.epa.gov/region07/programs/artd/air/title5/petitionb/petitiondb.htm*.

FOR FURTHER INFORMATION CONTACT: Dave Campbell, Air Protection Division, EPA Region III; telephone (215) 814–2196, or by e-mail at c*ampbell.dave@epa.gov*.

SUPPLEMENTARY INFORMATION: The Clean Air Act (CAA) affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to a state operating permit if EPA has not done so. Petitions must be based only on objections raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or that the grounds for objection or other issue arose after the comment period.

EPA received a petition from the New Jersey Department of Environmental Protection (NJDEP), dated July 21, 2006, requesting that EPA object to the issuance of the proposed title V permit for the Reliant Portland Generating Station because, (1) the plant was modified in violation of the Prevention of Significant Deterioration (PSD) requirements of the Clean Air Act but had not installed the Best Available Control Technology (BACT); (2) modifications increased the hourly emission rate at the plant, triggering unnamed New Source Performance Standards (NSPS); and (3) the permit must contain maximum hourly heat input limits for the boilers in order to prevent NAAQS exceedances, avoid triggering NSPS, and to assure compliance with limits derived from the Pennsylvania State Implementation Plan (SIP). The order explains the reasons behind EPA's decision to deny NJDEP's petition for objection on all grounds.

Dated: July 9, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–13896 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0608; FRL–8440–5]

Board of Scientific Counselors Executive Committee Meeting—August 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting (a teleconference call) will be held on Monday, August 6, 2007, from 10 a.m. to 1 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—a meeting room will not be used. Members of the public may obtain the call-in number and access code for the call from Lorelei Kowalski, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0608, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: ORD.Docket@epa.gov, Attention Docket ID No. EPA–HQ–ORD–2007–0608.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0608.
- *Mail:* Send comments by mail to: Board of Scientific Counselors Executive Committee Meeting—August 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0608.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC., Attention Docket ID No. EPA–HQ–ORD–2007–0608. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0608. 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.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors Executive Committee Meeting—August 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Drop 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1300 Pennsylvania Ave., NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to vetting available draft subcommittee reports. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov.* To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 10, 2007.

Mary Ellen Radzikowski,

Acting Director, Office of Science Policy.

[FR Doc. E7–13895 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0137; FRL–8140–1]

Pesticide Program Dialogue Committee: Registration Review Implementation Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Pesticide Program Dialogue Committee (PPDC):

Registration Review Implementation Work Group will hold a public meeting on July 24, 2007. An agenda for this meeting will be developed and posted on EPA's Web site. The Registration Review Implementation Work Group will review initial registration review dockets for antimicrobial and biopesticide cases, and may make recommendations to improve future dockets.

DATES: The Registration Review Work Group meeting will be held on July 24, 2007 from 10 a.m. to 4 p.m.. Future meetings will be announced on the work group's Web sites (see: Active Workgroups menu at: *http://www.epa.gov/oppfead1/cb/ppdc/*).

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will all be held at EPA's offices at 2777 South Crystal Dr., First Floor Conference Center, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; fax number: (703) 308–7090; e-mail address: *johnson.amaris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0137. Publicly accessible docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal D. Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. Background

The Office of Pesticide Programs is entrusted with the responsibility of ensuring the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92-463, in September 1995 for a two-year term and has been renewed every two years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; federal/state/local/ and tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC charter are filed with appropriate committees of Congress, the Library of Congress, and are available upon request.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 5, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division

[FR Doc. E7–13629 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0540; FRL–8139–3]

Bromonitrostyrene Risk Assessment; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment, and related documents for the pesticide bromonitrostyrene (BNS), and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for BNS through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 17, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0540, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0540. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov Web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

ShaRon Carlisle, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6427; fax number: (703) 308–8481; e-mail address:*carlisle.sharon@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for BNS, and soliciting public comment on risk management ideas or proposals. BNS is currently registered as an antimicrobial agent for use in the manufacture of a variety of materials as a materials preservative in industrial lubricants, polymer emulsions, aqueous emulsions, cutting oils, paints, adhesives, and fuel oil. EPA developed the risk assessment and risk characterization for BNS through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The primary use sites for BNS are use as a materials preservative in cleaners, caulks, inks, paints, paper, and fuel oil, and as an industrial fungicide for metal working fluids, water cooling towers and pulp and paper mills. EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for BNS. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as a 90–day oral toxicity study in rats, a carcinogenicity study in rats, a biodegradation study, non-target plant phytotoxicity studies, and monitoring or Tier II modeling of once-through cooling tower effluents could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for BNS. There are risks of concern associated with the use of BNS from the once through cooling tower use. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to BNS, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819)(FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For BNS, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment, few complex issues, and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for BNS. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review was completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests, antimicrobials, Bromonitrostyrene.

Dated: July 9, 2007.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E7–13804 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0414; FRL–8141–7]

2-Octyl-3 (2H)-isothiazolone (Octhilinone) Risk Assessment; Notice of Availability and Risk Reduction Options; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment(s), and related documents for the pesticide 2-octyl-3 (2H)-isothiazolone (also known as octhilinone or OIT), and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for octhilinone through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before August 17, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0414, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0414. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov Web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket

materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: K. Avivah Jakob, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number: (703) 308–8481; e-mail address: *jakob.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is EPA taking?

EPA is reopening the availability of the Agency's preliminary human health and ecological risk assessments, initially issued for comment through a **Federal Register** notice published on June 13, 2007 (72 FR 32649) (FRL–8136–2). EPA developed the risk assessments and risk characterization for octhilinone through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Octhilinone is used as a material preservative, as an industrial mildewcide for cooling tower and air washer water systems, and as a wood preservative.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for octhilinone. Risks of concern associated with use of octhilinone are: Occupational handler exposure and risks of concern resulting from plastics and vinyl preservation (via liquid pump and liquid pour), paint preservation (via liquid pump and liquid pour), wood preservation (via mixing, loading, high pressure/high volume spraying), professional painter application (via airless sprayer) and use of treated paint; residential application and post-application risks of concern resulting from treated paint, treated carpet, treated vinyl, treated clothing and treated mattresses; and residential aggregate exposure and risks of concern resulting from treated fabrics, clothing and polymers. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For octhilinone, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for octhilinone. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.After considering comments received, EPA will develop and issue the octhilinone RED.

III. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, antimicrobials, octhilinone, OIT.

Dated: July 11, 2007.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E7–13805 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8441–2]

Clean Water Act Section 303(d): Availability of 29 Total Maximum Daily Loads (TMDL) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record files for 29 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Red, Sabine, and Pearl River Basins of Louisiana, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to a court order in the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.*, No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before September 4, 2007.

ADDRESSES: Comments on the 29 TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or e-mail: *smith.diane@epa.gov.* For further information, contact Diane Smith at (214) 665–2145 or fax 214.665.7373. The administrative record files for the 29 TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/earth1r6/6wq/npdes/tmdl/index.htm*, or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA proposes these 29 TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comment on 29 TMDLs

By this notice EPA is seeking comment on the following 29 TMDLs for waters located within Louisiana basins:

Subsegment	Waterbody name	Pollutant
090101	Pearl River—MS State Line to Pearl River Navigation Canal	Mercury.
090102	East Pearl River—Holmes Bayou to I–10	Mercury.
090103	East Pearl River—From I–10 to Lake Borgne (estuarine)	Mercury.
090105	Pearl River Navigation Canal—From Pools Bluff to Lock No. 3	Mercury.
090106	Holmes Bayou—From the Pearl River to the West Pearl River (scenic)	Mercury.
090107	Pearl River—From Pearl River Navigation Canal to Holmes Bayou	Mercury.
090201	West Pearl River—From Headwaters to confluence with Holmes Bayou (scenic)	Mercury.
090202–5126	Morgan River—From Porters River to its confluence with Pearl River (scenic)	Mercury.
090203	Lower Bogue Chitto—From River Navigation Canal to Wilsons Slough	Mercury.
090204	Pearl River Navigation Canal—Below Lock No. 3	Mercury.
090205	Wilson Slough—Bogue Chitto to West Pearl River	Mercury.
090206	Bradley Slough—Bogue Chitto to West Pearl River	Mercury.
090207	Middle Pearl River and West Middle Pearl River—From West Pearl River to Little Lake	Mercury.
090207–5112	Morgan Bayou—Headwaters near I–10 to confluence with Middle River	Mercury.
090501	Bogue Chitto River—From MS State Line to Pearl River Navigation Canal (scenic)	Mercury.
100401–0556575	Ivan Lake	Mercury.
100703	Black Lake and Clear Lake	Mercury.
100705	Kepler Lake	Mercury.
100709	Grand Bayou—Headwaters to Black Lake Bayou	Mercury.
100709–001	Grand Bayou Reservoir	Mercury.
100803	Saline Bayou—From Saline Lake to Red River	Mercury.
101302	Iatt Lake	Mercury.
101501	Big Saline Bayou—Catahoula Lake to Saline Lake	Mercury.
101502	Saline Lake	Mercury.
101504	Saline Bayou—Larto Lake to Saline Lake (scenic)	Mercury.
101505	Larto Lake	Mercury.
101506	Big Creek—Headwaters to Saline Lake	Mercury.
110101	Toledo Bend Reservoir—TX–LA Line to Toledo Bend Dam	Mercury.
110503	Vernon Lake	Mercury.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for the 29 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: July 9, 2007.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E7–13897 Filed 7–17–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 72 FR 37221, Monday, July 9, 2007.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Tuesday, July 17, 2007, 10 a.m. (Eastern Time).

CHANGE IN THE MEETING: The meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663-4070.

Issued: July 16, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–3517 Filed 7–16–07; 12:47 pm]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 07–1327]

Additional Comment Sought on Petition of Genesis Communications International, Inc. for Declaratory Rulings Regarding Lifeline Assistance Revenues

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) seeks to refresh the record on issues raised in the Petition of Genesis Communications International, Inc. (Genesis) for Declaratory Rulings Regarding Lifeline Assistance Revenues (Petition). Because comments and reply comments on the issue were filed several years ago, the passage of time and intervening developments have rendered the records developed by those commenters stale. Moreover, some issues raised by commenters may have become moot or irrelevant in light of intervening events. For these reasons, the Bureau requests that parties refresh the record with any new information or arguments they believe to be relevant to deciding the issues still pending.

DATES: Comments are due on or before August 17, 2007. Reply comments are due on or before September 4, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Dana Bradford, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400 or TTY: 202–418–0432.

SUPPLEMENTARY INFORMATION: This is a summary of *Additional Comment Sought on Petition of Genesis Communications International, Inc. for Declaratory Rulings Regarding Lifeline Assistance Revenues,* CC Docket No. 96–45, DA 07–1327, released March 16, 2007.

1. In 2000, the Commission denied a complaint filed by Genesis against Pacific Bell (Pacific) seeking reimbursement of certain End User Common Line (EUCL) charges. Genesis then sought to recover the funds in a suit against the National Exchange Carrier Association, Inc. (NECA). Genesis and NECA subsequently agreed to stay the action pending referral to the Commission of Genesis's claim for retroactive reimbursement via its petition in the above captioned docket.

2. On November 16, 2000, Genesis filed the current Petition seeking a declaratory ruling from the Commission regarding: (1) Whether Commission certification of Genesis's eligibility was a prerequisite to obtaining reimbursement from NECA for Lifeline discounts given to eligible end users under California's Universal Lifeline Telephone Service program; and (2) whether Genesis was entitled to submit claims and receive reimbursement from NECA on a retroactive basis. The Petition was put on Public Notice for comment on March 27, 2001. In response, NECA and Genesis both asserted that, should reimbursement be warranted, the Universal Service Administrative Company (USAC) should disburse the funds.

3. Since the dispute arose, the Commission has amended the Lifeline rules, and transferred responsibility for the program's administration from NECA to USAC. The Bureau issues this Public Notice to update several issues contained in the current record, as well as any additional information that may have become relevant to the proceeding.

4. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments that are due on or before August 17, 2007 and reply comments that are due on or before September 4, 2007. Interested parties may file comments and reply comments on or before the date indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, April 6, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- *For ECFS Filers:* If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to: *ecfs@fcc.gov*, and include the following words in the body of the message, ''*get form.*'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to: *fcc504@fcc.gov,* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

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

• Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition, one copy of each pleading must be sent to each of the following:

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, *http://www.bcpiweb.com;* phone: 202–488–5300; fax: 202–488–5563; and

(2) Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5B–521, Washington, DC 20554; e-mail: *antoinette.stevens@fcc.gov;* and

(3) Dana Walton-Bradford, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5A–423, Washington, DC 20554; e-mail: *dana.walton-bradford@fcc.gov.*

5. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554, telephone: 202–488–5300, fax: 202–488–5563, or via e-mail at: *http://www.bcpiweb.com.*

6. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Jeremy D. Marcus,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. E7–13722 Filed 7–17–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 07–2426]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the re-chartering and appointment of members to the Consumer Advisory Committee (''Committee'') of the Federal Communications Commission (''Commission''). The Commission further designates the Chairperson of the Committee, and announces the date and agenda of the Committee's first meeting in calendar year 2007. A principal focus of the Committee will be the digital television transition.

DATES: The first meeting of the new Committee will take place on Friday, August 10, 2007, 9 a.m. to 4 p.m., at the Commission's Headquarters Building, Room TW-C305, 445 12th Street, SW., Washington, DC 20554.

ADDRESSES: Federal Communications Commission, 445 12th Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer & Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *scott.marshal@fcc.gov.*

SUPPLEMENTARY INFORMATION: On June 8, 2007, the Commission released document DA 07–2426, which announced the re-chartering of its Consumer Advisory Committee, announced the appointment of twenty-six (26) members to the Committee, designated the Committee's chairperson, and further announced the agenda, date and time of the Committee's first meeting in calendar year 2007.

On June 18, 2007, the Commission released document DA 07–2683, announcing the appointment of two (2) additional Committee members.

The Committee is organized under and will operate in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1988). On November 17, 2006, the Committee was renewed for another two-year term.

The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in rural areas) in proceedings before the Commission.

Each meeting of the full Committee will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection.

Functions

Digital Transition. A principal focus of the Committee will be the digital television transition as the Commission continues its efforts to assist consumers in understanding and preparing for the transition which, by law, must be completed by February 17, 2009. The Commission expects the Committee will provide specific recommendations on how best to ensure a smooth transition, as well as provide valuable insights that should further the Commission's goal of ensuring that all consumers, especially the elderly, low-income, non-English speaking consumers and people with disabilities, are aware of the transition and understand what specific steps, if any, they must take to continue watching television after the transition is complete on February 17, 2009.

Other Topics. In addition to digital television, other topics to be addressed by the Committee will include, but are not limited to, the following areas:

• Consumer protection and education (*e.g.*, cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations, such as Native Americans and persons living in rural areas).

• Access by people with disabilities (*e.g.*, telecommunications relay services, video description, closed captioning, accessible billing and access to telecommunications products and services).

• Impact upon consumers of new and emerging technologies (*e.g.*, availability of broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies).

Appointment of Chairman and Members

The Commission appointed twenty-eight (28) members to its Consumer Advisory Committee. Of this number, eleven (11) represent interests of consumers, minorities, and low income

communities; five (5) represent disabilities communities; six (6) represent the interest of state, local, and Native American interests, and, six (6) represent industry interests. The Committee's slate is designed to be representative of the Commission's many constituencies, and the diversity selected will provide a balanced point of view as required by the Federal Advisory Committee Act. All appointments are effective immediately and shall terminate November 17, 2008 or when the Committee is terminated, whichever is earlier.

The roster as appointed by Chairman Kevin J. Martin is as follows:

Ms. Debra Berlyn, representing the Digital Television Transition Coalition is hereby appointed as chairperson of the Committee.

Other members by organization and primary representative name include:

1. AARP—Jo Reed
2. Alaska State Department of Law—Lew Craig
3. Alliance for Community Media—Gloria Tristani
4. Appalachian Regional Commission—Harry L. Roesch
5. Benton Foundation—Charles Benton
6. Cablevision—Dodie Tschirch
7. Call For Action—Shirley Rooker
8. Communication Service for the Deaf—Karen Peltz Strauss
9. Communications Workers of America—Jeffrey Rechenbach
10. Consumer Action—Ken McEldowney
11. Consumer Electronics Association—Julie Kearney
12. Consumer Federation of America—Paul Schlaver
13. Consumers Union—Gene Kimmelman
14. Deaf and Hard of Hearing Consumer Advocacy Network—Claude Stout
15. Digital Television Transition Coalition—Debra Berlyn, Chairperson
16. Eastern Band of Cherokee Indians—Brandon Stephens
17. EchoStar Communications Corporation—Lori Kalani
18. Hawaii State Public Utilities Commission—John Cole
19. Hearing Loss Association of America—Janice Schacter
20. League of United Latin American Citizens—Eduardo Pena, Jr.
21. National Association of Broadcasters—John L. Sander
22. National Association of Regulatory Utility Commissioners—Nixyvette Santini
23. National Association of State Utility Consumer Advocates—Brenda Pennington
24. Northern VA Resource Center for Deaf and Hard of Hearing Persons—Cheryl Heppner
25. Parents Television Council—Dan Isett
26. Southern Growth Policies Board—Jim Clinton
27. The Seeing Eye, Inc.—Jay Stiteley
28. Verizon Communications, Inc.—Richard T. Ellis

Meeting Dates

On August 10, 2007, the Committee will meet to address matters of internal business and organization, such as the establishment of working groups, and will consider various consumer issues within the jurisdiction of the Commission including the digital television transition. Meetings are open to the public and are broadcast on the Internet in Real Audio/Real Video format with captioning at *www.fcc.gov/cgb/cac*. Members of the public may address the Committee or may send written comments to: Scott Marshall, Designated Federal Officer of the Committee, at the address indicated on the first page of this document.

The meeting site is accessible to people with disabilities. Meetings are sign language interpreted with real-time transcription and assistive listening devices available. Meeting agendas and handout materials are provided in accessible formats.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E7–13918 Filed 7–17–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 07–2761]

Telecommunications Relay Services Applications for State Certification and Renewal of Current Certification Accepted Until October 1, 2007

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces that it will accept applications for the renewal of state telecommunications relay services (TRS) program certification. The Commission's rules provide that states may apply for a renewal of their certified state TRS program one year prior to the expiration of their current certification.

DATES: TRS applications for state certifications and renewal certifications will be accepted beginning July 26, 2007, and are due on or before October 1, 2007.

ADDRESSES: You may submit TRS State Certification applications identified by [CG Document No. 03–123], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting electronic filings.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting electronic filings.
- Parties who choose to file by paper should also submit their filings on diskette. These diskettes should be submitted, along with three paper copies, to: Pam Gregory, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3–C417, Washington, DC 20554. Such submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 2003 or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode and must be clearly labeled with the state's name, filing date and captioned ''TRS Certification Application.'' The label should also include the following phrase ''Disk Copy—Not an Original''. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, electronic fillings must send diskette copies to the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–CB402, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting electronic filings and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Pam Gregory, Consumer & Government Affairs Bureau, at (202) 418–2498

(voice), (202) 418–1169 (TTY) or e-mail: *pam.gregory@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 07–2761, released June 22, 2007, in CG Docket No. 03–123. TRS State Certifications may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

• Electronic Filers: Filings may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting electronic filings.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the filing for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 03–123. Parties may also submit an electronic filing by Internet e-mail. To get filing instructions, filers should send an e-mail to: *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial mail sent by overnight mail (other than U.S. Postal Service Express mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to: 445 12th Street, SW., Washington, DC 20554.

A copy of document DA 07–2761 and any subsequently file documents in this matter will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. Document DA 07–2761 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at their Web site, *www.bcpiweb.com,* or call (800) 378–3160. TRS State Certification applications may also be found by searching on the Commission's Electronic Comment Filing System (ECFS) at: *http://www.fcc.gov.cgb/ecfs* (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send and e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

The Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act, 47 U.S.C. 225 of the Communications Act, are codified at 47 CFR 64.601–605 of the Commission's rules. Pursuant to 47 CFR 64.605(b) of the Commission's rules, a state desiring certification of its TRS program must establish that:

(1) The state program meets or exceeds all operational, technical, and functional minimum standards contained in 47 CFR 64.604 of the Commission's rules;

(2) The state program makes available adequate procedures and remedies for enforcing the state program; and

(3) Where a state program exceeds the mandatory minimum standards contained in § 64.604 of the Commission's rules, the state establishes that its program in no way conflicts with federal law.

Pursuant to 47 CFR 64.605(a) of the Commission's rules, documentation must be submitted through the state's office of the governor or other delegated executive office empowered to provide TRS. All documentation in support of the application must be submitted in narrative form, and must clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. To the maximum extent possible, states should provide historical, statistical, and illustrative evidence demonstrating compliance with the Commission's TRS rules.

Upon receipt, the Commission will give public notice of state TRS certification applications and provide notification in the **Federal Register,** pursuant to 47 CFR 64.605(a) of the Commission's rules. Interested parties will be invited to comment on each application within a period of time set by the Commission. In the event that a state's application is opposed or incomplete, the Commission may contact the responsible state officer to seek further documentation. If it appears that a state program will not meet certification requirements, the Commission will send notice to the responsible state officer prior to July 26, 2008, giving the state an opportunity to demonstrate that it has taken, or will take measures to bring its program into compliance with the Commission rules by July 26, 2008.

The Commission will act to approve the applications for certification of states that demonstrate compliance with all applicable requirements of the Commission's rules on or before July 26, 2008. Approved certifications will be in effect for five (5) years until July 26, 2013 pursuant to 47 CFR 64.605(c) of the Commission's rules.

In the event a state does not apply for certification, the Commission will contact common carriers providing voice transmission service in that state to ensure that TRS service meeting the Commission minimum operational, functional and technical standards is available within their service areas. *See* 47 U.S.C. 225(c) of the Communications Act.

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 07–3480 Filed 7–17–07; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 07–2845]

Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (the ''Commission'') debars Mr. Federowicz from the schools and libraries universal service support mechanism for a period of three years.

DATES: Debarment commences on the date Mr. Scott A. Federowicz receives the debarment letter or July 18, 2007, whichever date come first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission debarred Mr. Federowicz from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 521 and 47 CFR 0.111(a)(14). Attached is the debarment letter, Notice of Suspension and Initiation of Debarment Proceedings, DA 07–2845, which was mailed to Mr. Federowicz and released on June 27, 2007. The complete text of the notice of suspension and initiation of debarment proceedings, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC. 20554, In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

Federal Communications Commission.

Trent B. Harkrader,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

The suspension letter follows:

June 27, 2007

DA 07–2845

Via Certified Mail

Return Receipt Requested and E-Mail

Mr. Scott A. Federowicz, c/o Paul H.D. Stoughton, Conway & Stoughton, LLP, 818 Farmington Ave., West Hartford, CT 06119.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–07–IH–5171

Dear Mr. Federowicz:

The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction for mail fraud in violation of 18 U.S.C. 1341 in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to mail fraud for activities in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.[4] Specifically, you admitted that, as manager of an E-Rate first-tier subcontractor serving these school districts, you approved for payment approximately $452,203 of fictitious invoices for non-existent E-Rate work purportedly performed to upgrade the school districts' telecommunications capabilities.[5] These fictitious expenses ultimately were submitted to the Universal Service Administrative Company for reimbursement from E-Rate funds.[6]

Pursuant to section 54.521(a)(4) of the Commission's rules,[7] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[8] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[9]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[10] Such requests, however, will not ordinarily be granted.[11] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[12] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[13]

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to

[1] Any further reference in this letter to ''your conviction'' refers to your July 28, 2006 guilty plea and subsequent conviction of two counts of mail fraud. *United States* v. *Scott A. Federowicz*, Criminal Docket No. 3:06–CR–06–222 (RNC), Plea Agreement (D.Conn. filed and entered Jul. 28, 2006); *United States* v. *Scott A. Federowicz*, 3:06–CR–06–222 (RNC), Judgment (D.Conn. filed and entered May 9, 2007) (''*Federowicz Judgment*'').

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.521(a)(6).

[4] *See United States* v. *Scott A. Federowicz*, Criminal Docket No. 3:06–CR–06–222 (RNC), Information, 2–3 (D.Conn. filed and entered Jul. 28, 2006) (''*Information*''); *Federowicz Judgment* at 1.

[5] *See Information* at 3.

[6] *See http://newhaven.fbi.gov/dojpressrel/2006/nh072806a.htm* (Department of Justice Press Release dated July 28, 2006) (last accessed May 15, 2007).

[7] 47 CFR 54.521(a)(4). *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''*Second Report and Order*'').

[8] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[9] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[10] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[11] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

[12] 47 CFR 54.521(e)(5).

[13] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of

Continued

section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[18]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

Sincerely yours,
Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Calvin B. Kurimai, Esq., Assistant United States Attorney, Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. E7–13831 Filed 7–17–07; 8:45 am]

BILLING CODE 6712–01–P

activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR] 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[15] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

[16] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

[17] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[19] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[20] *Id.*

FEDERAL DEPOSIT INSURANCE CORPORATION

[6714–01]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval; comment request.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems: Certified Statement (3064–0057); (3064–0137); and Insurance Sales Consumer Protections (3064–0140).

DATES: Comments must be submitted on or before August 17, 2007.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name and number of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html*.
- *E-mail: comments@fdic.gov*. Include the name and number of the collection in the subject line of the message.
- *Mail:* Steve Hanft (202–898–3907), Clearance Officer, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Hanft (address above).

SUPPLEMENTARY INFORMATION:

1. *Title:* Certified Statement for Deposit Insurance Assessment.
OMB Number: 3064–0057.
Frequency of Response: Quarterly.
Affected Public: Insured financial institutions.
Estimated Number of Respondents: 8,681.
Estimated Time per Response: 20 minutes.
Total Annual Burden: 11,575 hours.
General Description of Collection: The FDIC collects deposit insurance assessments quarterly by means of direct debits through the Automated Clearing House network.

2. *Title:* Student Educational Employment Program.
OMB Number: 3064–0147.
Frequency of Response: On occasion.
Affected Public: Students seeking employment with the FDIC.
Estimated Number of Responses: 700.
Estimated Time per Response: 0.33 hours.
Total Annual Burden: 231 hours.
General Description of Collection: The application form used in this collection ensures that students seeking employment with FDIC as participants in either one of the two components of the Student Educational Employment Program (i.e., the Student Temporary Employment Program (STEP) or the Student Career Experience Program (SCEP)) meet the government-wide eligibility criteria established by the Office of Personnel Management as well as the internal eligibility criteria established by the FDIC. The information collected will include information on the applicant's coursework, grade point averages, and relationship to any FDIC employee.

3. *Title:* Complex Structured Finance Transactions.
OMB Number: 3064–0148.
Frequency of Response: On occasion.
Affected Public: State nonmember banks actively involved in complex structured finance transactions.
Estimated Number of Respondents: 5.
Estimated Time per Response: 25 hours.

Total Annual Burden: 125 hours.

General Description of Collection: Institutions verify and update their policies and procedures regarding complex structured finance transactions periodically to ensure that they are adequate and current.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 12th day of July, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–13877 Filed 7–17–07; 8:45 am]

BILLING CODE 6714–01–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 Office of Agreements (202–523–5793 or *http://tradeanalysis@fmc.gov*).

Agreement No.: 012006.

Title: HMM/ELJSA Suez Slot Exchange Agreement.

Parties: Hyundai Merchant Marine Co., Ltd. and Evergreen Line Joint Service Agreement.

Filing Party: Eliot J. Halperin, Esq., Manelli Denison & Selter, PLLC, 2000 M Street, NW., 7th Floor, Washington, DC 20036–3307.

Synopsis: The agreement authorizes the parties to exchange slots in the trade between the U.S. East Coast and Asia via the Suez Canal.

Agreement No.: 012007.

Title: APL/CMA CGM South East Asia and Sri Lanka/U.S. East Coast via Suez Slot Charter Agreement.

Parties: APL Co. Pte. Ltd/American President Lines, Ltd. (''APL'') and CMA CGM S.A (''CMA'').

Filing Party: Eric C. Jeffrey, Esq., Goodwin Procter, LLP, 901 New York Avenue, NW., Washington, DC 20001.

Synopsis: The agreement authorizes APL to charter space to CMA on vessels in the trade between the U.S. East Coast, and South East Asia, Sri Lanka, and the United Arab Emirates, via the Suez Canal.

By Order of the Federal Maritime Commission.

Dated: July 13, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–13930 Filed 7–17–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 019355F.
Name: Abad Air, Inc.
Address: 2685 Northwest 105th Avenue, Miami, FL 33178.
Date Revoked: June 28, 2007.
Reason: Failed to maintain a valid bond.

License Number: 002766F.
Name: ABB Intertrade Inc.
Address: 3628 Harden Blvd., Lakeland, FL 33803.
Date Revoked: June 29, 2007.
Reason: Failed to maintain a valid bond.

License Number: 001769F.
Name: Aid Forwarding Co., Inc.
Address: 2363 Carlton Pl., Ste. A, Costa Mesa, CA 92627.
Date Revoked: June 22, 2007.
Reason: Failed to maintain a valid bond.

License Number: 019319N.
Name: All American Logistics Inc.
Address: 145–32/34 157th Street, Jamaica, NY 11434.
Date Revoked: June 29, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018197F.
Name: Cargozone, Inc.
Address: 1490 Beachey Pl., Carson, CA 90746.
Date Revoked: June 20, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018772NF
Name: 1 Cross Island Plaza, Ste. 220, Rosedale, NY 11422.
Date Revoked: June 20, 2007.
Reason: Failed to maintain valid bonds.

License Number: 017783N.
Name: International Frontier Forwarders, Inc.
Address: 17101 Kuykendahl Rd., Ste. 255, Houston, TX 77068.
Date Revoked: June 22, 2007.
Reason: Failed to maintain a valid bond.

License Number: 016149F.
Name: Mid West Orient (New York) Ltd.
Address: 151 Summer Ave., Kenilworth, NJ 07033.
Date Revoked: June 21, 2007.
Reason: Failed to maintain a valid bond.

License Number: 003849F.
Name: Rock International Transport, Inc.
Address: 140 Eastern Avenue, Chelsea, MA 02150.
Date Revoked: June 30, 2007.
Reason: Failed to maintain a valid bond.

License Number: 017609N.
Name: Societe Monegasque De Transports Maritimes. (Somotransma) Dba Uni Container Line.
Address: 14 Ave., Crovetto, MC 98000 Monaco.
Date Revoked: June 30, 2007.
Reason: Failed to maintain a valid bond.

License Number: 003989N.
Name: Time Definite Services, Inc.
Address: 2551 Allan Drive, Elk Grove Village, IL 60007.
Date Revoked: June 22, 2007.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification, and Licensing.

[FR Doc. E7–13929 Filed 7–17–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License: Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Sapphire Cargo Movers, Incorporated, Sapphire Logistics Center, Multinational Access Road, Multinational Village, Paranaque City, 1700, Philippines, Officers: Ernesto S. Levanza, President (Qualifying Individual); Angelo S. Levanza, Jr., Vice President.

Larimar Envios & Cargo Express, Inc., 80 West 49th Street, Hialeah, FL 33012, Officers: Jose V. Garcia, President (Qualifying Individual); Diana A. Ruiz, Director.

Blue Ocean Shipping, Inc., 814 N. Central Avenue, Wood Dale, IL 60191, Officer: Bong Sub Kim, President (Qualifying Individual).

Infinity Trans Inc., 117 N. 3rd Street, New Hyde Park, NY 11040, Officers: Wing Fei Ng, President (Qualifying Individual), Cham Lim, Vice President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Mentfield Logistics Corp., 39 Avenue of the Commons, Suite 200, Shrewsbury, NJ 07302, Officers: Arik Yochai, CEO/President (Qualifying Individual), Silvester Colona, Secretary.

Catania CHB Inc. dba International, Inc., 10 Buckingham Lane, Bohemia, NY 11716, Officer: Joseph S. Catania, President (Qualifying Individual).

World Logistics Consulting Inc., 665 Perry Lane, Hoffman Estates, IL 60169–3128, Officer: Keun Taeg Kwon, President (Qualifying Individual).

PK Road Logistics, Inc., 18039 Crenshaw Blvd., #307, Torrance, CA 90504, Officers: Kevin Hoon Kim, CFO (Qualifying Individual), Peter Park, President.

EZ Cruise, Inc., 1209 67th Street, Baltimore, MD 21237, Officer: Akbar Omar, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

CJC Logistics LLC dba CJC Logistics, 186 Alps Road, Wayne, NJ 07470, Officers: Oliver Rosca, President (Qualifying Individual), Maria L. Rosca, CFO.

Dated: July 13, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–13939 Filed 7–17–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 17, 2007.

ADDRESSES: You may submit comments, identified by FR 2070: 7100–0171; or FR 2081a,b,c: 7100–0134, by any of the following methods:

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

All public comments are available from the Board's Web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and

instructions, the Paperwork Reduction Act Submission, supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Interagency Bank Merger Act Application

Agency form number: FR 2070

OMB control number: 7100–0171

Frequency: On occasion

Reporters: State member banks

Annual reporting hours: Nonaffiliate Transactions: 1,560; Affiliate Transactions: 234

Estimated average hours per response: Nonaffiliate Transactions: 30; Affiliate Transactions: 18

Number of respondents: Nonaffiliate Transactions: 52; Affiliate Transactions: 13

General description of report: This information collection is mandatory (12 U.S.C. 1828(c)) and is not given confidential treatment. However, applicants may request that parts of a submitted application be kept confidential. In such cases, the burden is on the applicant to justify the exemption by demonstrating that disclosure would cause substantial competitive harm or result in an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be judged on a case–by–case basis.

Abstract: The Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) (the agencies) each use this application form to collect information for bank merger proposals that require prior approval under the Bank Merger Act. Prior approval is required for every merger transaction involving affiliated or nonaffiliated institutions and must be sought from the regulatory agency of the depository institution that would survive the proposed transaction. A merger transaction may include a merger, consolidation, assumption of deposit liabilities, or certain asset–transfers between or among two or more institutions. The Federal Reserve collects this information so that it may meet its statutory obligation to evaluate the competitive, financial, managerial, future prospects, and convenience and needs aspects of each state member bank merger proposal.

Current Actions: The Federal Reserve proposes to update the General Information and Instructions to reflect passage of the Federal Deposit Insurance Reform Act of 2005, which was enacted on February 8, 2006. Provisions of this legislation directed the merger of the Bank Insurance Fund and the Savings Association Insurance Fund into a new Deposit Insurance Fund. The formation of the single insurance fund eliminated the need for two types of insurance–related applications that had been required for certain bank merger transactions. The proposed revisions relate entirely to the eliminated filing requirements. The OCC, FDIC, and the OTS will publish a separate **Federal Register** notice requesting public comment on these revisions.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Interagency Notice of Change in Control, Interagency Notice of Change in Director or Senior Executive Officer, and Interagency Biographical and Financial Report.

Agency form number: FR 2081a, FR 2081b, and FR 2081c

OMB control number: 7100–0134

Frequency: On occasion

Reporters: Financial institutions and certain of their officers and shareholders

Annual reporting hours: FR 2081a: 3,150; FR 2081b: 142; FR 2081c: 2,464

Estimated average hours per response: FR 2081a: 30; FR 2081b: 2; FR 2081c: 4

Number of respondents: FR 2081a: 105; FR 2081b: 71; FR 2081c: 616

General description of report: This information collection is mandatory (12 U.S.C. 1817(j) and 12 U.S.C. 1831(i)) and is not given confidential treatment. However, applicants may request that parts of a submitted application be kept confidential. In such cases, the burden is on the applicant to justify the exemption by demonstrating that disclosure would cause substantial competitive harm or result in an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be judged on a case–by–case basis.

Abstract: The information collected assists the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) (the agencies) in fulfilling their statutory responsibilities as supervisors. Each of these forms is used to collect information in connection with applications and notices filed prior to proposed changes in the ownership or management of banking organizations. The agencies use the information to evaluate the controlling owners, senior officers, and directors of the insured depository institutions subject to their oversight. The OCC, FDIC, and OTS will publish a separate **Federal Register** notice requesting public comment on the extension.

Board of Governors of the Federal Reserve System, July 13, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–13899 Filed 7–17–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer — Michelle Shore — Division of Research and Statistics, Board of Governors of the Federal Reserve

System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer — Alexander T. Hunt — Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Report of Selected Balance Sheet Items for Discount Window Borrowers

Agency form number: FR 2046

OMB Control number: 7100–0289

Frequency: On occasion

Reporters: Depository institutions

Annual reporting hours: 894 hours

Estimated average hours per response: Primary and Secondary Credit, 0.75 hour; Seasonal Credit, 0.25 hour

Number of respondents: 171

General description of report: This information collection is required to obtain or retain a benefit pursuant to section 10B of the Federal Reserve Act [12 U.S.C. § 347b] and is given confidential treatment [5 U.S.C. § 552(b)(4)].

Abstract: The Federal Reserve(s Regulation A, Extensions of Credit by Federal Reserve Banks, requires that the Federal Reserve review balance sheet data in determining whether to extend credit and to help ascertain whether undue use is made of such credit. Borrowers report certain balance sheet data for a period that encompasses the dates of borrowing. There are no proposed changes to the FR 2046; however, the Federal Reserve is clarifying the instructions.

Current Actions: On May 8, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 26116) requesting public comment for 60 days on the extension, without revision, of the FR 2046. The comment period for this notice expired on July 9, 2007. The Federal Reserve did not receive any comments.

2. Report title: Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted

Agency form number: FR 4006

OMB Control number: 7100–0129

Frequency: Annual

Reporters: Bank holding companies

Annual reporting hours: 180 hours

Estimated average hours per response: 5 hours

Number of respondents: 36

General description of report: This information collection is required to obtain a benefit pursuant to section 4(c)(2) of the Bank Holding Company Act [12 U.S.C. § 1843(c)(2)] and may be given confidential treatment upon request. The Federal Reserve has established a procedure for requesting an extension in its Regulation Y [12 C.F.R. § 225.22(d)(1)(ii)].

Abstract: A bank holding company that acquired voting securities or assets through foreclosure in the ordinary course of collecting a debt previously contracted may not retain ownership of those shares or assets for more than two years without prior Federal Reserve approval. There is no formal reporting form, and each request for extension must be filed at the appropriate Reserve Bank of the bank holding company. The Federal Reserve uses the information provided in the request to fulfill its statutory obligation to supervise bank holding companies.

Current Actions: On May 8, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 26116) requesting public comment for 60 days on the extension, without revision, of the FR 4006. The comment period for this notice expired on July 9, 2007. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, July 13, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–13900 Filed 7–17–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Cross County Bancshares, Inc., Wynne, Arkansas; to retain control of shares of Pinnacle Bancshares, Inc., and thereby indirectly retain control of shares of Pinnacle Bank, both of Bentonville, Arkansas.

Board of Governors of the Federal Reserve System, July 13, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13883 Filed 7–17–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the

BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. NCB Holdings, Inc.; to engage *de novo* through its subsidiary, Kingsbury Capital, L.L.C., both of Chicago, Illinois, in securities brokerage activities, pursuant to section 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13884 Filed 7–17–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1712–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1712–DR), dated July 7, 2007, and related determinations.

DATES: *Effective Date:* July 7, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 7, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, flooding, and tornadoes beginning on June 10, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Ottawa and Washington Counties for Individual Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–13906 Filed 7–17–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1712–DR]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1712–DR), dated July 7, 2007, and related determinations.

DATES: *Effective Date:* July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include Public Assistance Category B (emergency protective measures), limited to direct Federal assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 2007.

Comanche and Pottawatomie Counties for emergency protective measures [Category B], limited to direct Federal assistance under the Public Assistance program.

Ottawa and Washington Counties for emergency protective measures [Category B], limited to direct Federal assistance under the Public Assistance program (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–13909 Filed 7–17–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1709–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1709–DR), dated June 29, 2007, and related determinations.

DATES: *Effective Date:* July 10, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 29, 2007.

Archer, Bell, Burnet, Eastland, Hood, Parker, Starr, Victoria, Webb, Wichita, and Williamson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–13915 Filed 7–17–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1709–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1709–DR), dated June 29, 2007, and related determinations.

DATES: *Effective Date:* July 10, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include Public Assistance Category B (emergency protective measures), limited to direct Federal assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 29, 2007.

Cooke, Coryell, Denton, Grayson, Lampasas, and Tarrant Counties for Public Assistance Category B (emergency protective measures), limited to direct Federal assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–13916 Filed 7–17–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1709–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1709–DR), dated June 29, 2007, and related determinations.

EFFECTIVE DATE: July 6, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now June 16, 2007, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–13917 Filed 7–17–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5136–N–01]

Report of HUD Review of the Fair Housing Accessibility Requirements in the 2006 International Building Code

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice publishes a report of a review by the Department of Housing and Urban Development of certain accessibility provisions of the International Building Code, 2006

edition (2006 IBC), published by the International Code Council (ICC).[1] This report has already been posted on HUD's Web site and is unchanged in the publication of this report in today's **Federal Register**.

This report pertains to a request to the Department by the ICC to review of the accessibility provisions of the 2006 IBC to determine whether those provisions are consistent with the accessibility requirements of the Fair Housing Act (the Act), the Department's regulations implementing the 1988 Amendments to the Act (regulations), and the Fair Housing Accessibility Guidelines (the Guidelines) so that the 2006 IBC could be recognized by the Department as a safe harbor for compliance with the law.

The Department's report is intended to provide technical assistance to ICC and other interested parties. The Department is not promulgating any new technical requirements or standards by way of this report, nor is this report an endorsement of a model building code. The Department is not shifting its responsibility to enforce the accessibility requirements of the Act to state or local building code jurisdictions. Further, the Department's report is not intended to limit or invalidate any law of a State or local government that requires dwellings to be designed and constructed in a manner that affords persons with disabilities greater access than is required by the Act. The Department recognizes, however, that one important way to increase compliance with the Act's design and construction requirements is to encourage incorporation of those requirements into state and local building codes.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Special Advisor for Disability Policy, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5240, Washington, DC 20410–0500; telephone (202) 708–2333, extension 7058 (voice). (This is not a toll free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339 (TTY). This Notice is located at: *http://www.hud.gov/offices/fheo/disabilities/modelcodes/*. The Fair Housing Act, the Fair Housing Act regulations, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this Web site.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Fair Housing Act Accessibility Provisions

Title VIII of the Civil Rights Act (the Fair Housing Act) (42 U.S.C. 3601 *et seq.*) prohibits discrimination in housing and housing-related transactions based on race, color, religion, national origin, sex, familial status, and disability.[2] In its 1988 Amendments to the Fair Housing Act (the Act), Congress provided that all covered multifamily dwellings built for first occupancy after March 13, 1991 shall be designed and constructed so that: ''(1) The public and common use portions of such dwellings are readily accessible to and usable by persons with disabilities; (2) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and (3) All premises within such dwellings contain the following features of adaptive design: (a) An accessible route into and through the dwelling; (b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) Reinforcements in bathroom walls to allow later installation of grab bars; and (d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.'' These basic accessibility requirements are known as the Act's design and construction requirements.

The Act does not set forth specific technical design criteria that have to be followed in order to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the ''American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people,'' commonly referred to as ANSI A117.1, satisfies the Act's design and construction requirements for the interiors of dwelling units.

On January 23, 1989 (54 FR 3232), HUD published its final regulations implementing the Fair Housing Amendments Act of 1988. In the final regulation, HUD adopted the 1986 edition of ANSI A117.1, which was the most recent edition in effect at that time, as the appropriate edition for acceptable compliance with the Act. HUD's regulation adopting the ANSI A117.1 standard is located at 24 CFR 100.201. HUD's regulations implementing the design and construction requirements are located at 24 CFR 100.205. The Department's regulations specify that compliance with the appropriate requirements of ANSI A117.1–1986 satisfies the technical requirements of the Act relating to dwelling units. In addition, the Department's regulations reference the requirements of ANSI A117.1–1986 as a means of compliance with respect to the following features of covered multifamily dwellings: (a) Public and common use areas, (b) accessible routes, and (c) building entrances on an accessible route. Elsewhere in today's edition of the **Federal Register**, the Department is publishing a proposed rule to adopt the current edition of ANSI A117.1, which is the 2003 ICC/ANSI A117.1. The proposed rule will also stipulate that compliance with the appropriate requirements of the 1986, 1992 and 1998 editions remain sufficient to satisfy the Act's design and construction requirements.

Congress directed the Secretary of HUD to ''provide technical assistance to states and units of local government and other persons to implement [the design and construction requirements].'' On March 6, 1991 (56 FR 9472), the Department published the ''Final Fair Housing Accessibility Guidelines'' which set forth specific technical guidance for designing covered multifamily dwellings to be consistent with the Act. Section I of the Guidelines states: ''These guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.'' On June 24, 1994 (59 FR 33362), the Department published its ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines.'' The Department published a Fair Housing Act Design Manual (Design Manual) in 1996 that was reissued in 1998 with minor changes. The Design Manual is also a safe harbor for compliance with the Act. The Department also provides training and technical guidance through its Fair Housing Accessibility FIRST program: (*http:www.fairhousingfirst.org*).

The Act states that Congress did not intend the Department to *require* states and units of local government to include the Act's accessibility requirements in their state and local procedures for the review and approval of newly constructed covered multifamily dwellings. However, Congress authorized the Department to *encourage*

[1] The 2003 International Building Code© is a copyrighted work owned by the International Code Council, Inc.

[2] The Fair Housing Act refers to people with ''handicaps.'' Subsequently, in the Americans with Disabilities Act of 1990 and other legislation, Congress adopted the term ''persons with disabilities,'' or ''disability,'' which is the preferred usage. Accordingly, this Report hereinafter uses the terms ''persons with disabilities,'' ''disability,'' or ''disabled.''

inclusion of these requirements into their state and local procedures.

The Department's review of model codes falls within its mandate to provide technical assistance to state and local governments to incorporate the design and construction requirements of the Act into their laws and procedures for review and approval of newly constructed multifamily dwellings.[3] In the course of its review of model codes over the past several years, the Department has made every effort to ensure that any code or version of a code it deems a safe harbor provides at least the same level of accessibility that is required under the Act.

B. Prior HUD Reviews of Model Building Codes

In 1999 and 2004, HUD reviewed certain model building codes to determine if the accessibility provisions in these model codes met the design and construction requirements set forth in the Act, the regulations, and the Guidelines. In conjunction with these reviews, HUD reviewed the 1992 and 1998 editions of ANSI A117.1. On March 23, 2000 (65 FR 15740), HUD published its Final Report of HUD Review of Model Building Codes. In this report, HUD stated that it reviewed the 1992 CABO/ANSI A117.1 and the 1998 ICC/ANSI A117.1 and determined that these editions provide at least the same level of accessibility as the 1986 edition of ANSI A117.1. HUD reiterated this view in its February 28, 2005 (70 FR 9738), Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code, which uses the 1998 edition of ICC/ANSI A117.1. Both of these reports are available at: *http://www.hud.gov/offices/fheo/disabilities/modelcodes/*. These reports point out that because the ANSI A117.1 standard contains only technical criteria, designers and builders relying on the ANSI A117.1 standard also need to consult the Act, the Department's regulations, and the Guidelines for the scoping criteria. Scoping criteria define when a building, element or space must be accessible. Designers and builders also have the option of following one of the other HUD-recognized safe harbors which include scoping requirements.

C. Background on the International Building Code

The International Code Council was formed in an effort to bring national uniformity to building codes. Representatives of three former national model code bodies joined together to develop what are now called the International Codes, or I–Codes. The International Building Code is a major volume of the I–Codes, and contains provisions for accessibility designed to reflect the intent of the Act, the regulations, and the Guidelines.

Unlike the Act, the IBC is a model building code and not a law. It provides minimum standards for public safety, health, and welfare as they are affected by building construction. Compliance with the IBC or any other model code is not required unless adopted by a state or local jurisdiction's governing body. A jurisdiction may adopt a model building code in its entirety or with modifications.

With respect to housing, the IBC contains requirements for three different types of accessible units, which include sleeping units when such units are used as a residence. The most accessible of these three types is an ''Accessible Unit,'' which is wheelchair accessible and may be found in numerous types of buildings, and not just residential buildings. A second level of accessibility is set forth in the requirements for ''Type A'' dwelling units. Under the IBC, a percentage of ''Type A'' units must be provided containing a high level of accessibility, especially in kitchens and bathrooms, but will also have some features of adaptability. The third level of accessibility is a ''Type B'' dwelling unit, which is a unit that is intended to comply with those features of accessible and adaptable design required under the Act. Like the Act, the requirements set forth for Type B dwelling units apply to a greater number of dwelling units in a building but do not require as great a level of accessibility as Type A dwelling units, and instead provide a basic degree of accessibility.

II. HUD Review of the 2006 International Building Code

A. 2006 IBC

In July 2006, ICC contacted the Department to request that HUD review the accessibility requirements contained in the 2006 IBC to make a determination as to whether the 2006 IBC would be deemed a safe harbor for compliance with the Act's design and construction requirements. ICC provided HUD with a side-by-side matrix of the 2003 and 2006 provisions in the IBC and related code documents which are intended to address the Act's design and construction requirements. ICC also provided copies of the 2006 International Codes and the 2006 Code Commentary.

During its review of the 2003 IBC, HUD determined that there was one section of that code which could be interpreted in a manner which would be inconsistent with the requirements of the Fair Housing Act and a second section that needed further clarification. These sections related to accessible routes and site arrival points, as well as the circumstances under which it was permissible to use a vehicular route instead of an accessible pedestrian route between exterior public and common use areas. HUD advised ICC that approval of the 2003 IBC as a safe harbor was contingent upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, ''ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.''

In addition, in its Final Report on the 2003 IBC (70 FR 9738, published February 28, 2005), the Department stated: ''During the next code change cycle, if ICC seeks to have the 2006 edition of the IBC declared a safe harbor, ICC must modify the IBC to clearly state, in a manner acceptable to the Department, that an accessible pedestrian route must be provided from site arrival points to accessible building entrances of buildings required to provide Type B dwelling units, unless site impracticality applies.''

The Department's concerns with the two sections in the IBC 2003 were addressed through the following code changes that appear in the 2006 IBC (to aid the public's review, changes are shown with deletions in brackets and additions in *italic*):

1104.1 Site arrival points. Accessible routes within the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones and public

[3] The Act also makes it clear that it does not invalidate or limit any other state or federal laws that require dwellings to be designed or constructed in a manner that affords persons with disabilities greater access than that required under the Act. Further, federally funded facilities and dwelling units covered by section 504 of the Rehabilitation Act of 1973 (Section 504), the Architectural Barriers Act (ABA), or the Americans with Disabilities Act (ADA), must comply with the regulatory requirements of those laws in addition to the requirements of the Act, when applicable. For Section 504, regulatory requirements may be found at 24 CFR part 8; for the ABA, 24 CFR part 40; and for the ADA, 28 CFR parts 35 and/or 36, as applicable.

streets or sidewalks to the accessible building entrance served.

Exception: Other than in *buildings or* facilities *containing or serving Type B units* [complying with Section 1107.3], an accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing for pedestrian access.

1107.4 Accessible route. At least one accessible route shall connect accessible building or facility entrances with the primary entrance of each Accessible unit, Type A unit and Type B unit within the building or facility and with those exterior and interior spaces and facilities that serve the units.

Exceptions:

1. If *due to circumstances outside the control of the owner, either* the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal (1:12), or where physical barriers *or legal restrictions,* prevent the installation of an accessible route, a vehicular route with parking that complies with Section 1106 at each public or common use facility or building is permitted in place of the accessible route.

2. Exterior decks * * * (no change in text).

B. Missing Text—Section 1107.7.5 Design Flood Elevation

During its review of the 2006 IBC, the Department noted that text is missing from Section 1107.7.5, Design Flood Elevation, which appears in the 2003 edition. The missing text is shown below, in **bold.**

1107.7.5 Design Flood Elevation. The required number of Type A and Type B units shall not apply to a site where the required elevation of the lowest floor or the lowest horizontal structural building members of nonelevator buildings are at or above the design flood elevation resulting in:

1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm); and

2. A slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm).

Where no such arrival points are within 50 feet (15 240 mm) of the primary entrances, the closest arrival point shall be used.

The Department contacted ICC and learned that the text was erroneously left out when the 2006 IBC was published. ICC published an erratum on its Web site at: *http://www.iccsafe.org/cs/codes/errata/2006IBC.html* on January 31, 2007. Therefore, the Department is not making a finding of inconsistency, but is alerting users of the code to the missing text and the need to obtain the January 31, 2007 erratum.

C. Commentary for 2006 IBC Section 1107.4

In Fall, 2005, at ICC's request, the Department provided ICC with commentary to aid code officials in properly interpreting situations that would qualify as circumstances that are beyond the control of the owner. The Department's commentary appears below. ICC included this commentary in the 2006 IBC Commentary, Volume I, Pages 11–18 through 11–20. ICC made some editorial changes to HUD's language; however, HUD has determined that the changes do not change the substance of the commentary.

HUD Commentary for Section 1107.4 of 2006 IBC

The intent of this section is to ensure that there will be at least one accessible route that connects all accessible building and facility entrances with the entrance of all Accessible, Type A and Type B units. To qualify as an accessible route, a route must serve pedestrians (i.e., sidewalk or other walkway). People with disabilities who need the features of an Accessible, Type A or Type B dwelling or sleeping unit cannot use them if accessible routes are not provided from the entrances of buildings or facilities to the primary entrance to their dwelling or sleeping unit. There also must be accessible routes connecting accessible building or facility entrances with all interior and exterior spaces and facilities that serve such dwelling or sleeping units. For example, if a development has a recreational facility such as a community center, persons with disabilities who need the features of an Accessible, Type A or Type B unit need an accessible route from their dwelling unit to that community center.

Exception 1 is intended to provide consistency with the federal Fair Housing Act, which recognizes that, in very rare circumstances, an accessible pedestrian route between an accessible entrance to a Type B dwelling unit or an accessible entrance to a building containing Type B units and an exterior public use or common use facility may be impractical because of factors outside the control of the owner. Section 1107.4 requires an accessible pedestrian route between covered dwelling units and public use or common use areas and facilities that are required to be accessible except in rare circumstances outside the control of the owner where extreme terrain or impractical site characteristics result in a finished grade exceeding 8.33 percent or physical barriers or legal restrictions prevent the installation of an accessible pedestrian route. In these cases, Exception 1 allows access to be provided by means of a vehicular route leading from the accessible parking serving the Type B dwelling unit to the accessible parking serving the public use or common use facility. Accessible parking complying with IBC Section 1106 must be provided in each parking area. If a building containing Type B units also contains units with accessible features that are required by other code provisions or federal, state or local laws, then Exception 1 may not apply at all.

It is important to understand that compliance with the accessible design and construction requirements of the Fair Housing Act is a legal obligation applicable to *all* architects, engineers, builders, developers, and others involved in the design and construction of housing that is required to meet the accessibility requirements of the Fair Housing Act. HUD's regulations implementing the Fair Housing Act make it clear that the burden of showing the applicability of exceptions is the responsibility of those individuals and entities involved in the design and construction of such housing. In order to ensure compliance with the Fair Housing Act, architects, engineers, developers, builders, and others who use the IBC must make accessibility a priority at the planning and design phase of Group I and Group R developments, including the siting of housing and public use or common use areas. To do this, at the initial stage of site planning and design for all sites, before considering whether Exception 1 applies, persons and entities involved in the design of covered residential occupancies must have determined whether and how the exceptions at Sections 1107.7.4 and 1107.7.5 apply.

After careful site planning and design has been completed, the following factors may then be considered to determine whether it is outside the control of the owner to provide an accessible pedestrian route between a building/Type B dwelling unit entrance and a given public use or common use facility. Each such route must be analyzed individually. Exception 1 will only apply when at least one of the following factors is present:

Factors:

1. Legal restrictions outside the control of the owner. These include setback requirements, tree-save ordinances, easements, environmental restrictions, and other limitations that prevent installation of an accessible pedestrian route without violating the law.

2. Physical barriers outside the control of the owner. These include physical characteristics of the site, which are outside the control of the owner, that prevent the installation of an accessible pedestrian route.

3. On sites that qualify for the exceptions at 1107.7.4 and 1107.7.5, the presence of extreme terrain or other unusual site characteristics (e.g., flood plain, wetlands) outside the control of the owner that would require substantial additional grading to achieve a slope that will allow for an accessible pedestrian route.

In considering whether the additional grading is substantial enough to qualify for Exception 1, one must consider the extent to which the builder has elected to grade the site for other purposes unassociated with accessibility. If grading for those other purposes is extensive, then substantial additional grading would be required to provide the required accessible pedestrian route. If grading for other purposes is not extensive, and substantial additional grading is necessary to provide an accessible pedestrian route, then reliance on Exception 1 would be appropriate. Note: In determining whether the additional grading is substantial, one may not consider the grading that the builder must perform to provide accessible pedestrian routes from site arrival points to the accessible entrances of Type B dwelling or sleeping units.

If none of the factors above are present, Exception 1 does not apply. If one or more of these factors is present, then the next step in determining whether Exception 1 applies (i.e., the vehicular route is the only feasible option), is to consider alternative locations and designs for buildings, facilities, and accessible pedestrian routes connecting each accessible building/Type B dwelling unit entrance and each public use or common use area required to be accessible to ensure that there is no other way to provide the required accessible pedestrian routes. It is important to recognize that if a road sloping 8.33 percent or less can be provided, then an accessible pedestrian route would also be feasible and must be provided.

Following are some examples to illustrate the proper application of Exception 1:

Example 1: An undisturbed site has slopes of 8.33 percent or less between planned accessible entrances to Type B dwelling units and public use or common use areas and no legal restrictions or other unique characteristics preventing the construction of accessible routes. For aesthetic reasons, the developer would like to create some hills or decorative berms on the site. Because there are no extreme site conditions (severe terrain or unusual site characteristics such as floodplains), and no legal barriers that prevent installation of an accessible pedestrian route between the buildings/Type B dwelling units and any planned public use or common use facilities, the developer will still be obligated to provide accessible pedestrian routes. Exception 1 to Section 1107.4 is inapplicable in this circumstance.

Example 2: A developer plans to build several buildings with Type B units clustered in a level area of a site that has some slopes of 10 percent. A swimming pool and tennis court will be added on the two opposing sides of the site. The builder plans grading that will result in a finished grade exceeding a slope of 8.33 percent along the route between the Type B units and the swimming pool and tennis court. There are no physical barriers or legal restrictions outside the control of the owner or builder that prevent the builder from reducing the existing grade to provide an accessible pedestrian route between the Type B units and the pool and tennis courts. Therefore, the builder's building plan would not be approved under the IBC because it is within the owner's control to assure that the final grading falls below 8.33 percent and meets the slope and other requirements for an accessible pedestrian route. Accessible pedestrian routes between the Type B units, pool and tennis court must be provided.

Example 3: A multi-family housing complex is built on two sections of a large piece of property, which is divided by a wide stream running through protected wetlands. Both sections of the property are at the same relative elevation and have dwelling units with accessible routes from site arrival points. However, a combination clubhouse and swimming pool is located on one section of the property. Access to each section is provided by an existing public road outside the boundary of the site, which includes a bridge over the stream. Environmental restrictions prevent construction of any type of paved surface between the two sections within the boundary of the site. If environmental restrictions do not prevent the construction of an accessible pedestrian route such as a boardwalk through the wetlands connecting the two sections, then the accessible pedestrian route must be provided even if a road cannot be provided. If construction of any type of pedestrian route is prohibited, then a vehicular route that utilizes the public road and bridge is permitted with parking complying with IBC 1106 located at the clubhouse/swimming pool, even though the vehicular route relies on a public road instead of a road through the development.

Example 4: A narrow and deep site has a level section in the front taking up most of the site and another level section at the back that is located up a steep incline. The developer will place all of the buildings/Type B dwelling units on the front section, assuring accessible routes from site arrival points to building entrances. After considering all options for siting buildings and facilities in different locations, including the priority of accessibility, the only feasible location for a planned swimming pool is at the top of the higher section to the rear of the property. Because of the narrowness of the site and the relative elevation of the upper level at the rear of the property, it is not possible to construct an accessible pedestrian route to the pool. However, a road that slopes more than 8.33 percent can be provided. Under these circumstances, Exception 1 is applicable and access to the swimming pool on the upper level of the site may be provided by means of a vehicular route with parking complying with Section 1106 provided at the pool.

Example 5: A developer plans to build a multi-family housing complex with non-elevator buildings on a site with hilly terrain. All of these buildings will have some Type B dwelling units. The developer plans to locate tennis courts on the site. There are gentle slopes exceeding 8.33 percent with existing trees between the entrances to the Type B units and the tennis courts. There is also a tree-save ordinance in place. If the builder can grade the site to allow for an accessible pedestrian route to the tennis courts without disturbing the trees in violation of the tree-save ordinance, then an accessible pedestrian route between the Type B units and the planned location of the tennis courts must be provided. If however, the grading necessary to reduce the slope of the site near the trees to provide an accessible route would cause tree loss or damage in violation of the ordinance, then the

developer cannot grade without violating the tree-save ordinance. The developer must then consider whether the tennis courts can be relocated so they are served by an accessible pedestrian route and if yes, the tennis courts must be relocated. If the tennis courts cannot be relocated so they can be served by an accessible pedestrian route, then the developer may provide a vehicular route from the Type B dwelling units to the tennis court with parking complying with Section 1106 at the tennis courts. Note, however, that if the developer can provide an accessible pedestrian route from some of the buildings without violating the ordinance, the developer must do so, even if it is necessary to provide a vehicular route from other buildings. Additionally, if the grading and construction of the proposed vehicular route can be limited to 8.33 percent by design and would not violate the tree-save ordinance, it is likely that an additional accessible walkway adjacent to the vehicular route would also fall under the scope of work that would not violate the tree-save ordinance and, therefore, must be provided, eliminating the use of Exception 1.

D. ICC/ANSI A117.1–2003 Edition

The 2006 IBC requires buildings and facilities to be accessible in accordance with the code and ICC/ANSI A117.1–2003, Accessible Buildings and Facilities. With respect to the design and construction of Type B dwelling units, the 2006 IBC references the requirements of Chapter 10 of 2003 ICC/ANSI A117.1. The Department has reviewed the technical standards of the 2003 ICC/ANSI A117.1, particularly the technical criteria for the Type B dwelling unit in Chapter 10, to determine if these technical criteria provide at least the same level of accessibility as the 1986 edition of ANSI A117.1, which is the edition that was in effect at the time the Act was passed. Having completed this review, the Department believes that the technical criteria of the 2003 ICC/ANSI A117.1 are consistent with the Act and constitute a safe harbor when used together with the Act, HUD's regulations and the Guidelines for the scoping requirements. Similarly, the technical criteria of the 2003 ICC/ANSI A117.1 constitute a safe harbor when used together with one of the other HUD-recognized safe harbors that provide scoping requirements. ANSI A117.1 is a technical standard on how to make buildings, elements or spaces accessible. Since it lacks specific details on scoping requirements, it is necessary to consult a safe harbor document that provides scoping information.

Elsewhere in today's **Federal Register**, the Department is publishing a proposed rule proposing to adopt the 2003 ICC/ANSI A117.1 accessibility standard, and stipulating that the 1998, 1992 and 1986 editions of ANSI A117.1 continue to be available as safe harbors. In its proposed rule, the Department is seeking comments on the efficacy of continuing to recognize older editions of the ANSI standard.

E. HUD Determination of 2006 IBC as a Safe Harbor

Through this report, HUD is formally announcing that it has assessed the provisions of the 2006 edition of the International Building Code, with the January 31, 2007 erratum, that relate to facilities covered by the Act. HUD has determined that these provisions, when interpreted in accordance with relevant 2006 IBC Commentary, are consistent with the Act, HUD's regulations, and the Fair Housing Accessibility Guidelines. Therefore, the 2006 IBC, with the 2007 erratum, constitute a safe harbor for compliance with the design and construction requirements of the Act, HUD's regulations and the Guidelines, when used in accordance with HUD policy, as discussed below.

The 2006 IBC is a publication of the International Code Council. The Department is not promulgating any new regulatory, legal or technical requirements or standards by way of this report, nor is this report an endorsement of a model building code. Further, the Department is not shifting its responsibility for enforcement of the Act's accessibility requirements. The Department's report explains under what conditions the 2006 IBC will serve as a safe harbor for compliance with the design and construction requirements of the Act, and provides guidance on the Department's enforcement policies concerning the requirements of the Act and HUD-recognized safe harbor documents.

III. HUD Recognized Safe Harbors and HUD Policy

With its review of the 2006 International Building Code and the 2003 ICC/ANSI A117.1 as safe harbors, the Department currently recognizes ten safe harbors for compliance with the design and construction requirements of the Act. These documents are:

1. Fair Housing Accessibility Guidelines, March 6, 1991 (*http://www.hud.gov/offices/fheo/disabilities/fhefhag.cfm*), in conjunction with the June 28, 1994 Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines (*http://www.hud.gov/offices/fheo/disabilities/fhefhasp.cfm*);
2. Fair Housing Act Design Manual (*http://www.huduser.org/publications/destech/fairhousing.html*), published by HUD in 1996, updated in 1998;
3. ANSI A117.1–1986, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act (available from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 90112), HUD's regulations, and the Guidelines for the scoping requirements;
4. CABO/ANSI A117.1–1992, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act (*http://www.iccsafe.org*), HUD's regulations, and the Guidelines for the scoping requirements;
5. ICC/ANSI A117.1–1998, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act (*http://www.iccsafe.org*), HUD's regulations, and the Guidelines for the scoping requirements;
6. ICC/ANSI A117.1–2003, Accessible and Usable Buildings and Facilities (*http://www.iccsafe.org*), in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements;
7. 2000 ICC Code Requirements for Housing Accessibility (CRHA), published by the International Code Council (ICC), October 2000 (*http://www.iccsafe.org*) (ICC has issued an errata sheet to the CRHA);
8. 2000 International Building Code (IBC), as amended by the 2001 Supplement to the International Building Code (2001 IBC Supplement);
9. 2003 International Building Code (IBC) (*http://www.iccsafe.org*),[4] published by ICC December 2002, with one condition: Effective February 28, 2005, HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, ''ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling

[4] ICC's website includes information about the condition on the 2003 IBC at the following links: *http://www.iccsafe.org/news/nr/2005/index.html; http://www.iccsafe.org/government/news/; http://www.iccsafe.org/news/ePeriodicals/eNews/archive/ICCeNews_0305.html.*

units because site impracticality is addressed under Section 1107.7''; and

10. 2006 International Building Code (*http://www.iccsafe.org*), published by ICC, January 2006, with the 2007 erratum (to correct the text missing from Section 1107.7.5), and interpreted in accordance with relevant 2006 IBC Commentary.

HUD's March 23, 2000 Final Report addresses HUD's policy with respect to the above safe harbors. If a state or locality has adopted one of the above documents without modification to the provisions that address the Act's design and construction requirements, a building that is subject to these requirements will be deemed compliant provided the building is designed and constructed in accordance with construction documents approved during the building permitting process and the building code official does not waive, incorrectly interpret, or misapply one or more of those requirements. However, neither the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, nor that construction of a building subject to the Act was approved under such a code, changes HUD's statutory responsibility to conduct an investigation, following receipt of a complaint from an aggrieved person, to determine whether the requirements of the Act have been met. Nor does either fact prohibit the Department of Justice from investigating whether violations of the Act's design and construction provisions may have occurred. The Act provides that: ''determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title.''

HUD's investigation of an accessibility discrimination complaint under the Act typically involves a review of building permits, certificates of occupancy, and construction documents showing the design of the buildings and the site, and an on-site survey of the buildings and property. During the investigation, HUD investigators take measurements of relevant interior and exterior elements on the property. All parties to the complaint have an opportunity to present evidence concerning whether HUD has jurisdiction over the complaint, and whether the Act has been violated, as alleged. In enforcing the design and construction requirements of the Fair Housing Act, a prima facie case may be established by proving a violation of HUD's Fair Housing Accessibility Guidelines. This prima facie case may be rebutted by demonstrating compliance with a recognized, comparable, objective measure of accessibility. See Order on Secretarial Review, *U.S. Department of Housing and Urban Development and Montana Fair Housing, Inc.* v. *Brent Nelson,* HUD ALJ 05–068FH (September 21, 2006) (2006 WL 4540542).

In making a determination as to whether the design and construction requirements of the Fair Housing Act have been violated, HUD uses the Fair Housing Act, the regulations, and the Guidelines, which reference the technical standards found in ANSI A117.1–1986.

It is the Department's position that the above-named documents represent safe harbors only when used in their entirety; that is, once a specific safe harbor document has been selected, the building in question should comply with all of the provisions in that document that address the Fair Housing Act design and construction requirements to ensure the full benefit of the safe harbor. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more than one of the above safe harbor documents or from a variety of sources, and will be lost if waivers of provisions are requested and received. A designer or builder taking this approach runs the risk of building an inaccessible property. While this does not necessarily mean that failure to meet all of the respective provisions of a specific safe harbor will result in unlawful discrimination under the Fair Housing Act, designers and builders that choose to depart from the provisions of a specific safe harbor bear the burden of demonstrating that their actions result in compliance with the Act's design and construction requirements. HUD's purpose in recognizing a number of safe harbors for compliance with the Fair Housing Act's design and construction requirements is to provide a range of options that, if followed in their entirety during the design and construction phase, will result in residential buildings that comply with the design and construction requirements of the Fair Housing Act, so long as they are applied without modification or waiver.

IV. Conclusion

Through this report, the Department is formally announcing that it has assessed the provisions of the 2006 International Building Code, as corrected by the January 31, 2007 erratum, that relate to facilities covered by the Act. HUD has determined that these provisions, when interpreted in accordance with relevant 2006 IBC commentary, are consistent with the Act, HUD's regulations, and the Fair Housing Accessibility Guidelines. Therefore, the 2006 IBC, as corrected by the January 31, 2007 erratum to the IBC, if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements, constitute a safe harbor for compliance with the design and construction requirements of the Act, HUD's regulations and the Guidelines, and interpreted in accordance with relevant 2006 IBC commentary. The Department looks forward to continuing to work with members of the housing industry, persons with disabilities and advocacy organizations, model code officials, state and local governments, fair housing organizations and all other interested parties on our common goal of eliminating discrimination against persons with disabilities and eliminating structural barriers to housing choice for persons with disabilities.

Environmental Impact

This report is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this report is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. E7–13885 Filed 7–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Kanuti National Wildlife Refuge, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of extension of time to review draft revised Comprehensive Conservation Plan and Environmental Assessment for Kanuti National Wildlife Refuge.

SUMMARY: The U.S. Fish and Wildlife Service published FR Doc. E7–9281 in the **Federal Register** on May 15, 2007, announcing availability of the Draft Revised Comprehensive Conservation Plan and Environmental Assessment for Kanuti National Wildlife Refuge. The document identified a review period ending on July 16, 2007. Because summer is such a busy time in Alaska,

we are concerned that many people will not be able to meet our deadline; therefore we announce extension of the review period until September 15, 2007.

DATES: We must receive your comments on or before September 15, 2007.

ADDRESSES: To provide written comments or to request a paper copy or compact disk of the Draft CCP/EA, contact: Peter Wikoff, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS. 231, Anchorage, Alaska 99503, or at *fw7_kanuti_planning@fws.gov,* or at 907–786–3837. You may view or download a copy of the Draft CCP/EA at: *alaska.fws.gov/nwr/planning/plans.htm.* Copies of the Draft CCP/EA may be viewed at the Kanuti Refuge Office in Fairbanks, Alaska; at local libraries; and at the U.S. Fish and Wildlife Service Regional Office in Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Peter Wikoff at the above address.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the Refuge Improvement Act of 1997 (16 U.S.C. 668dd et seq.), requires each refuge to develop and implement a CCP. The U.S. Fish and Wildlife Service published FR Doc. E7–9281 in the **Federal Register** on May 15, 2007, announcing availability of the Draft Revised Comprehensive Conservation Plan and Environmental Assessment for Kanuti National Wildlife Refuge. The document identified a review period ending on July 16, 2007. Because summer is such a busy time in Alaska, we are concerned that many people would not be able to meet our deadline; therefore we announce extension of the review period until September 15, 2007.

Public availability of comments: Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 12, 2007.

Thomas O. Melius,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E7–13942 Filed 7–17–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Environmental Impact Statement on Light Goose Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final environmental impact statement on light goose management.

SUMMARY: This notice advises the public of the availability of the Final Environmental Impact Statement (FEIS) on light goose management. The FEIS follows publication of the Draft Environmental Impact Statement (DEIS) and a proposed rule, each of which had extensive public comments periods. The FEIS analyzes the potential environmental impacts of several management alternatives for addressing problems associated with overabundant light goose populations. The FEIS analyzes the direct, indirect, and cumulative impacts related to several management alternatives and provides the public with responses to comments received on the DEIS.

DATES: The public review period for the FEIS will end August 13, 2007. After that date, we will publish a Record of Decision and a final rule.

ADDRESSES: You can obtain a copy of the FEIS by writing to the Division of Migratory Bird Management, 4401 N. Fairfax Drive, MBSP–4107, Arlington, VA 22203; by e-mailing us at: *LightGooseEIS@fws.gov*; or by calling us at (703) 358–1714. We will also post the FEIS on our Web site at: *http://www.fws.gov/migratorybirds/issues/snowgse/tblcont.html.*

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, (703) 358–1714; or James Kelley (612) 713–5409.

SUPPLEMENTARY INFORMATION: On May 13, 1999, we published a notice in the **Federal Register** announcing our intent to prepare an EIS to address population expansion by light goose populations (64 FR 26268). On September 28, 2001, the Environmental Protection Agency (EPA) published a notice of availability of our DEIS on light goose management (66 FR 49668). We followed the EPA notice with our own notice of availability of the DEIS on October 5, 2001, and provided for a public comment period that ended on November 28, 2001 (66 FR 51274). On December 10, 2001, we published a notice extending the public comment period to January 25, 2002 (66 FR 63723). On July 13, 2007, EPA published a notice of availability of our FEIS (72 FR 38576).

The DEIS evaluated four management alternatives to address habitat destruction and agricultural depredations caused by light geese on various breeding, migration, and wintering areas: (1) Take no Action, or a continuation to manage light goose populations through existing wildlife management policies and practices (Alternative A); (2) Modify harvest regulation options and refuge management (Alternative B) (proposed action); (3) Implement direct agency control of light goose populations on migration and wintering areas in the U.S. (Alternative C); or (4) Seek direct light goose population control on breeding grounds in Canada (Alternative D). Our proposed alternative (Alternative B) would modify existing light goose hunting regulations to expand methods of take during normal hunting season frameworks. In addition, we proposed to create a conservation order to allow take of light geese outside of normal hunting season frameworks. We would also modify management practices on certain National Wildlife Refuges to alter the availability of food and sanctuary to light geese. On October 12, 2001, we published a proposed rule that summarized these alternatives in more detail, and outlined how we proposed to amend parts 20 and 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations (66 FR 52077).

In response to public comments that the alternatives we analyzed in the DEIS were mutually exclusive and did not represent a comprehensive management approach, we created a new alternative (Alternative E) in the FEIS that combined Alternatives B, C, and D. Alternative E would achieve light goose control using an integrated, two-phased approach involving increased harvest resulting from new regulatory tools (e.g. conservation order), changes in refuge management, and direct agency control. Phase 1 of Alternative E is identical to Alternative B, whereas phase 2 includes elements of Alternatives C and D. We envision that no more than 5 years would elapse in phase 1 before we evaluate the effectiveness of the light goose management program and assess the potential need for proceeding to phase 2. Because we have no jurisdiction over management actions in Canada (Alternative D), we would begin phase 2 with the actions outlined in Alternative C. If additional population control actions are required to achieve management goals, we would approach the Canadian Wildlife Service and urge implementation of actions outlined in

Alternative D. The FEIS describes Alternatives A–E in more detail and analyzes the direct, indirect, and cumulative impacts related to each alternative. The FEIS also provides the public with responses to comments received on the DEIS.

Dated: June 4, 2007.

Kenneth Stansell,

Acting Director.

[FR Doc. E7–13935 Filed 7–17–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Rainwater Basin Wetland Management District, Nebraska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, We) announces that the draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Rainwater Basin Wetland Management District (WMD, District) is available. This draft CCP/EA describes how the Service intends to manage this District for the next 15 years. We request public comment.

DATES: To ensure consideration, we must receive your written comments on the draft CCP/EA by August 17, 2007.

ADDRESSES: Please provide written comments to Bernardo Garza, Planning Team Leader, Division of Refuge Planning, Branch of Comprehensive Conservation Planning, Mountain-Prairie Region, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; via facsimile at 303–236–4792; or electronically to *bernardo_garza@fws.gov.* A copy of the CCP/EA may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, Colorado 80228; or by download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Bernardo Garza, 303–236–4377 or John Esperance, 303–236–4369.

SUPPLEMENTARY INFORMATION: Rainwater Basin WMD was established in 1963 when the Service began acquiring critical migratory waterfowl habitat in south-central and southeast Nebraska with Duck Stamp dollars. This WMD was established for the following purposes: (1) ''* * * To assure the long-term viability of the breeding waterfowl population and production through the acquisition and management of Waterfowl Production Areas, while considering the needs of other migratory birds, threatened and endangered species and other wildlife.'' (purpose statement developed for all WMDs in Region 6 in June 2004); (2) ''* * * to acquire * * * small wetland and pothole areas * * * to be designated as 'Waterfowl Production Areas' * * * as an inviolate sanctuary or for any other management purpose, for migratory birds * * * and to restore and develop adequate wildlife habitat'' under the Migratory Bird Hunting and Conservation Stamp Act [16 U.S.C. 715d (2), 715i(a) & 718 (c)]; (3) ''for conservation purposes'' under the Consolidated Farm and Rural Development Act [7 U.S.C. 2002(a)]; (4) ''promote * * * the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations in various migratory bird treaties and conventions with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere'' under the Emergency Wetlands Resources Act [16 U.S.C. 3901(b)]; and (5) ''to protect waterfowl production areas'' under Public Land Orders 6979 [May 25, 1993], and 7206 [June 24, 1996].

Today, the District manages approximately 23,500 acres in 61 individual tracts of land within the geographic area called the Rainwater Basin. This District encompasses a complex of wetlands scattered throughout a 17-county area. Current public use opportunities at this WMD include hunting, wildlife observation and photography.

This draft CCP/EA identifies and evaluates two alternatives for managing the District for the next 15 years. Alternative A, the No Action alternative, reflects the current management of the District. It provides the baseline against which to compare the other alternative. District habitats would continue to be managed on an opportunistic schedule that may maintain, or most likely would result in further decline in, the diversity of vegetation and water quality and quantity in the wetlands. District staff would continue to perform only limited research and would monitor only long-term vegetation change. Partnerships and priority public uses such as fishing, hunting, wildlife observation and wildlife photography would continue at present levels. Other priority public uses such as environmental education and interpretation would only be available on an informal basis. Outreach efforts would not be attainable due to the staff's inability to support them. The District would continue to support and work cooperatively to further the goals of the Rainwater Basin Joint Venture.

Alternative B is the Service's proposed action and basis for the draft CCP. Under this alternative the staff would continue to pursue the same goals and activities as in Alternative A but the emphasis would be to address all aspects in a holistic manner. The WMD would work with formal and informal partnerships, including landowners, to improve waterfowl production areas at a landscape level. Actions would strive to build a ''neighborly interaction'' between privately-owned, State and WMD lands within each watershed. The WMD would work with partners to complete the engineering and funding and would continue to support and work cooperatively to further the goals of the Rainwater Basin Joint Venture.

The proposed action (Alternative B) was selected because it best meets the purposes and goals of the District, as well as the mission and goals of the National Wildlife Refuge System. The proposed action will also benefit federally listed species, shore birds, migrating and nesting waterfowl, neotropical migrants and resident wildlife. Environmental education and partnerships will result in improved wildlife-dependent recreational opportunities. Cultural and historical resources as well as federally listed species will be protected.

Opportunity for public input will be provided at public meetings to be scheduled soon. The specific date and time for the public meeting is yet to be determined, but will be announced via local media and a planning update. All information provided voluntarily by mail, by phone, or at public meetings (e.g., names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information. The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; Executive Order 12996; the National Wildlife Refuge System Improvement Act of 1997; and Service policies and procedures for compliance with those laws and regulations.

Dated: March 30, 2007.

Elliott Sutta,

Acting Regional Director, Region 6, Denver, Colorado.

Editorial Note: This document was received at the Office of the Federal Register on July 13, 2007.

[FR Doc. E7–13887 Filed 7–17–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–160–1430–EU; COC–69635]

Notice of Realty Action: (Non-Competitive) Direct Sale of Public Lands, Hinsdale County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described 0.76-acre public land parcel near Lake City, Hinsdale County, Colorado, has been examined and found suitable for title transfer by (non-competitive) direct sale to Patsie and Michael DeHuff. The sale will be conducted under the authority of section 203(f)(2) of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 *et seq.* (FLPMA) and CFR 2711.3–3(a), and will take place according to procedures governing direct sale of public land.

DATES: On or before September 4, 2007, interested parties may submit comments concerning the proposed sale to the BLM Field Office Manager at the below address. Only written comments will be accepted.

ADDRESSES: Address all written comments concerning this notice to the Field Manager, BLM Gunnison Field Office, 216 N. Colorado St., Gunnison, Colorado 81230.

FOR FURTHER INFORMATION CONTACT: Marnie Medina, Realty Specialist, at the above address, or call: (970) 642–4457.

SUPPLEMENTARY INFORMATION: The 0.76-acre parcel is approximately 5 miles west of Lake City, in Hinsdale County, Colorado. It is offered on a non-competitive (direct) sale basis to Patsie and Michael DeHuff in accordance with Section 203(f)(2) of the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR 2711.3–3(a). The BLM Gunnison Field Manager has determined that a non-competitive (direct) sale will be in the best interest of the public. In accordance with 43 CFR 2711.3–3(a)(5), this parcel is being offered by (non-competitive) direct sale to Patsie and Michael DeHuff at not less than the appraised fair market value (FMV) as determined by the authorized officer after appraisal. An appraisal report has been prepared by a State-certified appraiser for the purpose of establishing FMV. Direct sale is based on the DeHuff's inadvertent occupancy of the parcel and value of added improvements consisting of a log cabin residence, solar panels, a battery and generator shed, buried electric lines from the solar panels to the shed and to the cabin, a 165-foot deep domestic water well, a septic system, a buried 500-gallon propane tank, a parking pad, a driveway, and other personal property.

The parcel is described as follows:

New Mexico Principal Meridian

Colorado

T. 44 N., R. 5 W.,
Tract 37.

The area described contains 0.76 acre, more or less, in Hinsdale County.

The market value for this land, utilizing direct sale procedures, at not less than the current appraised fair market value, is determined to be $7,000.00.

This 0.76-acre parcel is not required for any Federal purposes. It has been determined that this parcel is impractical to manage as part of the public lands. BLM has determined that resource values will not be adversely affected by title transfer of this 0.76-acre parcel to non-Federal ownership. Sale of the parcel conforms to criteria of the BLM Gunnison Resource Area Resource Management Plan (RMP) approved in February 1993. The patent, when issued, will contain the following reservations, covenants, terms and conditions:

1. The parcel will be conveyed with a reservation of a right-of-way to the United States for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. The patentee, by accepting the patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the grantor, its employees, agents, contractor, or lessees, or a third party arising out of, or in connection with, the grantor's use and/or occupancy of the deeded real property resulting in: Violations of Federal, State and local laws and regulations that are now, or in the future become, applicable to the real property: (1) Judgments, claims, or demands of any kind assessed against the United States; (2) costs, expenses, or damages of any kind incurred by the United States; (3) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s) as defined by Federal or State environmental laws, off, on, into, or under land, property, and other interests of the United States; (4) other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the deeded real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (5) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the deeded real property and may be enforced by the United States in a court of competent jurisdiction.

Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described parcel has been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

Upon publication of this notice in the **Federal Register** the parcel will be segregated from appropriation under the public land laws, including the general mining laws, except the sale provisions of the Federal Land Policy Management Act of 1976. The segregation will terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation, or on July 20, 2009, whichever occurs first unless extended by the BLM State Director, Colorado, in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

No warranty of any kind, expressed or implied, is given by the United States as to the title, the parcel's physical condition or potential uses. The conveyance will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable Federal, State, or local government laws, regulations, or policies that may affect the subject parcel or its future uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal**

Register. In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests. The purchaser will have 30 days from date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price, the $50.00 filing fee for conveyance of mineral interests, and for payment of publication costs. The purchaser must remit the remainder of the purchase price within 180 days from the date the sale offer is received. Payments must be by certified check, postal money order, bank draft, or cashier's check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited. Failure or refusal by Patsie and Michael DeHuff to submit the required fair market appraisal amount within 180 days of the sale of the parcel will constitute a waiver of this preference consideration and this parcel may be offered for sale on a competitive or modified competitive basis.

Public Comments

For a period until September 4, 2007, interested parties and the general public may submit in writing any comments concerning the land being offered for sale, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM Gunnison Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments sent via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Gunnison Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone 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.

Any adverse comments will be reviewed by the BLM Colorado State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections or adverse comments, this proposed realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1–2)

Arden Anderson,

Acting Field Manager, Gunnison.

[FR Doc. E7–13798 Filed 7–17–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service

ACTION: Notice of July 28, 2007 Meeting.

SUMMARY: This notice sets forth the date of the July 28, 2007 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, July 28, 2007 from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

LOCATION: The joint meeting will be held at the Somerset County Courthouse, Courtroom #1; 2nd floor; 111 East Union Street, Somerset, Pennsylvania 15501.

Agenda

The April 28, 2007 joint Commission and Task Force meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance.

(2) Review and Approval of Commission Minutes from April 28, 2007.

(3) Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.

(4) Old Business.

(5) New Business.

(6) Public Comments.

(7) Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: June 21, 2007.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 07–3488 Filed 7–17–07; 8:45 am]

BILLING CODE 4312–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 30, 2007. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 2, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Alameda County

Eden Congregational Church, 1046 Grove Way, Hayward, 07000788

COLORADO

Prowers County

Willow Creek Park, (New Deal Resources on Colorado's Eastern Plains MPS) Roughly bounded by Memorial Dr., Parkview Ave., Willow Balley Rd., Lamar, 07000789

Routt County

Columbine, 645 Routt County Rd. 129, Clark, 07000791

Steamboat Laundry Building, 127 and 131 11th St., Steamboat Springs, 07000790

DELAWARE

New Castle County

Cool Spring Park Historic District (Boundary Increase), Roughly N. Rodney St., W. Ninth St., W. Tenth St., Pennsylvania Ave., Delaware Ave., N. Jackson St., Wilmington, 07000792

MAINE

Oxford County

Albany Town House, Jct. of ME 5 and ME 35, Albany Township, 07000793

Greenwood Cattle Pound, Greenwood Rd., 0.33 mi N of ME 219, Greenwood, 07000794

NORTH CAROLINA

Catawba County

Lylerly Full Fashioned Mill, (Hickory MRA) 56 Third St., SE., Hickory, 07000808

PENNSYLVANIA

Bucks County

Springhouse Farm, 2184 Springhouse Ln., Springfield, 07000796

Lycoming County

Houseknecht Farm, (Agricultural Resources of Pennsylvania MPS) 812 J. Houseknecht Rd., Moreland, 07000795

Philadelphia County

Rodeph Shalom Synagogue, 607–615 N. Broad St., Philadelphia, 07000797

SOUTH CAROLINA

Greenville County

Burdette Building (Boundary Decrease), 104 E. Curtis St., Simpsonville, 07000809

Spartanburg County

Wright, Mary H., Elementary School, 201 Caulder Ave., Spartanburg, 07000798

VIRGINIA

Bath County

Oakley Farm, 11865 Sam Snead Highway (US 220), Warm Springs, 07000803

Hampton Independent City Hampton City Hall, 100 Kings Way, Hampton (Independent City), 07000806

Hopewell Independent City

Kippax Plantation Archeological Site, Address Restricted, Hopewell (Independent City), 07000799

King William County

Roseville Plantation, 3736 Herring Creek Rd., Aylett, 07000800

Norfolk Independent City

Southern Bagging Company, 1900 Monticello Ave., Norfolk (Independent City), 07000804

Portsmouth Independent City

Fort Nelson Chapter of the Daughters of the American Revolution Chapter House, 506 Westmoreland Ave., Portsmouth (Independent City), 07000805

Roanoke Independent City

Salem Avenue—Roanoke Automotive Commerical Historic District, Geneally Salem Ave., Rorer Ave., Campbell Ave., bet. 3rd and 6th Sts., Roanoke (Independent City), 07000807

Warren County

Mountain House, 2471 Remound Rd., Front Royal, 07000801

Washington County

Moonlite Theatre, 17555 Lee Highway, Abingdon, 07000802

A request for REMOVAL has been made for the following resource:

MARYLAND

Charles County

Widow's Pleasure Piney Church Rd.

Waldorf vicinity, 89000664

[FR Doc. E7–13849 Filed 7–17–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Rocky Mountain National Park; Proposed Exchange of Federal Land for Non-Federal Land, All Within Larimer County, Colorado

AGENCY: National Park Service.

ACTION: Notice of realty action.

SUMMARY: Pursuant to the authority contained in the Act of October 26, 2005 (Pub. L. 109–93, 119 Stat. 2104), the Secretary of the Interior has been authorized to acquire certain lands by exchange, and is authorized, upon completion of said exchange, to revise the boundaries of Rocky Mountain National Park accordingly.

DATES: The effective date for this notice shall be the date of the **Federal Register** publication in which this notice appears.

FOR FURTHER INFORMATION CONTACT: Realty Officer, Land Resources Program Center, Intermountain Region, P.O. Box 728, Santa Fe, New Mexico 87504–9728, (505) 988–6810.

SUPPLEMENTARY INFORMATION: The above cited Act authorizes the Secretary of the Interior to exchange certain Federal land within Rocky Mountain National Park for non-Federal land within and adjacent to the Park boundary. Upon completion of this exchange, the boundaries of Rocky Mountain National Park will be revised to include the parcel now adjacent to the Park boundary. A perpetual easement shall be reserved over the Federal land for the purposes of protecting, preserving, and enhancing the conservation values of the Federal land. Land acquired in this exchange shall be managed as part of the Park in accordance with the laws and regulations applicable thereto. The lands to be exchanged are generally described as follows:

Federal Parcel

Tract No. 02–101A, a parcel of land in Section 14, Township 5 North, Range 73 West, Sixth Principal Meridian, containing 70.00 acres, more or less.

Non-Federal Parcels

Tract No. 10–106B, a parcel of land in Section 18, Township 5 North, Range 72 West, Sixth Principal Meridian, containing 2.48 acres, more or less.

Tract No. 10–106D, a parcel of land in Section 19, Township 5 North, Range 72 West, Sixth Principal Meridian, containing 1.58 acres, more or less.

Tract No. 10–112, a parcel of land in Section 18, Township 5 North, Range 72 West, Sixth Principal Meridian, containing 1.94 acres, more or less.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated, and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 27, 2007.

Michael D. Snyder,

Director, Intermountain Region.

[FR Doc. E7–13943 Filed 7–17–07; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0039

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR 784, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by August 17, 2007, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John A. Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in: 30 CFR 784—Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans. OSM is requesting a 3-year term of approval for the information collection activity.

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 number for this collection of information is 1029–0039.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on February 27, 2007 (72 FR 8788). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR 784.

OMB Control Number: 1029–0039.

Summary: Sections 507(b), 508(a) and 5176(b) of Public Law 95–87 require underground coal mine permit applications to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards required by the law.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 63 Underground coal mining permit applicants and 24 State regulatory authorities.

Total Annual Burden Hours: 17,185.

Total Annual Non-wage Cost Burden: $534,574.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed under **ADDRESSES.** Please refer to the appropriate OMB control number in all correspondence.

Dated: July 11, 2007.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 07–3486 Filed 7–17–07; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–560]

In the Matter of Certain Nor and Nand Flash Memory Devices and Products Containing the Same; Notice of Commission Decision Not To Review the Initial Determination of No Violation of Section 337 and Recommended Determination on Remedy and Bond; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review a final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') regarding whether there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on February 13, 2006, based on a complaint filed by SanDisk Corporation of Sunnyvale, California. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain NOR and NAND flash memory devices and products containing same by reason of infringement of various claims of United States Patent Nos. 5,172,338 (''the '338 patent''); 5,991,517 (''the '517 patent''); and 6,542,956 (''the '956 patent''). The complaint named two respondents: STMicroelectronics N.V. of Geneva, Switzerland and STMicroelectronics, Inc. of Carrollton, Texas (collectively, ''ST'').

On May 17, 2006, the ALJ granted, by an ID issued June 1, 2006, SanDisk's motion for partial termination of the investigation with respect to the '956 patent. The Commission issued a notice that it determined not to review the ID on June 19, 2006.

On June 1, 2007, the ALJ issued the final ID finding no violation of Section 337 in the importation into the United States, the sale for importation or the sale within the United States after importation, of certain NOR and NAND flash memory devices and products containing the same in connection with the asserted claims of the '517 and '338 patents. No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in

§ 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 13, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–13893 Filed 7–17–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–402 and 731–TA–892 and 893 (Review)]

Honey From Argentina and China

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order on honey from Argentina and the antidumping duty orders on honey from Argentina and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on November 1, 2006 (71 F.R. 64292) and determined on February 5, 2007 that it would conduct expedited reviews (72 F.R. 6745, February 13, 2007). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on June 29, 2007. The views of the Commission are contained in USITC Publication 3929 (June 2007), entitled *Honey From Argentina and China: Investigation Nos. 701–TA–402 and 731–TA–892 and 893 (Review).*

By order of the Commission.

Issued: July 11, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–13838 Filed 7–17–07; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–448 and 731–TA–1117 (Preliminary)]

Certain Off-the-Road Tires From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

SUMMARY: On June 18, 2007, the Commission established a schedule for the conduct of the subject investigations (72 FR 30831, June 4, 2007). Subsequently, the Department of Commerce extended the date for its initiation of the investigations from July 9 to July 30, 2007. The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: the deadline for filing written briefs is July 17, 2007, and the administrative deadline for transmitting determinations and views to Commerce is August 27, 2007.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 18, 2007.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888/ *joanna.lo@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at: *http://edis.usitc.gov*.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 12, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–13829 Filed 7–17–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–477]

Sub-Saharan Africa: Factors Affecting Trade Patterns of Selected Industries—Second Annual Report

AGENCY: United States International Trade Commission.

ACTION: Scheduling of second annual report and public hearing; industry coverage of second report.

SUMMARY: In a letter dated July 26, 2006, the United States Trade Representative (USTR) requested, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), that the U.S. International Trade Commission (Commission) prepare three annual reports relating to factors that affect trade patterns of selected industries in sub-Saharan African (SSA) countries. In response, the Commission instituted investigation No. 332–477, *Sub-Saharan Africa: Factors Affecting Trade Patterns of Selected Industries,* and delivered its first report on April 3, 2007. This notice announces the scheduling of the second report in this series, the industries to be covered, and the scheduling of a public hearing.

DATES: October 1, 2007: Deadline for filing requests to appear at the public hearing.

October 3, 2007: Deadline for filing pre-hearing briefs and statements.

October 23, 2007: Public hearing.

November 2, 2007: Deadline for filing post-hearing briefs and statements.

April 3, 2008: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at: *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project leader Falan Yinug (202–205–2160 or (*falan.yinug@usitc.gov*) or deputy project leader James Fetzer (202–

708–5403 or (*james.fetzer@usitc.gov*) for information specific to this investigation (the second report). For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or (*william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As indicated above, this notice concerns the second of three annual reports that the USTR requested the Commission to provide concerning factors affecting trade patterns of selected industries in SSA countries. In her July 26, 2006, letter, the USTR described the type of information that the Commission should provide in its reports with respect to each industry and identified the industries and products produced to be covered in the first annual report. The USTR indicated that she would provide additional lists of industries and products produced for each of the second and third annual reports. She requested that the Commission deliver its first annual report by April 3, 2007, and its second and third annual reports by April 3, 2008, and April 3, 2009, respectively. The Commission published notice of institution of this investigation in the **Federal Register** on August 29, 2006 (71 F.R. 51212), and delivered its first report to USTR on April 3, 2007.

On June 19, 2007, the Commission received a memorandum from the Office of the United States Trade Representative listing the industries and products to be covered in the second annual report. In its second annual report the Commission will provide profiles of SSA industries that produce the following products: (1) In the agriculture sector, coffee, certain spices (including ginger), shea butter and downstream products thereof, and tropical fruits (e.g. bananas, pineapples, and guavas) and processed products thereof; (2) in the mining and manufacturing sector, natural rubber and downstream products thereof, footwear, textiles, jewelry and downstream diamond processing (e.g., polishing and cutting), and wood furniture; and (3) in the services sector, aviation services and communications services.

Each industry profile will include the following information, to the extent data are available, for the most recently available 5-year period:

- A description of the leading industries within the SSA that export the subject products, including their position relative to global competitors;
- identification of the leading SSA exporting countries and their key markets; and
- analysis of the competitive factors, by country, that have contributed to the shift in exports. (Such factors may include access to inputs, labor, technology, investment, trade policies, e.g., tariffs and trade preference programs such as AGOA, privatization, and liberalization.)

Public Hearing: A public hearing in connection with this investigation will be held beginning at 9:30 a.m. on October 23, 2007, at the United States International Trade Commission Building, 500 E Street, SW., Washington DC. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m. October 1, 2007, in accordance with the requirements in the ''Written Submissions'' section below. In the event that, as of the close of business on October 1, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after October 1, 2007, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning this investigation. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary. Any pre-hearing statements or briefs should be filed not later than 5:15 p.m., October 3, 2007; and post-hearing statements and briefs and all other written submissions should be filed not later than 5:15 p.m. November 2, 2007. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see *Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf;* persons with questions regarding electronic filing should contact the Office of the Secretary at 202–205–2000.

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

In her request letter, the USTR stated that her office intends to make the Commission's reports in this investigation available to the public in their entirety, and asked that the Commission not include any confidential business or national security information in its reports. Consequently, the reports that the Commission sends to the USTR will not contain any such information. Any confidential business information received by the Commission in this investigation and used in preparing its reports will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: July 12, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–13828 Filed 7–17–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0014]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-day notice of information collection under review: Semi-Annual Progress Report for the STOP Violence Against Indian Women Discretionary Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until September 17, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the STOP Violence Against Indian Women Discretionary Grant Program (STOP VAIW Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0014. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the STOP VAIW Program. The primary goal of the program is to encourage tribal governments to develop and strengthen the tribal justice system's response to violence against Indian women, and to improve the services available to victims of domestic violence, sexual assault, and stalking in Indian country. OVW awards discretionary grants to support the efforts of tribal governments in achieving these goals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 165 respondents (STOP VAIW grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A STOP VAIW Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 13, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–13888 Filed 7–17–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0013]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-day notice of information collection under review: Semi-Annual Progress Report for the Rural Domestic Violence and Child Victimization Enforcement Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until September 17, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Rural Domestic Violence and Child Victimization Enforcement Grant Program (Rural Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0013. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 13, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–13889 Filed 7–17–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0012]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-day notice of information collection under review: Semi-Annual Progress Report for Education and Technical Assistance Grants to End Violence Against Women with Disabilities Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until September 17, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Education and Technical Assistance Grants to End Violence Against Women with Disabilities Program (Disability Grant Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0012. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 18 grantees of the Disability Grant Program. Grantees include states, units of local government, Indian tribal governments and non-governmental private entities. These grants provide funds for education and technical assistance in the form of training, consultations, and information to organizations and programs that provide services to individuals with disabilities and to domestic violence programs providing shelter or related assistance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 18 respondents (Disability Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Disability Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 36 hours, that is 18 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and

Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 13, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–13890 Filed 7–17–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0011]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-day notice of information collection under review: Semi-Annual Progress Report for Grantees from the Grants to Support Tribal Domestic Violence and Sexual Assault Coalitions Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until September 17, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants to Support Tribal Domestic Violence and Sexual Assault Coalitions (Tribal Coalitions).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0011. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 14 grantees from the Tribal Coalitions Program. The Tribal Coalitions Program grantees include Indian tribal governments that will support the development and operation of new or existing nonprofit tribal domestic violence and sexual assault coalitions in Indian country. These grants provide funds to develop and operate nonprofit tribal domestic violence and sexual assault coalitions in Indian country to address the unique issues that confront Indian victims. The Tribal Coalitions Program provides resources for organizing and supporting efforts to end violence against Indian women.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 14 respondents (grantees from the Tribal Coalitions Program) approximately one hour to complete a Semi-Annual Progress Report. The Semi-Annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 28 hours, that is 14 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 13, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–13891 Filed 7–17–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

National Drug Intelligence Center; Agency Information Collection Activities; New Collection; Comments Requested

ACTION: 30-day notice of information collection under review: New Collection SENTRY/Emerging Drug Tracking System.

The United States Department of Justice (DOJ), National Drug Intelligence Center (NDIC), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 81, pages 21051–21052 on April 27, 2007, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 17, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your

comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* SENTRY/Emerging Drug Tracking System, a drug early warning and response system.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Not Applicable.

(4) The 2004 National Synthetic Drugs Action Plan designated NDIC the lead agency for developing an early warning and response system. This instrument is critical for NDIC to detect emerging drug abuse and production trends and thereafter notify law enforcement demand authorities and prepared associated reports. Respondents will be authorized state and local law enforcement officers, and treatment/education/medical service providers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that during the first year 300 respondents will submit a tip requiring approximately 15 minutes. Use of the system is expected to increase significantly.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 75 total annual burden hours associated with this collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 13, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–13907 Filed 7–17–07; 8:45 am]

BILLING CODE 4410–DC–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Federation of Physicians and Dentists, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment and Competitive Impact Statement have been filed in a civil antitrust case, *United States of America* v. *Federation of Physicians and Dentists, et al.,* Case No. 1:05–cv–431, in the United States District Court for the Southern District of Ohio.

On June 24, 2005, the United States filed a Complaint alleging that the Federation of Physicians and Dentists (''Federation''), Federation employee Lynda Odenkirk, and three physician co-defendants coordinated a conspiracy among Federation Cincinnati-area OB–GYN members to increase fees paid by health care insurers to them, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The three physician co-defendants agreed to a settlement entered by the Court on November 14, 2005. The proposed Final Judgment, filed on June 19, 2007, enjoins the Federation and Ms. Odenkirk from taking future actions in Cincinnati or anywhere else that could facilitate private-practice physicians' coordination of their dealings with health care payers, such as insurers, by prohibiting the Federation's involvement in physicians' contracting with such payers.

A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and the Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, Room 215 North, 325 Seventh Street, NW., Washington, DC 20530 (telephone 202–514–2481), on the Department of Justice's Web site at: *http://www.usdoj.gov/atr/cases/indx26_b.htm*, and at the Office of the Clerk of the United States District Court for the Southern District of Ohio. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joseph Miller, Acting Chief, Litigation I, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: (202) 307–0001).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the Southern District of Ohio Western Division

United States of America, Plaintiff, vs. Federation of Physicians and Dentists, Lynda Odenkirk, Warren Metherd, Michael Karram, and James Wendel, Defendants.

[Civil Action No. 1:05–cv–431; Filed Jun 24, 2005]

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this action for equitable and other relief against Defendants: Federation of Physicians and Dentists (''Federation''), Federation employee Lynda Odenkirk, and Federation members Warren Metherd, M.D., Michael Karram, M.D., and James Wendel, M.D., to restrain Defendants' violations of Section 1 of the Sherman Act in concert with the Federation's other Cincinnati-area obstetrician and gynecologist (''OB–GYN'') members.

I. Introduction

1. In concert with approximately 120 OB–GYN Federation members located in the Cincinnati area (''Federation members''), Defendants participated in a conspiracy to increase fees paid by health care insurers to Federation members. The Defendant physicians and other competing Federation members joined the Federation to use its services to coordinate the renegotiation of their contracts with Cincinnati-area healthcare insurers. The Federation, with substantial assistance from the Defendant physicians, coordinated and helped implement its members' concerted demands to insurers for higher fees and related terms, accompanied by threats of contract terminations.

2. Defendants' and their conspirators' collusion caused Cincinnati-area health care insurers to raise fees paid to Federation members above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of Defendants' and other Federation members' conduct, the three largest Cincinnati-area health care insurers were each forced to increase fees paid to most Federation members by approximately 15–20% starting July 1, 2003, followed by cumulative increases of 20–25%, starting January 1, 2004, and 25–30%, effective January 1, 2005. Defendants' concerted conduct also caused other insurers to raise the fees they paid to Federation members.

3. The United States, through this suit, asks this Court to declare Defendants' conduct illegal and to enter injunctive relief to prevent further injury to consumers in the Greater Cincinnati area and elsewhere.

II. Defendants

4. The Federation is a membership organization comprising mostly physicians and dentists, and is headquartered in Tallahassee, Florida. The Federation's physician membership includes economically independent, competing physicians in private practice in localities in many states, including Cincinnati, Ohio. The Federation offers these independent physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

5. Lynda Odenkirk has been employed in Wallingford, Connecticut, by the Federation since 1997 as a Regional Director and Contract Analyst. Ms. Odenkirk worked with Cincinnati-area Federation members from May, 2002, through at least 2004.

6. Warren Metherd, M.D., is an OB–GYN presently in a solo practice in Cincinnati.

7. Michael Karram, M.D., is an OB–GYN practicing in Cincinnati and is the Chief Executive Officer of Seven Hills Women's Health Centers, a practice comprising several groups totaling 22 OB–GYNs in Cincinnati.

8. James Wendel, M.D., is an OB–GYN practicing in Cincinnati and is the Chief Executive Officer of Mount Auburn Obstetrics and Gynecologic Associates, Inc., a group practice of nine OB–GYNs in Cincinnati.

III. Jurisdiction and Venue

9. The United States brings this action to prevent and restrain Defendants' recurring violations of Section 1 of the Sherman Act. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. 4 and 28 U.S.C. 1331 and 1337.

10. During 2002 and 2003, the Federation's Cincinnati OB–GYN Chapter enrolled as paid members over 120 OB–GYN physicians, most practicing in the Southern District of Ohio and some in nearby northern Kentucky communities. The Federation and Ms. Odenkirk have transacted business and committed acts in furtherance of the conspiracy in the Southern District of Ohio. Drs. Metherd, Karram, and Wendel each provide OB–GYN services in the Southern District of Ohio. Consequently, this Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. 1391(b)(2).

IV. Conspirators

11. Various persons, not named as defendants in this action, have participated as conspirators with Defendants in the offense alleged and have performed acts and made statements in furtherance of the alleged conspiracy.

V. Effects on Interstate Commerce

12. The activities of the Defendants that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

13. Federation representatives have traveled across state lines to meet with Federation members and also have communicated with them by mail, e-mail, and telephone across state lines. Federation members have communicated with Federation representatives and have remitted their Federation membership dues across state lines. Some Federation members have also traveled from Kentucky to Ohio to attend Federation meetings and have communicated with other Federation members across the Ohio-Kentucky state line.

14. Federation members have treated patients who live across state lines, and Federation members have also purchased equipment and supplies that were shipped across state lines.

15. Health care insurers operating in the Cincinnati area remit substantial payments across state lines to Federation members. Health care insurers' payments to Federation members affect the reimbursements paid to insurers by self-insured employers, whose plans they administer, and also affect the premiums for health care insurance those insurers charge other employers. Many of the affected employers sell products and services in interstate commerce. The reimbursements and premiums those health care insurers receive from employers for administration or coverage of the expenses of their employees' health care needs, including OB–GYN services, represent a cost of production for those employers that affects the prices at which those firms' products are sold in interstate commerce.

VI. Cincinnati Area Health Care Insurers and OB–GYNs

16. At least six major health care insurers provide coverage in the Cincinnati area: WellPoint Health Networks, which during the events at issue here was named Anthem, Inc. (''Anthem''), Humana Inc. (''Humana'' or ''ChoiceCare''), United HealthCare Insurance Company (''United''), Cigna Corp. (''Cigna''), Aetna U.S. Healthcare Inc. (''Aetna''), and Medical Mutual of Ohio (''Medical Mutual'' or ''MMO'').

17. Anthem, Humana and United, through administration and insurance of health care benefits, are the three largest private health insurers operating in the Greater Cincinnati area. On the basis of market share, Medical Mutual, Aetna, and Cigna each insures and administers a smaller, but still significant, share of privately financed health coverage in the Greater Cincinnati area. The remainder of the privately financed health insurance coverage market in the Greater Cincinnati area consists of a large number of insurers, each with a small share.

18. All of the major health care insurers operating in the Cincinnati area offer a variety of insurance plans to employers and their employees, including ''managed care'' plans such as health-maintenance organizations and preferred provider organizations. To offer such plans, an insurer typically contracts with participating providers, including physicians and hospitals, to form a provider network (or panel). Among other things, such contracts establish the fees that the providers will accept as payment in full for providing covered medical care to the insurer's subscribers. All of the major Cincinnati-area health care insurers consider it necessary to include in their provider panels a substantial percentage of OB–GYN physicians who practice in the Cincinnati area to make their health care plans marketable to area employers and their employees. Before the formation of the alleged conspiracy, Federation member groups competed with each other, in their willingness to accept an insurer's proposed fee levels and other contractual terms, to be included in these insurers' provider panels.

VII. Defendants' Unlawful Activities

19. In the spring of 2002, Cincinnati OB–GYNs became interested in joining the Federation primarily to band together to negotiate higher fees from health care insurers. Through a series of meetings with and communications to Cincinnati-area OB–GYNs during the spring, the Federation—assisted by some local OB–GYNs, including Defendants Metherd, Karram, and Wendel—recruited Cincinnati-area OB–GYNs as Federation members and laid the foundation for their coordinated negotiating positions seeking higher fees from major Cincinnati health care insurers. At an initial membership recruitment meeting on April 17, 2002, a featured presentation by Jack Seddon, the Federation's Executive Director, focused on the need for a majority of area OB–GYN practices to use the Federation's contract negotiation services to obtain increased fees from insurers.

20. Ms. Odenkirk, the Federation employee with primary responsibility for dealing with Federation members in Cincinnati, attended a second recruitment meeting on May 7, 2002. At this meeting, the OB–GYNs in attendance decided they needed a 60–70% participation rate in the Federation by OB–GYN physicians in the Cincinnati area for their activities as Federation members to have an impact on area insurance companies. By the end of May 2002, about 75–80% of actively practicing, Cincinnati-area OB–GYNs had opted to join the Federation.

21. On June 10, 2002, the Cincinnati-area OB–GYN Federation chapter held its organizational meeting, which was attended by representatives from many area OB–GYN practices. At the meeting, Jack Seddon, the Federation's Executive Director, told the Federation members that, although the Federation could legally represent only individual physicians, all physicians must remember that they are part of the Federation when making any business decisions regarding a contract. He also explained that, although the Federation could not directly recommend, through its Negotiation Assistance Program, whether Federation members should accept or reject a given provider contract, physicians would be given enough information to allow them to decide whether or not to sign a contract. At the June 10 meeting, Mr. Seddon also explained that Federation members could encourage other member physicians to use the Federation's Negotiation Assistance Program rather than negotiate on their own without Federation involvement.

22. In June and July 2002, Ms. Odenkirk, in consultation with some Federation members, established the order, or the ''game plan,'' by which she would review and coordinate their dealings with the first five health care insurers contracts: Anthem, ChoiceCare, United, Aetna, and Medical Mutual.

23. The Federation mailed a newsletter dated September 4, 2002, to all Federation member practices, notifying them that the Federation had reviewed their current Anthem contract. Accompanying the newsletter was the Federation's contract analysis and a set of proposed changes. An accompanying memorandum addressed to Cincinnati OB–GYN members from Ms. Odenkirk advised members that her contract analysis and proposed alternative language could be used to open negotiations with Anthem.

24. The September 4, 2002, newsletter also encouraged Federation members to use the Federation's ''extremely valuable service'' of acting as their third-party messenger and as a consultant, touted as providing the ''advantage of a nationally experienced consultant who can certainly look out for their best interests when negotiating with insurance plan executives.'' The newsletter suggested that those members dissatisfied with their Anthem contracts, as outlined in the accompanying contract analysis, should copy an enclosed sample ''third party messenger'' letter onto their practice's letterhead to open a dialogue with Anthem. The sample letter advised Anthem that the submitting practice had ''several items of concern'' regarding its current Anthem contract including ''contract language for various clauses and reimbursements rates'' and apprised Anthem that ''the purpose of this letter is to open negotiations with Anthem regarding the provider agreement.'' The sample letter further informed Anthem that the practice had decided to use the Federation as a ''third party messenger'' to facilitate negotiations and that the Federation would be contacting Anthem to open a dialogue. The sample letter also contained a thinly veiled warning that the practice might resort to contract termination if its concerns were not addressed and was understood as such by Anthem.

25. Following Ms. Odenkirk's September 4, 2002, communications regarding the Anthem contract, most Federation member physician practice groups copied the sample letter onto their own letterhead, signed it, and sent it to Anthem.

26. The Federation mailed a newsletter dated September 30, 2002, to all Federation member practices, informing them that there had been a significant response to the September 4, 2002, Anthem contract analysis and that many members had opted to use the ''full services'' of the Federation.

27. Starting on October 11, 2002, Ms. Odenkirk followed up on the Federation members' letters to Anthem. She notified Anthem that the Federation would be facilitating Federation members' discussion of their Anthem contract. For each such practice, Ms. Odenkirk sent Anthem a substantively identical letter enclosing a proposed amendment to the contracts ''that addresses some of their concerns.'' The set of proposed amendments was essentially the same set that Ms. Odenkirk had forwarded on September 4, 2002, to all Federation members in connection with her review of the Anthem contract.

28. Besides reporting to Federation members' on their response to Anthem, the September 30, 2002, Federation newsletter also focused on another insurer. The newsletter explained to Federation members that the Federation had reviewed their current ChoiceCare contract. The newsletter also included a sample letter to inform ChoiceCare that the Federation would be representing the medical practice as a third-party messenger. The process of negotiating with ChoiceCare then began and tracked the pattem of Federation coordination of negotiations with Anthem.

29. The Federation mailed a newsletter dated October 31,2002, to all Federation member practices, explaining that the Federation had reviewed the contract of yet another insurer: United. The newsletter also included a sample letter to inform United that the Federation would be representing the medical practice as a third-party messenger. The process of negotiations with United then began and tracked the pattem of Federation coordination that occurred in negotiations with Anthem and ChoiceCare.

30. The October 31, 2002, newsletter also noted that 39 OB–GYN practices had joined the local Federation chapter. The newsletter recapped members' status with Anthem, noting that the Federation had initiated contact with Anthem, on behalf of those practices that had submitted third-party messenger letters to Anthem, and that the Federation had received a very significant response from the local chapter practices that had sent Anthem a third-party messenger letter. The newsletter also reported to Federation members that a significant proportion of them had provided e-mail addresses to participate in a ''Critical Alert'' mass e-

mailing system developed by the Federation ''to avoid any situation where a member might miss critical information from the Federation.''

31. On November 1, 2002, the day after the October 31, 2002, newsletter, Ms. Odenkirk e-mailed a ''Critical Federation Alert'' to member practices. After updating all member practices on the status of matters involving United, Humana and Anthem, she wrote:

ALL MEMBERS ARE AGAIN REMINDED OF THEIR REASON FOR JOINING THE LOCAL CHAPTER OF THE FEDERATION. THE OVERALL PURPOSE OF THE FEDERATION IS TO ALLOW MEMBER PHYSICIANS TO DEAL WITH THE INSURANCE INDUSTRY ON AN EQUAL BASIS. WHILE THE FEDERATION CANNOT RECOMMEND THAT PHYSICIANS SIGN OR NOT SIGN A GIVEN PROVIDER AGREEMENT, THE FEDERATION CAN ADVISE A MEMBER WHEN THEY ARE BEING PRESENTED WITH A BAD CONTRACT.

32. By letters dated November 14, 2002, sent to each practice, Anthem responded to the prior correspondence it had received from the practice and the Federation. The letters expressed Anthem's willingness to meet with the practices individually to discuss the concerns raised. Around the same period, Humana communicated to Federation members its preference to deal directly with each practice, rather than with the Federation representing the practices.

33. On November 15, 2002, Ms. Odenkirk spoke by telephone with Anthem representatives. Ms. Odenkirk told the Anthem employees that she represented a large number of OB–GYN practices in the Cincinnati area. Anthem told Ms. Odenkirk they would meet and correspond directly with individual practices. Though noting during the conversation that each practice would need to speak for itself, Ms. Odenkirk stated generally that the physicians would be seeking higher fees at 160% of Medicare levels.

34. Following her telephone conversation with Anthem, Ms. Odenkirk proceeded to coordinate Federation practices' ''individual'' dealings with Anthem, Humana, and United. She e-mailed a ''Critical Federation Alert'' on November 19, 2002, to each practice, addressed to the attention of ''Office Manager.'' The Alert informed each practice that the Federation had, in its role as a third-party messenger, notified Anthem of the practice's desire to initiate negotiations regarding the current Provider Agreement, and advised Anthem that the practice had designated the Federation to represent it and act as its consultant in this process. The Alert then informed member practices they had two options: Negotiate directly with Anthem (noting that if this option were selected the practice was encouraged to forward all communication from Anthem to the Federation), or advise Anthem that the practice wished to have the Federation speak on its behalf.

35. Responding promptly, as requested, to Ms. Odenkirk's November 19, 2002, Critical Federation Alert, most Federation member practices notified the Federation in writing that they wanted the Federation to speak on their behalf as their third-party messenger for contract negotiations with Anthem.

36. On Saturday morning, December 14, 2002, Ms. Odenkirk and most Federation members attended a membership meeting. The meeting was called amid apprehension among Federation members that large Federation member groups might make individual deals with insurers without regard to the interests of smaller Federation groups and solo practitioners. Federation members' discussion at the meeting informed the strategy that Ms. Odenkirk and the Defendant physicians developed for the Federation to coordinate Federation members' contract negotiations with Anthem, ChoiceCare, and United. The strategy employed the Federation's collective knowledge and consultation with Federation members as the ''key'' to ensuring that small groups were not ''left behind'' in negotiations with insurers.

37. Following up promptly on the sense of the December 14 meeting, Dr. Metherd, in coordination with Drs. Wendel and Karram, prepared a draft of a letter for Ms. Odenkirk to send to Federation members. The letter suggested that Federation members again send letters to Anthem demanding higher fees and contract amendments. Reviewing a redraft of the letter by Ms. Odenkirk on December 17, 2003, Dr. Wendel e-mailed Dr. Metherd: ''Have reviewed the letter and changes from Lynda [Odenkirk], I also think that we need to also send similar letters to [C]hoice [C]are and [U]nited. It[']s time to carpet bomb them with these letters and demand responses in a timely fashion. This may be a way for the [F]ederation to help to facilitate the process.''

38. On December 20, 2002, Ms. Odenkirk sent to all Federation member practices the final version of the letter implementing the coordinated strategy developed from the December 14 membership meeting. The letter reviewed the status of the Federation's dealings with Anthem on members' behalf to discuss ''problems in the provider agreement.'' The letter apprised Federation members that Anthem had ''become recalcitrant'' toward the Federation's attempts to attend meetings on behalf of multiple physician groups and that ''[c]onsequently, the Federation [wa]s recommending another tactic by which you may negotiate with Anthem.'' The letter sought to provide Federation members ''with a clear set of guidelines* * * that w[ould] hopefully lead to a productive set of discussions.'' The ''guidelines'' set forth a number of steps for member groups to follow, which the Federation touted as ''the means by which you are most likely to achieve your goals.'' The letter also noted: ''If this tactic is UNSUCCESSFUL in achieving a contract with Anthem that meets your concerns, then the Federation will so notify you that you are continuing to work under a bad contract and that you are now left with two options. You may: (1.) Continue to work under this bad contract or (2.) Terminate the contract.''

39. Beginning in January 2003, and following up on the steps Ms. Odenkirk had outlined in her December 20, 2002, letter to Federation practices, most Federation member practices sent substantively identical letters to Anthem enclosing proposed contractual changes styled as ''necessary to achieve an equitable business relationship between Anthem and this OB/GYN practice.'' The letters sought a response from Anthem within two weeks of receipt and advised that ''all responses from Anthem will be forwarded to the Federation of Physicians and Dentists for review, interpretation and consultation.'' The letters closed with a slightly adapted version of the thinly veiled threat of termination first raised in the wave of September and October 2002 third-party messenger letters sent by Federation member practices to Anthem: ''This practice truly desires to avoid any interruption of obstetrical and gynecological services to Anthem's customers. Such a circumstance can be avoided by a meaningful and productive written response from Anthem regarding the issues raised herein no later than the aforementioned date.''

40. Proceeding over the next several months, Federation member practices-in close coordination with the Federation and with some additional direct coordination among Drs. Karram, Wendel, and Metherd-negotiated contracts with Anthem that provided for a substantial increase in fees. While targeting Anthem initially, the Federation, with encouragement and assistance from the Defendant

physicians, also coordinated member groups' efforts to pressure ChoiceCare and United to renegotiate their contracts.

41. Implementing Federation members' similar strategy toward ChoiceCare, Ms. Odenkirk sent to ChoiceCare letters dated January 27–31, 2003, on behalf of 30 member practices. The letters reviewed the history of Humana's discussions with each practice, and included each practice's desired fee amounts. The letters asked for a response by February 14, 2003, and notified Humana that the practice ''still intends to forward any and all responses from HUMANA to the Federation of Physicians and Dentists for review, interpretation and consultation, as they have every right to do.'' Each letter again noted, as had the practices' third-party messenger letters sent to Humana in the fall of 2002, that a service interruption could be avoided by Humana's prompt and meaningful written response.

42. From December 2002, through March 2003, Dr. Karram's and Dr. Wendel's large OB–GYN groups spearheaded Federation member groups' attempts to renegotiate their contracts with Anthem and Humana. By a letter dated March 4, 2003, Humana proposed to Dr. Wendel's group a 30-month contract increasing fee levels substantially, in stages, over existing fees. According to the proposal, the terms were discussed and agreed upon in a telephone conversation on March 4. The next day, Dr. Wendel's office faxed Humana's proposal to Ms. Odenkirk.

43. On March 7, 2003, Ms. Odenkirk sent by e-mail and regular mail a Critical Federation Alert that had been prepared by Dr. Metherd in consultation with Drs. Karram and Wendel and edited and approved by Ms. Odenkirk and Mr. Seddon. The Alert encouraged Federation members to meet as soon as possible with Anthem and Humana to discuss proposed contract changes because the companies ''seem to legitimately desire discussions.'' Accompanying the Alert were negotiation guidelines to use in meetings, including advice to tell the health plan ''that you are seeking a fair contract both in language and reimbursements.'' The guidelines also suggested to members, in part, that

> (3.) You may explain to the health plan that you are, or will be, reviewing all of your major contracts and negotiating fairer terms for all, and that you are not just focusing on any one particular health plan. One particular concern a health plan may have is that they will be 'out front' if they were, for instance, to increase reimbursements thereby placing them at a disadvantage with their competitors in their markets.

44. As negotiations progressed, Ms. Odenkirk became active in advising groups how to proceed. Dr. Metherd also coordinated with Dr. Wendel and other physicians regarding the status of Federation members' negotiations with Anthem.

45. On April 1, 2003, Dr. Metherd e-mailed to Ms. Odenkirk and Mr. Seddon proposed additions to a draft Critical Federation Alert that Dr. Metherd had begun drafting with them in mid-March. Dr. Metherd proposed adding two paragraphs to a draft he had received from Mr. Seddon and explained the reason for his additions:

> It is becoming extremely important to somehow inform the smaller groups and solo practitioners that the large groups are not achieving favorable contracts at the expense of the small groups. * * * It's also important to somehow explain that the physicians are not going to get 170–180% of Medicare and that 30–35% is a more realistic number. Finally, from my personal discussions with the insurance companies, the members need to emphasize that all major plans are going to be looked at by the physicians. This seems to be critical for the insurance companies to hear.

46. By mid-April 2003, ChoiceCare had reached agreement with several of the larger Federation member groups. ChoiceCare continued making offers of varying fee amounts to other groups, which, in turn, forwarded them to, or discussed them with, Ms. Odenkirk to obtain her thoughts. In an April 16, 2003, e-mail, Dr. Metherd updated Ms. Odenkirk and suggested how she should advise the smaller Federation member groups regarding ChoiceCare:

> Since you know what everyone is getting, we need you to make sure that the small groups are pushing to end up in reasonable proximity (5% for example) to the larger groups in regards to reimbursements. The larger groups need to know that they can utilize [the Federation's] guidelines that we sent out on April 3 * * * as a way to pressure ChoiceCare to minimize variations in their reimbursements.
>
> Since you are the only one who, as the third party messenger, can know all the facts, it is imperative that you use the knowledge to push all of us in the same direction. * * * It is absolutely critical that one segment of the Federation here not feel that it has gained a significant advantage or suffered a significant disadvantage at another's expense * * * especially as we will soon be moving onto United, Aetna, etc.

47. By May 1, 2003, Anthem had sent to all Federation members a contract amendment raising fees over a three-year period to 120% of Medicare fees, as of July, 2003; 125%, as of January, 2004; and 130%, as of January, 2005.

48. By early May 2003, the large OB–GYN practice groups shifted their focus to United Healthcare. At a May 8th the meeting with United, called by Dr. Wendel to discuss OB–GYN fees in Cincinnati, Dr. Wendel informed United that his group had been able to negotiate new deals with the other two top payers in Cincinnati. During the meeting, Dr. Wendel threatened that his group would terminate its contract if United did not offer it a satisfactory deal. At a meeting on the same day with United, Dr. Karram conveyed a similar message on behalf of his group.

49. Dr. Metherd communicated several times in May 2003 with Drs. Karram and Wendel concerning his negotiations on fees with ChoiceCare. On May 12, 2003, Dr. Metherd responded to ChoiceCare and attempted to leverage Federation members' contract renegotiations with Anthem and suggested that ChoiceCare would face a boycott if it did not meet his and other OB–GYNs' fee demands.

50. On May 11, 2003, Dr. Metherd sent an e-mail to Drs. Karram, Wendel:

> As per our discussions on Friday [May 9th], I think we need to do some 'campaigning' so to speak. We need to educate the members and encourage them to do four things.
>
> (1.) They need to accept the contract from Anthem. While not perfect, it's actually pretty good and Lynda [Odenkirk] also feels the same based on my discussions with her this week. Apparently she is quite surprised that we have done as well as we have. * * *
>
> (2.) They need to negotiate with ChoiceCare. * * *
>
> (3.) Everyone needs to do the above so we can all move onto United next especially given the promising discussions that you have just had.
>
> (4.) Finally, membership dues for the Federation are here and we need to convince the members that this is worth doing again this next year. * * *

51. Prompted by Dr. Metherd, on May 16, 2003, Ms. Odenkirk sent to essentially all Cincinnati Federation members a ''Federation Alert—Update.'' Ms. Odenkirk's Alert opined that the revised Anthem contract was ''as good as it's going to get at this point in time'' and suggesting it was ready to be signed. Ms. Odenkirk's Federation Alert also posed the Anthem contract to Federation members as a ''benchmark to follow'' when negotiating with other comparable health plans.

52. On May 20, 2003, Dr. Metherd sent to Federation members a proposal to endorse a ''large insurance company'' that had recently provided a contract with ''physician-friendly'' changes. Dr. Metherd explained that the other insurers could also be endorsed if they

offered similar contracts and expressed the hope that ''this would then offer all companies an incentive to work with member physicians to achieve physician-friendly agreements.'' The proposal also noted, ''This concept has been reviewed and approved by the Federation leadership.''

53. At a May 28, 2003, meeting with United representatives, Dr. Metherd threatened to terminate his contract with United if it did not offer him satisfactory terms. After the meeting, he sent an e-mail to a United representative to emphasize the need for United to ''offer an acceptable contract to all members'' and complete fee negotiations promptly if it wished to participate in the ''endorsement'' program that had also been discussed at the meeting.

54. By May 30, 2003, United had met with about six Federation member groups. Each group conveyed that they wanted essentially the same deal and would terminate their contracts if they did not get it.

55. On May 29, 2003, Dr. Metherd sent an e-mail to all Federation members requesting their attention to ''some extremely important issues,'' including the need for doctors to keep the Federation informed of their negotiation status with various insurers. On May 29, Dr. Karram e-mailed Ms. Odenkirk and stated, ''I agree with Warren. We need to get everyone moving faster and to become more persistent otherwise they will not get increases in 03. I am sure that is what [ChoiceCare] is doing. Just think of the money they will save if they keep delaying people till 04.'' Dr. Karram's e-mail also asked Ms. Odenkirk: ''Are we ready to move on to the next player. I think that is Medical Mutual of Ohio.''

56. During June and July 2003, Ms. Odenkirk continued to advise Federation members concerning their contract negotiations with ChoiceCare, United, and, to a lesser extent, Anthem.

57. By letters dated June 13, 2003, Ms. Odenkirk sent to United proposed contractual amendments for nearly all Federation member groups. On June 17, 2003, she apprised the groups of the communications to United on their behalf. In a July 9, 2003, Federation Alert, Ms. Odenkirk suggested that all Federation members persist in negotiations with United and let United ''know that you have been able to achieve a significantly better agreement with one of their competitors, and are currently in discussions with another competitor, so if they want to remain competitive they need to answer you.'' She reiterated essentially the same message to Federation members in an August 1, 2003, Critical Federation Alert. By November 24, 2003, United had signed contracts, calling for substantially increased reimbursements, with 33 OB–GYN practice groups or solo practitioners, representing the vast majority of Federation member physicians.

58. On June 23, 2003, ChoiceCare representatives met with Drs. Karram, Metherd, and Wendel to learn more about the '' 'endorsement campaign' '' Federation OB–GYNs were planning. Dr. Metherd described the endorsement as both public and private support of those managed-care organizations that had met the OB–GYNs' established minimum fee levels. No physician articulated any criterion for being included in the endorsement other than meeting their fee demands, despite repeated questions about any other criteria. All three physicians confirmed that all physicians affiliated with the Federation would have to receive fees at or above the fee threshold to receive the endorsement.

59. On August 10, 2003, Dr. Metherd sent an e-mail survey to Federation member practices, inquiring as to the status of negotiations with their top three insurance companies. On September 12, 2003, Dr. Metherd faxed the results of his August 10 e-mail survey to Ms. Odenkirk. The results included the status of negotiations with their top three insurance companies for each of the 31 (out of 43) practices that responded.

60. In a September 18, 2003, memo addressed to Cincinnati area members, Ms. Odenkirk advised members that

> Cincinnati OB/GYNs have been discussing their issues with several health plans and have been reaching successful outcomes. Therefore, I continue to encourage you to hav[e] dialogues with various health plans. I am in the process [o]f reviewing the Aetna and Medical Mutual of Ohio ('MMO') agreements, so if you're interested in opening a dialogue with either of these companies, please feel free to use the enclosed sample third party letters.

The enclosed sample letters, addressed to Aetna and Medical Mutual, appointed the Federation as the practice's third-party messenger, raised concerns about contract language and fees, and contained the usual language threatening contract termination.

61. At an October 7, 2003, Federation membership meeting, which Ms. Odenkirk attended, both Dr. Wendel and Dr. Metherd announced to competing physicians that they had terminated their respective unfavorable contracts with Aetna because of Aetna's refusal to discuss the contracts.

62. In an October 17, 2003, Critical Federation Alert, Ms. Odenkirk updated members on the status of negotiations with Aetna and Medical Mutual. The Alert evaluated Aetna's new fee schedule as ''NOT 'reasonable for the Cincinnati market' '' and gave Federation members specific instructions on how to respond to Aetna's and Medical Mutual's fee proposals.

63. On October 21, 2003, Dr. Metherd e-mailed the entire Cincinnati membership to inform them that his practice had terminated Aetna. Although written under the pretense only of informing OB–GYNs not to refer Aetna patients to him, Dr. Metherd prefaced his message with an account of his reason for termination, decrying Aetna's fees as ''significantly lower than the current market level in the Cincinnati-Northern Kentucky area'' and Aetna's refusal to renegotiate his contract.

64. On October 29, 2003, Dr. Metherd e-mailed Lynda Odenkirk, reporting on strategizing at a meeting that day of the recently formed local Federation Chapter Executive Committee, with copies to the Executive Committee, which included Drs. Karram and Wendel:

> The meeting went well * * * we're still waiting to see whether and how Aetna responds to Seven Hills. Thus far no one else is getting any attention from them and, apparently, they are not being all that friendly with Seven Hills. We'll just have to wait and see * * * all of us at the meeting are aware of the goals of the entire Federation and will, hopefully, not forget them. [Dr. Wendel] and I are hoping everyone will react to Aetna as we had to [terminating their contracts] * * * time will tell. As for endorsing United * * * the message back to them is that they still haven't provided 'fair and equitable' contracting (i.e. the language issues) and that they will receive no endorsement as a result. They will be told this by Dr. Karram, and, that, if they do better in 2005 when we come back to them, then, perhaps they will be endorsed. (all ellipses in original)

65. In an October 29, 2003, memo to Cincinnati area members, Ms. Odenkirk noted that a new fee schedule from Cigna represented a reduction in rates, and, in her opinion, did not meet the notice requirements in the members' contracts with Cigna. Ms. Odenkirk's memo included an attached sample letter, addressed to Cigna, which not only raised the concerns noted in her memo, but also appointed the Federation as the practice's third-party messenger.

66. On November 5, 2003, Ms. Odenkirk prepared a sample letter for Federation members to send Aetna

regarding its revised fee schedule. The sample letter advised Aetna that the sender had ''recently negotiated far better reimbursements with several of your competitors, which has significantly changed the Cincinnati market. Therefore we find that your fee schedule is not reasonable for this area.''

67. Dr. Metherd commented to Ms. Odenkirk on her sample letter to Aetna, in a November 5, 2003, e-mail, which he copied to the Cincinnati Chapter Executive Committee:

> The letter looks good * * * Both [another physician] and [Dr.] Wendel are making overtures to Aetna as I did in order to judge Aetna's reaction. Before we put this out there, let's see what they hear as well. * * * If Aetna responds to [another physician] and [Dr.] Wendel with a willingness to consider a proposal as they did with me, then we can encourage current Aetna providers (and those of us that just recently terminated) to renew contact with them via both phone and your letter.

68. On November 7, 2003, Lynda Odenkirk e-mailed a Critical Federation Alert updating Federation members on the status of negotiations with Medical Mutual, Cigna, and Aetna. Ms. Odenkirk's Alert reported about ''multiple terminations of the Aetna agreement by Cincinnati-Northern Kentucky OB/GYN physicians'' and that Aetna had now indicated a willingness to negotiate with area OB–GYNs. She strongly encouraged Federation members—even those that had noticed termination of their Aetna contracts—to negotiate with Aetna. Ms. Odenkirk also advised Federation members that Medical Mutual had been advised that part of its fee schedule offer was ''unacceptable.''

69. On November 17, 2003, Medical Mutual mailed proposed agreements offering substantially increased fees to nearly all Federation member practices. On November 19, 2003, Ms. Odenkirk e-mailed a Critical Federation Alert that informed Federation members that Medical Mutual's new ''proposal is, for all points and purposes, fair and reasonable, as it is now in line with agreements you've recently negotiated with other companies.'' By early 2004, most of the Federation member practices had signed and returned the contracts.

70. Ms. Odenkirk's November 19, 2003, Critical Federation Alert also gave Federation members specific instructions to persist in negotiations with Aetna, noting that its fee schedule was ''considerably below'' current levels. In the same November 19, 2003, Critical Federation Alert, Ms. Odenkirk instructed members that ''[b]y now you should have sent your third party letter to CIGNA'' and added that members should use with Cigna all of the points mentioned concerning Aetna. The Alert also included a general comment regarding the smaller insurers in the area, such as Aetna, Cigna, and Medical Mutual: ''Consequently, you should make these calls and make it plainly known to each that you will NOT settle for anything less than a 'fair and equitable' contract from each. Moreover, you are in such a position with the bigger companies that you NO LONGER have to accept UNFAIR contracts from these smaller companies.''

71. Coordinated by the Federation, using the Anthem agreement as a benchmark, as Ms. Odenkirk had urged, and using threats of terminating their services, Federation members were able to force ChoiceCare, United, and Medical Mutual to offer all Federation OB–GYN practices new contracts at fees and terms substantially equivalent to those in their Anthem contracts.

72. Most of the contracts between Federation member OB–GYNs and the major insurers run through, at least, the end of 2005. The Federation continues to have Cincinnati-area member OB–GYNs. Although some OB–GYNs have discontinued their membership in the Federation, the Cincinnati chapter of the Federation continues to exist and is available to coordinate another round of collectively negotiated contracts when the current contracts approach expiration.

VIII. Violation Alleged

73. Beginning at least as early as April, 2002, and continuing to date, Defendants and their conspirators have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. This offense is likely to continue and recur unless the relief requested is granted.

74. The combination and conspiracy consisted of an understanding and concert of action among Defendants and their conspirators that the Federation's Cincinnati Chapter members would coordinate their negotiations with health care insurance companies operating in the Cincinnati area to enable the collective negotiation of higher fees from these health care insurers.

75. For the purpose of forming and effectuating this combination and conspiracy, Defendants and their conspirators did the following things, among others:

(a) Successfully recruited as members of the Federation a high percentage of competing OB–GYNs practicing in the Cincinnati area;

(b) Designated the Federation to represent most Federation members in their fee negotiations with Anthem, Humana, United, Medical Mutual, Aetna, and Cigna;

(c) Reached an understanding to coordinate their negotiations through the Federation; and

(d) In coordination with the Federation demanded new, substantially higher fees from each insurer while threatening termination of their contracts if satisfactory results were not obtained.

76. This combination and conspiracy has had the following effects, among others:

(a) Price competition among independent and competing OB–GYNs in the Cincinnati area who became Federation members has been restrained;

(b) Health care insurance companies in the Cincinnati area and their subscribers have been denied the benefits of free and open competition in the purchase of OB–GYN services in the Cincinnati area; and

(c) Self insured employers and their employees have paid significantly higher prices for OB–GYN services in the Cincinnati area than they would have paid in the absence of this restraint of trade.

IX. Request for Relief

77. To remedy these illegal acts, the United States of America requests that the Court:

(a) Adjudge and decree that Defendants entered into an unlawful contract, combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

(b) Enjoin the Defendant Federation and its members, officers, agents, servants, employees and attorneys and their successors, the individual physician Defendants, and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violations or that otherwise violates Section 1 of the Sherman Act, 15 U.S.C. 1, through price fixing of medical services, collective negotiation on behalf of competing independent physicians or physician groups, or group boycotts of the purchasers of health care services;

(c) Enjoin the Federation and any Federation representative from representing or providing consulting services of any kind to any medical practice group, or any self-employed physician; and

(d) Award to plaintiff its costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

Dated: June 24, 2005.

For Plaintiff United States of America:

R. Hewitt Pate,

Assistant Attorney General, Antitrust Division.

J. Bruce McDonald,

Deputy Assistant Attorney General, Antitrust Division.

J. Robert Kramer,

Director of Enforcement, Antitrust Division.

Mark J. Botti,

Chief, Litigation I, Antitrust Division.

Joseph Miller,

Assistant Chief, Litigation I, Antitrust Division.

Gregory G. Lockhart,

United States Attorney.

Gerald F. Kaminski (Bar No. 0012532),

Assistant United States Attorney, Office of the United States Attorney, 221 E. 4th Street, Suite 400, Cincinnati, Ohio 45202 (513) 684–3711.

Steven Kramer, John Lohrer, Paul Torzilli

Attorneys, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0997, steven.kramer@usdoj.gov.

Certificate of Service

I hereby certify that on June 24, 2005, copies of the foregoing Complaint were served by facsimile and first-class regular U.S. mail, postage prepaid, to:

Michael E. DeFrank, Esq., Hemmer Pangburn DeFrank PLLC, Suite 200, 250 Grandview Drive, Fort Mitchell, KY 41017, Fax: 859–344–1188, Attorney for Defendant Dr. James Wendel.

G. Jack Donson, Jr., Esq., Taft, Stettinius & Hollander, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, Fax: 513–381–0205, Attorney for Defendant Dr. Michael Karram.

Jeffrey M. Johnston, Esq., 37 North Orange Avenue, Suite 500, Orlando, FL 32801, Fax: 407–926–2452, Attorney for Defendant Dr. Warren Metherd.

Paul J. Torzilli,

Attorney, United States Department of Justice.

In the United States District Court for the Southern District of Ohio Western Division

United States of America, Plaintiff, vs. Federation of Physicians and Dentists, Lynda Odenkirk, *et al.,* Defendants.

[Case No. 1:05–cv–431, Hon. Sandra S. Beckwith, C.J., Hon. Timothy S. Hogan, M.J.]

[Proposed] Final Judgment As to the Federation of Physicians and Dentists and Lynda Odenkirk

Whereas, Plaintiff, the United States of America, filed its Complaint on June 24, 2005, alleging that Defendant Federation of Physicians and Dentists (''Defendant FPD''), and Defendant Lynda Odenkirk (''Defendant Odenkirk'') (collectively ''the Federation Defendants'') participated in agreements in violation of section 1 of the Sherman Act;

Whereas, Plaintiff and the Federation Defendants, by their counsel, have consented to the Court's entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by the Federation Defendants that the law has been violated as alleged in the Complaint, or that the facts alleged in such Complaint, other than the jurisdictional facts, and the allegations admitted in the Federation Defendants' Answers, are true;

Whereas, the essence of this Final Judgment is to restore competition, as alleged in the Complaint, and to restrain the Federation Defendants from participating in any unlawful conspiracy to increase fees for physician services;

And Whereas, Plaintiff United States requires the Federation Defendants to be enjoined from rendering services to, or representing, any independent physician pertaining to such physician's dealing with any payer, for the purpose of preventing future violations of Section 1 of the Sherman Act.

Now Therefore, without trial or adjudication of any issue of law or fact, and upon consent of Plaintiff and the Federation Defendants, it is Ordered, Adjudged and Decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and over the United States and the Federation Defendants in this action. The Complaint states a claim upon which relief may be granted against the Federation Defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) ''Communicate'' means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, in any manner;

(B) ''Defendant FPD'' means the Federation of Physicians and Dentists, its successors and assigns; its subsidiaries, divisions, groups, partnerships and joint ventures; and each entity over which it has control; and their directors, officers, managers, agents, representatives, and employees.

(C) ''Defendant Odenkirk'' means Lynda Odenkirk, an employee of Defendant FPD;

(D) ''Delaware Decree'' means the final judgment entered in *United States* v. *Federation of Physicians and Dentists, Inc.,* CA 98–475 JJF (D. Del., judgment entered Nov. 6, 2002).

(E) ''The Federation Defendants'' means Defendant FPD and Defendant Odenkirk;

(F) ''Independent physician'' means any physician or physicians in private solo or group medical practice, regardless of whether such person is a member of the Federation of Physicians and Dentists. For purposes of this Final Judgment, an ''independent physician'' does not include physicians or other medical professional employees not in private practice or who belong to a recognized or certified bargaining unit that is affiliated with the Federation of Physicians and Dentists;

(G) ''Messenger'' means, in relation to the Federation Defendants, communicating to a payer any information the Federation Defendants have received from an independent physician, or communicating to any independent physician any information the Federation Defendants receive from any payer;

(H) ''Payer'' means any person that purchases or pays for all or part of a physician's services for itself or any other person and includes but is not limited to individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(I) ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity;

(J) ''Recognized or certified bargaining unit'' means a group of physicians that have been recognized or certified pursuant to state or federal law to bargain collectively with their common employer over wages, terms, and conditions of employment.

III. Applicability

(A) This Final Judgment applies to the Federation Defendants and to any person, including any independent physician, in active concert or participation with the Federation Defendants, who receives actual notice of this Final Judgment by personal service or otherwise.

(B) Defendant Odenkirk shall be bound by the provisions of Section IV of this Final Judgment only while she is an employee or agent of, or acting in active concert with, Defendant FPD.

(C) This Final Judgment shall not apply to the conduct of any physician or other medical professional employee who belongs to a recognized or certified bargaining unit affiliated with Defendant FPD, only to the extent such conduct reasonably relates to the lawful activities of the recognized or certified bargaining unit.

(D) Nothing contained in this Final Judgment is intended to suggest or imply that any provision herein is or has been created or intended for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

(E) Nothing contained in this Final Judgment is intended to suggest or imply that Defendant FPD's obligations under the Delaware Decree have been diminished, limited, curtailed, or otherwise modified.

(F) In the event of any conflict or inconsistency between Section IV of this Final Judgment, and sections IV or V of the Delaware Decree, this Final Judgment controls.

IV. Prohibited Conduct

The Federation Defendants are enjoined from, in any manner, directly or indirectly:

(A) Providing, or attempting to provide, any services to any independent physician regarding such physician's actual, possible, or contemplated negotiation, contracting, or other dealings with any payer;

(B) Acting, or attempting to act, in a representative capacity, including as a messenger or in dispute resolution (such as arbitration), for any independent physician with any payer;

(C) Reviewing or analyzing, or attempting to review or analyze, for any independent physician, any proposed or actual contract or contract term between such physician and any payer;

(D) Communicating, or attempting to communicate, with any independent physician about that physician's, or any other physician's, negotiating, contracting, or participating status with any payer, or, except as consistent with section V(A), about any proposed or actual contract or contract term between any independent physician and any payer;

(E) Responding, or attempting to respond, to any question or request initiated by any payer, except to state that this Final Judgment prohibits such response; and

(F) Training or educating, or attempting to train or educate, any independent physician in any aspect of contracting or negotiating with any payer, including but not limited to, contractual language and interpretation thereof, methodologies of payment or reimbursement by any payer for such physician's services, and dispute resolution such as arbitration, except that the Federation Defendants may, provided they do not violate sections IV(A) through IV(E) of this Final Judgment, (1) Speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit and only if at least five-days advance written notice has been provided to Plaintiff and any handouts, outlines, presentation slides, notes or other documents relating to what was said by the Federation Defendants are retained by the Defendant FPD for possible inspection by Plaintiff; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to independent physicians regarding the regulatory structure (including legislative developments) of workers compensation, Medicaid, and Medicare, except Medicare Advantage.

V. Permitted Conduct

(A) The Federation Defendants may engage in activities that fall within the safety zone set forth in Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153.

(B) Nothing in this Final Judgment shall prohibit the Federation Defendants, or any one or more of Defendant FPD's members from:

(1) Engaging or participating in lawful union organizational efforts and activities;

(2) Advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965), and their progeny, legislative, judicial, or regulatory actions, or other governmental policies or actions; and

(3) Exercising rights protected by the National Labor Relations Act or any state collective bargaining laws.

(C) Nothing in this Final Judgment shall prohibit:

(1) Any independent physician to whom this Final Judgment applies from engaging solely with other members or employees of such physician's bona fide solo practice or practice group in activities otherwise prohibited herein;

(2) Any independent physician to whom this Final Judgment applies from acting alone in the exercise of his or her own independent business judgment, from choosing the payer or payers with which to contract, and/or refusing to enter into discussions or negotiations with any payer.

(D) Nothing in this Final Judgment shall prohibit or impair the right of the Federation Defendants (or any affiliate thereof) as a labor organization from communicating with other labor organizations concerning the identity of payers who are considered pro- or anti-union, provided such activity is consistent with § 8(b)(4) of the National Labor Relations Act, 29 U.S.C. 158(b)(4), and to the extent it does not constitute a secondary boycott.

VI. Compliance

To facilitate compliance with this Final Judgment, Defendant FPD shall:

(A) Distribute within 60 days from the entry of this Final Judgment, a copy of this Final Judgment and the Competitive Impact Statement to:

(1) All of Defendant FPD's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to independent physicians; and

(2) All of Defendant FPD's members who are independent physicians.

(B) Distribute as soon as practicable a copy of this Final Judgment and the Competitive Impact Statement to:

(1) Any person who succeeds to a position with Defendant FPD described in section VI(A), in no event shall such distribution occur more than fifteen (15) days later than such person assumes such position; and

(2) Any independent physician who becomes a member of Defendant FPD, in no event shall such distribution occur more than fifteen (15) days later than such physician becomes a member.

(C) Conduct an annual seminar explaining to all of Defendant FPD's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to independent physicians, the antitrust principles applicable to their

work, the restrictions contained in this Final Judgment, and the implications of violating the Final Judgment;

(D) Maintain an internal mechanism by which questions about the application of the antitrust laws and this Final Judgment from any of Defendant FPD's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to independent physicians, can be answered by counsel as the need arises;

(E) Obtain a certificate from each person to whom Defendant FPD must distribute this Final Judgment:

(1) Pursuant to section VI(A), within 120 days from the entry of this Final Judgment; and

(2) Pursuant to section VI(B), as soon as practicable but in no event more than 120 days from the date of such distribution;

The certificate shall state that such person has received, read, and understands this Final Judgment, and that such person has been advised and understands that such person must comply with this Final Judgment and may be held in civil or criminal contempt for failing to do so. Defendant FPD shall retain each certificate for the duration of this Final Judgment; and

(F) Maintain for inspection by Plaintiff a record of recipients to whom this Final Judgment, and Competitive Impact Statement have been distributed and from whom written certifications, pursuant to section VI(E), have been received.

VII. Certification

(A) Within 75 days after entry of this Final Judgment, Defendant FPD shall certify to Plaintiff that it has provided a copy of this Final Judgment to all persons described in VI(A) of this Final Judgment.

(B) For a period of ten (10) years following the date of entry of this Final Judgment, the Federation Defendants shall separately certify to Plaintiff annually on the anniversary date of the entry of this Final Judgment that each, respectively, and any agents if applicable, has complied with the provisions of this Final Judgment.

VIII. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the Federation Defendants, be permitted:

(1) Access during the Federation Defendants' regular business hours to inspect and copy, or, at the United States' option, to require that the Federation Defendants provide copies of all books, ledgers, accounts, records and documents in their possession, custody, or control, relating to any matters contained in this Final Judgment;

(2) To interview, either informally or on the record, Defendant Odenkirk or any of Defendant FPD's officers, directors, employees, agents, managers, and representatives, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Federation Defendants; and

(3) To obtain from the Federation Defendants written reports or responses to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

(B) The provisions of section VIII(A) shall not apply to any member of Defendant FPD or to any such member's group practice.

(C) No information or documents obtained by the means provided in this Section shall be divulged by Plaintiff to any person other than authorized representatives of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at any time a Federation Defendant furnishes information or documents to the United States, the Federation Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give the Federation Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such Defendant is not a party.

(E) The Federation Defendants have the right to representation by counsel in any proceeding under this Section.

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XI. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated:_____, 2007.

Sandra S. Beckwith, Chief Judge

United States District Court.

In the United States District Court for the Southern District of Ohio Western Division

United States Of America, Plaintiff, vs. Federation of Physicians and Dentists, *et al.,* Defendants.

Case No. 1:05–CV–431, Chief Judge Sandra S. Beckwith, Magistrate Judge Thomas S, Hogan.

Plaintiff's Competitive Impact Statement Concerning the Proposed Final Judgment As to the Federation of Physicians and Dentists and Lynda Odenkirk

In this civil antitrust action, the United States of America, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. section 16(b)–(h), files this Competitive Impact Statement concerning the proposed Final Judgment as to the Federation of Physicians and Dentists and Lynda Odenkirk (''Final Judgment'') that the parties have submitted for entry.

I. Nature and Purpose of the Proceeding

The United States filed this civil antitrust Complaint on June 24, 2005, in the United States District Court for the Southern District of Ohio, Western Division, alleging that the Federation of

Physicians and Dentists (''Federation'') and Federation employee Lynda Odenkirk, along with physician co-defendants Drs. Warren Metherd, Michael Karram, and James Wendel coordinated a conspiracy among about 120 obstetrician-gynecologist physicians (''OB–GYNs'') practicing in greater Cincinnati, Ohio, that unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. section 1. As alleged in the Complaint, the conspiracy artificially raised fees paid by health care insurers to Federation members in the Cincinnati area, which are ultimately borne by employers and their employees. The physician defendants agreed to a judgment that was filed concurrently with the Complaint and eventually entered by this Court on November 14, 2005, after determining, under the APPA, that the decree was in the public interest. (Dkt. Entry #36).

The plaintiff and the remaining defendants, the Federation and Ms. Odenkirk (the ''Federation defendants''), have stipulated that the proposed Final Judgment may be entered after compliance with the APPA and upon the Court's determination that it serves the public interest. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations of it.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

The Complaint in this action includes the following allegations. The Federation is a membership organization of physicians and dentists, headquartered in Tallahassee, Florida. The Federation's membership includes economically independent physician groups in private practice in many states, including Ohio. The Federation has offered such member physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

In spring 2002, several Cincinnati OB–GYNs became interested in joining the Federation to negotiate higher fees from health care insurers. The physician defendants assisted the Federation in recruiting other Cincinnati-area OB–GYNs as members. By June 2002, the membership of the Federation had grown to include a large majority of competing OB–GYN physicians in the Cincinnati area.

With substantial assistance from the physician defendants and Ms. Odenkirk, the Federation coordinated and helped implement its members' concerted demands to insurers for higher fees and related terms, accompanied by threats of contract terminations. From September 2002 through the fall of 2003, Ms. Odenkirk communicated with the physician defendants and other Cincinnati-area OB–GYN Federation members to coordinate their contract negotiations with health care insurers. Along with the physician defendants, Ms. Odenkirk developed a strategy to intensify Federation member physicians' pressure on health care insurers to renegotiate their contracts, including informing member physicians about the status of competing member groups' negotiations and taking steps to coordinate their negotiations.

The agreement coordinated by the Federation defendants forced Cincinnati-area health care insurers to raise fees paid to Federation member OB–GYNs above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of the conspirators' conduct, the three largest Cincinnati-area health care insurers each were forced to increase fees paid to most Federation members OB–GYNs by approximately 15–20% starting July 1, 2003, followed by cumulative increases of approximately 20–25% starting January 1, 2004, and approximately 25–30% effective January 1, 2005. Federation member OB–GYNs' conduct, coordinated by the Federation defendants, also caused other insurers to raise the fees they paid to Federation members.

III. Explanation of the Proposed Final Judgment

A. Relief To Be Obtained

The proposed Final Judgment is designed to enjoin the Federation defendants from taking future actions that could facilitate private-practice physicians' coordination of their dealings with payers. The central objective of the injunctive provisions, therefore, is to prohibit the Federation from being involved anywhere in the country in its private-practice members' negotiating or contracting with health insurers or other payers for health care services.

The proposed Final Judgment prohibits the Federation defendants from providing any services to any physician in private practice regarding such physician's negotiation, contracting, or other dealings with any payer. The proposed Final Judgment also prohibits the Federation defendants from (1) representing (including as a messenger) any private-practice physician with any payer; (2) reviewing or analyzing, for any such physician, any proposed or actual contract or contract term between such physician and any payer; and (3) communicating with any independent physician about that physician's, or any other physician's, negotiating, contracting, or participating status with any payer. Communications by the Federation defendants about any proposed or actual contract or contract term between any independent physician and any payer are also generally prohibited. In addition, the proposed Final Judgment enjoins the Federation defendants from responding to any question or request initiated by any payer, except to state that the Final Judgment prohibits such a response. Finally, the proposed Final Judgment generally prohibits the Federation defendants from training or educating, or attempting to train or educate, any independent physician in any aspect of contracting or negotiating with any payer.

The only exceptions to these broad prohibitions cover conduct that neither threatens competitive harm nor undermines the clarity of the prohibitions, which the Department will enforce aggressively. One exception limits the prohibition on the Federation defendants from training or educating, or attempting to train or educate, any independent physician in any aspect of contracting or negotiating with any payer, provided they do not violate the other injunctive provisions of the proposed Final Judgment, enabling defendants to (1) speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit, advance written notice has been given to Plaintiff, and documents relating to what was said by the Federation Defendants are retained by them for possible inspection by the United States; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to independent physicians regarding the regulatory structure (including legislative developments) of workers compensation, Medicaid, and Medicare, except Medicare Advantage.

In a section titled ''permitted conduct,'' the proposed decree permits the Federation defendants to engage in activities involving physician participation in written fee surveys that are covered by the ''safety zone'' under Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health

Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153, which addresses provider participation in exchanges of price and cost information. The proposed Final Judgment also clarifies that it does not prohibit the Federation defendants or Federation members from engaging in lawful union organizational efforts and activities. The proposed Final Judgment also allows the Federation defendants or Federation members to petition governmental entities in accordance with doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), and its progeny. In addition, the decree permits Federation physician members to choose independently, or solely with other members or employees of such member's bona fide solo practice or practice groups, health insurers with which to contract, and/or to refuse to enter into discussion or negotiations with any health care payer.

To promote compliance with the decree, the proposed Final Judgment also requires the Federation to provide Federation agents and members in private practice with copies of the Final Judgment and this Competitive Impact Statement and to institute mechanisms to facilitate Federation agents' compliance. For a period of ten years following the date of entry of the Final Judgment, the Federation defendants separately must certify annually to the United States whether they have complied with the provisions of the Final Judgment.

The proposed Final Judgment clarifies that it does not alter the Federation's obligations under the decree entered by the district court in Delaware in a prior, similar case against the Federation, *United States* v. *Federation of Physicians and Dentists, Inc.,* CA 98–475 JJF (D. Del., judgment entered Nov. 6, 2002), and that, if there is any conflict between the injunctive provisions of the proposed Final Judgment and the injunctive provisions or conduct permitted by the Delaware decree, the proposed Final Judgment controls. The proposed Final Judgment embodies more stringent relief than that provided by the Delaware decree because it prohibits the Federation from, for example, representing physicians in their dealings with payers as a messenger and from reviewing and analyzing physician contracts with any payer, activities that the Delaware decree had permitted in limited circumstances.

B. Anticipated Effects on Competition of the Relief To Be Obtained

The proposed Final Judgment attempts to prevent recurrence of the violation and restore lost competition, as alleged in the Complaint. The essential relief imposed by the proposed Final Judgment—prohibiting the Federation's involvement in its private-practice members' contracting with payers—will eliminate a substantial restraint on price competition among competing OB–GYNs in Cincinnati and elsewhere. Consequently, payers in the Cincinnati area and elsewhere seeking to develop or maintain a network of OB–GYNs will benefit from competition unimpeded by the collusive behavior of the Federation and its members. Employers arranging for delivery of physician services through insurer networks and members of such health care plans will similarly benefit from the plans' ability to negotiate for OB–GYN services on competitive terms, rather than on the collusively inflated fees that resulted from the Federation's coordination of the negotiations conducted with payers by the majority of Cincinnati-area OB–GYN physicians.

IV. Remedies Available to Potential Private Litigants Damaged By the Alleged Violation if the Proposed Final Judgment is Entered

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment also would have no *prima facie* effect in any subsequent private lawsuits that may be brought against the Federation defendants involving their alleged conduct in this action.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the latter of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of notice of the filing of the proposed Final Judgment and this Competitive Impact Statement. The United States will evaluate and respond to the comments received during this period, and it remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: Joseph Miller, Acting Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment Actually Considered by The United States

The United States considered rejecting the Federation's proposal that the Final Judgment contain exceptions permitting the Federation to engage in certain educational and training activities, and thus continuing to litigate the claims in the Complaint. The exceptions, however, are narrow and do not undermine the effectiveness of the decree. The United States decided, therefore, that the Final Judgment provides it with substantially all of the relief it could have expected to achieve in Court and did not warrant the delay, risks, and costs of further litigation.

VII. Standard of Review Under the APPA of the Proposed Final Judgment

After the sixty (60)-day comment period and compliance with the provisions of the APPA, if the United States has not withdrawn its consent to the proposed Final Judgment, it will move for entry of the proposed Final Judgment in accordance with the APPA. Persons considering commenting on the proposed Final Judgment are advised that, in determining, under the APPA, whether entry of the proposed Final Judgment is ''in the public interest,'' the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies

actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B).

As these statutory provisions suggest, the APPA requires the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). In determining whether the proposed judgment is in the public interest, ''[n]othing in [the APPA] shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene,'' 15 U.S.C. 16(e)(2), ''which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Congo Rec. 24,598 (1973) (statement of Senator Tunney). This caveat is also consistent with the deferential review of consent decrees under the APPA. See *United States* v. *Microsoft*, 56 F.3d at 1460–62; *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988); *United States* v. *SBC Commc'ns, Inc.*, Nos. 05–2102 and 05–2103, 2007 WL 1020746, at *9 (D.D.C. Mar. 29, 2007) (confirming that 2004 amendments to the APPA ''effected minimal changes[] and that the[e] Court's scope of review remains sharply proscribed by precedent and the nature of [APPA] proceedings.'').

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Dated: July 2, 2007.

For Plaintiff United States of America:

Gregory G. Lockhart,

United States Attorney.

Gerald F. Kaminski

Assistant United States Attorney, Bar No. 0012532.

Office of the United States Attorney, 221 E. 4th Street, Suite 400, Cincinnati, Ohio 45202, (513) 684–3711.

Steven Kramer,

Paul Torzilli,

Attorneys, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0997, steven.kramer@usdoj.gov.

Certificate of Service

I hereby certify that on July 2, 2007, I electronically filed the foregoing Plaintiff's Competitive Impact Statement Concerning the Proposed Final Judgment as to The Federation of Physicians and Dentists and Lynda Odenkirk with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

David M. Cook, Esq. of Cook, Portune & Logothetis (Cincinnati) (as Trial Attorney for Defendant Federation of Physicians and Dentists, and Trial Attorney for Defendant Lynda Odenkirk), and

Kimberly L. King, Esq. of Hayward & Grant, P.A. (Tallahassee, FL) (as Attorney for Defendant Federation of Physicians and Dentists, and Attorney for Defendant Lynda Odenkirk).

Paul Torzilli,

Attorney, United States Department of Justice.

[FR Doc. 07–3421 Filed 7–17–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0240]

Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 30-day notice of information collection under review: 2007 Survey of State and Local Law Enforcement Agencies.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 90, pages 26648–26649 on May 10, 2007, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until August 17, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brian Reaves, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* 2007 Survey of State and Local Law Enforcement Agencies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: The form numbers are CJ–44L and CJ–44S, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, and Local Government. This information collection is a survey of State and local law enforcement agencies. The survey will provide statistics on law enforcement personnel, budgets,

equipment, and policies and procedures.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 3,200 respondents will complete a survey form, including 1,000 3-hour forms and 2,200 2-hour forms.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 7,400 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: July 13, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–13940 Filed 7–17–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 12, 2007.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/email: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Request for State or Federal Workers' Compensation Information.

OMB Number: 1215–0060.

Form Number: CM–905.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: State, Local, or Tribal governments.

Estimated Number of Respondents: 1,400.

Estimated Number of Annual Responses: 1,400

Estimated Average Response Time: 15 minutes.

Estimated Total Annual Burden Hours: 350.

Total Estimated Annualized capital/startup costs: $0.

Total Estimated Annual Costs (operating/maintaining systems or purchasing services): $616.

Description: The Form CM–905 is submitted to Federal or state agencies for completion when it is indicated that the beneficiary has filed a claim for workers' compensation benefits due to pneumoconiosis, or is receiving benefits that may need to be offset. The information is used by DOL claims examiners in determining the amounts of black lung benefits paid to beneficiaries. Benefit amounts are reduced, dollar for dollar, for other black lung related workers' compensation awards the beneficiary may be receiving from state or Federal programs.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Labor Standards for Federal Service Contracts—Regulations 29 CFR, Part 4.

OMB Number: 1215–0150.

Form Numbers: N/A.

Frequency: Annually.

Type of Response: Reporting and Recordkeeping.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 50,812.

Estimated Number of Annual Responses: 50,812.

Estimated Average Response Time: 1 hour to prepare a vacations benefit seniority list; 30 minutes to prepare a conformance record; and 5 minutes to transmit collective bargaining agreements.

Estimated Total Annual Burden Hours: 49,220.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 2(a) of the Service Contract Act (41 U.S.C. 351) provides that every contract subject to the Act must contain a provision specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees performing work on the contract. This information collection pertains to records needed to determine an employee's seniority for purposes of determining any vacation benefit, to conform wage rates where they do not appear on a wage determination (WD), and to update WDs because of changing terms in a collective bargaining agreement.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–13876 Filed 7–17–07; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,637]

Vytech Industries, Inc., Elkhart, IN; Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

ACTION: Notice; correction.

SUMMARY: The Department of Labor, Employment and Training Administration published a document in the **Federal Register** on July 9, 2007, titled Notice of Determinations Regarding Eligibility to Apply for

Worker Adjustment Assistance and Alternative Trade Adjustment Assistance. The Department is issuing a restructured paragraph for clarification purposes.

Correction

This is to correct the ''text'' caption in the **Federal Register** of July 9, 2007, in FR Doc. E7–13173, on page 37265, in the third column, under the heading Negative Determinations for Alternative Trade Adjustment Assistance, to read:

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

Signed in Washington DC this 11th day of July 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–13875 Filed 7–17–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: Comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before August 17, 2007.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *E-Mail: Standards-Petitions@dol.gov*.
2. *Telefax:* 1–202–693–9441.
3. *Hand-Delivery or Regular Mail:* Submit comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Edward Sexauer, Chief, Regulatory Development Division at 202–693–9444 (Voice), *sexauer.edward@dol.gov* (E-mail), or 202–693–9441 (Telefax), or contact Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2007–037–C.

Petitioner: Mallie Coal Company, Inc., 8442 Hwy. 6, Corbin, Kentucky 40701.

Mine: Mine No. 7, (MSHA I.D. No. 15–19007), located in Knox County, Kentucky.

Regulation Affected: 30 CFR 75.380(f)(4)(i) (Escapeways; bituminous and lignite mines).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method for the use of mobile equipment traveling in the primary escapeway. The petitioner asserts that technology has not developed a fire suppression system that will fit on the type of equipment used in this mine, which has an average coal seam of 28 inches. The petitioner proposes to use one ten pound or two five pound portable chemical fire extinguishers on each Mescher Jeep used at the Mine. If two extinguishers are used, one five pound extinguisher will be mounted in the operators' deck with the other mounted on the jeep accessible to the operator. If one extinguisher is used, it will be mounted in the operators' deck. In either case, the petitioner proposes to use a total of ten pounds of fire extinguisher capability on each Mescher Jeep, which will be readily accessible to the operator. The petitioner states that: (1) The equipment operator will inspect each fire extinguisher daily before entering the primary escapeway; and (2) a record of the inspections will be maintained; and (3) defective fire extinguishers will be replaced prior to entering the mine. The petitioner further states that: (1) The main travelway of the mine is also the primary escapeway; (2) the amount of time each Mescher Jeep is in the primary escapeway is limited to the travel time to the face at the start of the shift, and at mid-shift, to change batteries, and travel out at the end of the shift during which time the drag bucket is empty and the tractor is not transporting coal; (3) employees who operate the Mescher Jeeps in the primary escapeway have been properly trained in the daily inspection of fire extinguishers installed on the equipment they operate; and (4) the employees have been trained to properly operate the fire extinguishers should it become necessary to extinguish a fire on the equipment they operate. The petitioner also states that it is likely that the application of the existing standard would reduce the safety of the affected miners, since fire suppression equipment is not presently available for this type of equipment, and currently, technology does not provide fire suppression equipment for the type of machinery used at the Mine No. 7. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–038–C.

Petitioner: Mallie Coal Company, Inc., 8442 Hwy. 6, Corbin, Kentucky 40701.

Mine: Mine No. 7, (MSHA I.D. No. 15–19007), located in Knox County, Kentucky.

Regulation Affected: 30 CFR 75.342 (Methane monitors).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of hand-held continuous-duty methane and oxygen indicators in lieu of machine-mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner states that: (1) The operator

will be qualified to use the hand-held detectors; (2) a gas test will be taken to determine if any methane concentration is present in the atmosphere prior to allowing the coal-loading tractor in the face area; (3) if one percent (1%) of methane is detected, the operator will manually de-energize his/her battery operated tractor immediately, production will immediately cease, work will be performed to eliminate the elevated methane levels, and production will resume when the methane has been lowered to less than one percent; (4) a spare continuous-duty hand-held methane and oxygen detector will be available to ensure that all coal hauling tractors are equipped with a working detector; and (5) the monitors will be inspected daily and fully charged, calibrated at least every 30 days, and will not be changed from manufacturer's specifications unless by a person qualified to do so. The petitioner asserts that application of the existing standard reduces protection and the proposed alternative method would greatly increase the safety and well being of miners.

Docket Number: M–2007–039–C.

Petitioner: Mountain Coal Company, LLC, 5174 Highway 133, Somerset, Colorado 81434.

Mine: West Elk Mine, (MSHA I.D. No. 05–03672), located in Gunnison County, Colorado.

Regulation Affected: 30 CFR 75.380(d)(4) (Escapeway; bituminous and lignite mines).

Modification Request: The petitioner requests an amendment to its previous petition for modification, docket number M–94–023–C, to increase the affected distance in the belt entry from 1,050 feet to 2,300 feet with the same terms and conditions as its previously approved petition. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that application of the approved terms and conditions of the previous petition will at all times provide a safe work environment to the miners. In addition, the petitioner asserts that the requested amendment will provide at least as much protection as the previously granted petition.

Docket Number: M–2007–040–C.

Petitioner: UAE CoalCorp Associates, One Harmony Road, P.O. Box 0306, Mount Carmel, Pennsylvania.

Mine: Harmony Mine, (MSHA I.D. No. 36–07838), located in Columbia County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

Modification Request: The petitioner requests a modification of the existing standard for its anthracite coal mine to permit the use of the slope (gunboat) to transport persons in shafts and slopes using an increased rope strength/safety factor and secondary safety rope connection instead of using safety catches or other no less effective devices. The petitioner asserts that: (1) A functional safety catch capable of working in slopes with knuckles or curves is not commercially available; (2) a makeshift device would be activated on or by knuckles or curves when no emergency exists; and (3) activation of a safety catch can or will damage the haulage system and subject persons being transported to hazards from dislodged timbering, roof material or guide rails, and being battered about within the conveyance. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–041–C.

Petitioner: Brooks Run Mining Company, LLC, 25 Little Birch Road, Sutton, West Virginia 25601.

Mine: Cucumber Mine, (MSHA I.D. No. 46–09066), located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

Modification Request: The petitioner requests a modification of the existing standard to permit mining on a complete line of pillars without having to tram the Mine Roof Supports (MRS) units around the pillars. The petitioner states that: (1) This petition will apply only to trailing cables that are at least a No. 6 American Wire Gauge and have a 90 degree insulation rating to supply 575-volt three-phase alternating current to mobile roof supports; (2) the size of the trailing cable will be according to the equipment approval documentation and the maximum cable length will not exceed 800 feet; (3) all circuit breakers used to protect the trailing cables exceeding 600 feet in length will have instantaneous trip units calibrated to trip at 300 amperes; (4) each trip setting of the circuit breakers will be sealed and the circuit breakers will have permanent, legible labels to identify the circuit breaker as being suitable for protecting the cables; (5) during each production day, a person designated by the operator will visually examine the trailing cables to ensure that the cables are in safe operating condition and visually examine the instantaneous settings of the specially calibrated breakers to ensure that the seals have not been removed or tampered with or do not exceed the settings; (6) warning labels will be installed and properly maintained permanently on the cover(s) of the power center or distribution box identifying the location of each sealed short circuit protective device; (7) back-spooling and temporary discharging points shall be limited; and (8) Part 48 training plan will be revised to include additional training. The petitioner further states that labels will warn miners not to change or alter the sealed short circuit settings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–042–C.

Petitioner: Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763.

Mine: Mine # 75, MSHA I.D. No. 15–17478, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

Modification Request: The petitioner requests a modification of the existing standard to permit check points (examination points) for air volume and quality to be established in two locations of the Return Mains due to water accumulations in these areas that prevent foot travel. The petitioner proposes to establish examination points at certain points to evaluate airflow entering the 2nd Return Mains and exiting the 2nd Return Mains. The petitioner also proposes to establish ventilation check points between certain breaks of the 2nd Return Mains near the installed man doors and in the cut-through of certain breaks in the 2nd Return Mains. The petitioner states that due to water accumulations and the distance from active works, it is impractical to expose personnel to traveling the affected area. The petitioner describes additional safety precautions, such as, signage and establishing and monitoring air measurement stations, at locations that would allow a certified person to effectively evaluate ventilation in the affected areas of the mine. The petitioner has listed specific additional procedures in this petition that will be used to comply with the proposed alternative method. Individuals may review a complete description of the procedures at the MSHA address listed in this notice. The petitioner asserts that this petition for modification will provide no less protection than the existing standard.

Dated: July 12, 2007.

Jack Powasnik,

Acting Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E7–13921 Filed 7–17–07; 8:45 am]

BILLING CODE 4510–43–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 1, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Philosophy I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

2. *Date:* August 1, 2007.
Time: 2 p.m. to 5 p.m.
Room: 421.
Program: This meeting, which will be by teleconference, will review applications for Public Libraries, submitted to the Office of Challenge Grants, at the May 1, 2007 deadline.

3. *Date:* August 2, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Romance Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

4. *Date:* August 2, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Music History and Theory in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

5. *Date:* August 6, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American Literature I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

6. *Date:* August 6, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Literature II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

7. *Date:* August 7, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Ancient and Classical Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

8. *Date:* August 7, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Medieval and Renaissance Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

9. *Date:* August 8, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Germanic and Slavic Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

10. *Date:* August 8, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Political Science and Jurisprudence in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

11. *Date:* August 9, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American History I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

12. *Date:* August 9, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Advanced Research Fellowships on Japan in Fellowships for Advanced Research on Japan, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

13. *Date:* August 10, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Sociology, Anthropology, and Psychology in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

14. *Date:* August 13, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Comparative Literature and Literary Criticism in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

15. *Date:* August 13, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Humanities II in Faculty Research Awards, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

16. *Date:* August 14, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Digital Humanities Fellowships III in Digital Humanities Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

17. *Date:* August 14, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Philosophy II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

18. *Date:* August 15, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Religious Studies in

Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

19. *Date:* August 16, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Film, Media, Rhetoric, and Communication in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

20. *Date:* August 16, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American History II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2007 deadline.

Heather C. Gottry,
Acting Advisory Committee Management Officer.

[FR Doc. E7–13841 Filed 7–17–07; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Audit and Oversight Committee; Sunshine Act Meetings; Notice

The National Science Board's Audit and Oversight Committee, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Monday, July 30, 2007 at 5 p.m.

SUBJECT MATTER: To discuss findings and recommendations of OIG review of Board operations polices and procedures.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Bruce M. Carpel, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–4982.

Russell Moy,
Attorney-Advisor.

[FR Doc. E7–13968 Filed 7–17–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–184]

National Institute of Standards and Technology; National Bureau of Standards Reactor; Notice of Availability of the Draft Environmental Impact Statement for License Renewal and Public Comment Period for the License Renewal of National Bureau of Standards Reactor

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a Draft Environmental Impact Statement (Draft EIS) for License Renewal of the Operating License No. TR–5 for an additional 20-years of operation for the National Bureau of Standards Reactor (NBSR) located on the National Institute of Standards and Technology (NIST) campus in upper Montgomery County, Maryland. Possible alternatives to the proposed action (license renewal) include no action, constructing a new reactor to replace the NBSR capabilities, and using alternative research facilities.

The Draft EIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm*. The Accession Number for the Draft EIS is ML070920453. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*. In addition, the Montgomery County Library, located at 2 Metropolitan Court, Suite 4, Gaithersburg, MD 20878, has agreed to make the Draft EIS available for public inspection.

Any interested party may submit comments on the Draft EIS for consideration by the NRC staff. To be considered, comments on the Draft EIS and the proposed action must be received by September 5, 2007; the NRC staff is able to assure consideration only for comments received on or before this date. Comments received after the due date will be considered only if it is practical to do so. Written comments on the Draft EIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *NISTDEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Beissel, Environmental Branch A, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Beissel may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 9th day of July, 2007.

For the Nuclear Regulatory Commission.

Eric Benner,
Branch Chief, Environmental Branch A, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E7–13934 Filed 7–17–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–357]

WTO Dispute Settlement Proceeding Regarding United States—Subsidies and Other Domestic Support for Corn and Other Agricultural Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on June 7, 2007, Canada requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') regarding U.S. domestic support measures for corn and other agricultural products. That request may be found at: *http://www.wto.org* contained in a document designated as WT/DS357/11. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before August 17, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to: *FR0705@ustr.eop.gov,* with ''Agricultural Subsidies (Canada) (DS357)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

FOR FURTHER INFORMATION CONTACT: David Yocis, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–6150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a dispute settlement panel has been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such a panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Canada

In its request for the establishment of a panel, Canada alleges that the United States has provided support to domestic agricultural producers in excess of U.S. commitments with respect to the Aggregate Measurement of Support (''AMS'') as described in Article 6.2 of the WTO *Agreement on Agriculture* and the U.S. WTO schedule of commitments. According to Canada, the United States has provided domestic support in excess of its AMS commitments in each of the years 1999, 2000, 2001, 2002, 2004, and 2005, in breach of Article 3.2 of the WTO *Agreement on Agriculture.* In addition, Canada alleges that U.S. export credit guarantees under the GSM–102 program in respect of agricultural products not included in the U.S. WTO schedule of agricultural export subsidy commitments are export subsidies prohibited under Articles 3.1(a) and 3.2 of the WTO *Agreement on Subsidies and Countervailing Measures* and provided in violation of Articles 8 and 10.1 of the WTO *Agreement on Agriculture.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to: *FR0705@ustr.eop.gov,* with ''Agricultural Subsidies (Canada) (DS357)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''Business Confidential'' at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as Submitted in Confidence at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–357, Canada Corn–AMS Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E7–13941 Filed 7–17–07; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS316]

WTO Dispute Settlement Proceeding Regarding European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft; Notice of Opportunity To View Non-Confidential Session of Dispute Settlement Panel's Second Meeting With the Parties

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that members of the public have an opportunity to view the non-confidential session of the second substantive meeting of the World Trade Organization (''WTO'') in the dispute *European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft* (WT/DS316). At the session, parties will make their opening statements and may pose questions or make comments on the other party's statement. The United States does not expect the Panel to pose any questions or make any comments during the session. The session will be videotaped. At an appropriate time after the session is over, the Panel will confirm that no business confidential information was referenced during the session. Public viewing of the videotape will occur after the conclusion of the second substantive meeting, which will take place July 24–26, 2007. In the case of the first panel meeting, the viewing was held the day after the panel meeting concluded, so the viewing could be as

early as July 27. Once the WTO announces the time and date of the public viewing, USTR will post that information on its Web site at *www.ustr.gov*. The public viewing will be held at the World Trade Organization, Centre William Rappard, Rue de Lausanne 154, CH—1211 Geneva 21, Switzerland.

USTR invites any person interested in viewing the non-confidential session to so inform USTR by e-mail at *rsvp-DS316@ustr.eop.gov*. USTR urges that the request be made as soon as possible and in any event no later than July 20. Requests will be forwarded to the WTO. Each request should indicate the person's full name, contact information (full address, phone, and e-mail), organization (if any), and nationality, and whether the person has made any other request to view the session (such as a request directly to the WTO or to the other party to the dispute, the European Communities).

FOR FURTHER INFORMATION CONTACT: Shane Warren, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3150.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E7–13945 Filed 7–17–07; 8:45 am]

BILLING CODE 3190–W7–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) for the following collection of information: 3220–0200, Designation of Contact Officials. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

Coordination between railroad employers and the RRB is essential to properly administer the payment of benefits under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). In order to enhance timely coordination activity, the RRB utilizes Form G–117a, Designation of Contact Officials. Form G–117a is used by railroad employers to designate employees who are to act as point of contact with the RRB on a variety of RRA and RUIA-related matters. Completion is voluntary. The RRB estimates that about 100 G–117a's are submitted annually. One response is requested from each respondent. Completion time is estimated at 15 minutes. No changes are proposed to Form G–117a.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 26657 on May 10, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Designation of Contact Officials.

OMB Control Number: 3220–0200.

Form(s) Submitted: G–117A.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for profit.

Abstract: The Railroad Retirement Board (RRB) requests that railroad employers designate employees to act as liaison with the RRB on a variety of Railroad Retirement Act and Railroad Unemployment Insurance Act matters.

Changes Proposed: The RRB proposes no changes to Form G–117A.

The burden estimate for the ICR is as follows:

Estimated Annual Number of Respondents: 100.

Total Annual Responses: 100.

Total Annual Reporting Hours: 25.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–13910 Filed 7–17–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56051; File No. SR–BSE–2007–30]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the iShares Russell 2000 Index Fund Option Pilot Program Until January 18, 2008

July 12, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by BSE. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend an existing pilot program that increases the position and exercise limits for options on the iShares Russell 2000 Index Fund (''IWM'') traded on the Exchange (''IWM Option Pilot Program''). The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and *http://www.bostonstock.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the IWM Option Pilot Program for an additional six-month period, through January 18, 2008,[5] and to make non-substantive changes to simplify the rule text describing the IWM Option Pilot Program. The IWM Option Pilot Program increases the position and exercise limits for IWM options traded on the Exchange.[6] The Exchange is not proposing any other changes to the IWM Option Pilot Program. The Exchange represents that it has not encountered any problems or difficulties relating to the IWM Option Pilot Program since its inception.

The proposal that established the IWM Option Pilot Program was designated by the Commission to be effective and operative upon filing and provided that it would run from January 23, 2007 through July 22, 2007.[7] In that filing, the Exchange explained that in June 2005, as a result of a 2-for-1 stock split, the position limit for IWM options was temporarily increased from 250,000 contracts (covering 25,000,000 shares) to 500,000 contracts (covering 50,000,000 shares). At the time of the split, the furthest IWM option expiration date was January 2007. Therefore, the temporary increase of the IWM position limit was scheduled to automatically revert to the pre-split level (as provided for in connection with the Chapter III, Section 7 Pilot Program) of 250,000 contracts after expiration in January 2007.

As the Exchange described in the proposal that established the IWM Option Pilot Program, the Exchange believes that a position limit of 250,000 contracts is too low and may be a deterrent to the successful trading of IWM options. Importantly, options on IWM are 1/10th the size of options on the Russell 2000 Index (''RUT''), which have a position limit of 50,000 contracts.[8] Traders who trade IWM options to hedge positions in RUT options are likely to find a position limit of 250,000 contracts in IWM options too restrictive and insufficient to properly hedge. For example, if a trader held 50,000 RUT options and wanted to hedge that position with IWM options, the trader would need—at a minimum—500,000 IWM options to properly hedge the position. Therefore, the Exchange continues to believe that a position limit of 250,000 contracts is too low and may adversely affect market participants' ability to provide liquidity in this product.

As the Exchange also described in the proposal that established the IWM Option Pilot Program, IWM options have grown to become one of the largest options contracts in terms of trading volume. For example, through May 29, 2007, year-to-date industry volume in IWM options has averaged over 460,000 contracts per day, for a total of over 61 million contracts. BOX alone has averaged 15,386 IWM option contracts per day during that time, for a total of almost 2 million contracts. In contrast, QQQQ options, which have a position limit of 900,000 contracts, have averaged almost 575,000 contracts per day in 2007.[9]

The Exchange believes that maintaining the increased position and exercise limits for IWM options will lead to a more liquid and more competitive market environment for IWM options that will benefit customers interested in this product. In fact, the Exchange has received positive feedback from market participants, who have expressed a desire that the IWM Option Pilot Program be renewed. For these reasons, the Exchange believes that the above stated reasons justify the IWM Option Pilot Program and requests that the Commission extend the IWM Option Pilot Program for an additional six-month time period, through January 18, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does no intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[14] However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit position and exercise limits for options on IWM to continue at 500,000 option contracts for a six-month pilot period.

[5] January 18, 2008 is the third Friday of the month (or expiration Friday), which is the day on which January 2008 IWM options will expire.

[6] Pursuant to Chapter III, Section 7 of the Boston Options Exchange (''BOX'') Rules, the exercise limit established under Chapter III, Section 7 for IWM options shall be equivalent to the position limit prescribed for IWM options in Supplementary Material .01 to Chapter III, Section 7. The increased exercise limits would only be in effect during the pilot period and the proposed six-month extension of that pilot period through January 18, 2008.

[7] *See* Securities Exchange Act Release No. 55171 (January 25, 2007), 72 FR 4549 (January 31, 2007).

[8] *See* Chapter XIV, Section 5 of BOX Rules.

[9] Please note contract volume data is quoted using one-sided figures.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

[15] *Id.*

For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[16]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to: *rule-comments@sec.gov.* Please include File Number SR–BSE–2007–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2007–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2007–30 and should be submitted on or before August 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–13879 Filed 7–17–07; 8:45 am]

BILLING CODE 8010–01–P

[16] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56056; File No. SR–BSE–2007–19]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Rules of the Boston Options Exchange Related to Obvious Errors

July 12, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)[3] of the and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amending the Boston Options Exchange (''BOX'') Rules related to Obvious Errors to allow the parties to a transaction to mutually agree to nullify or adjust a trade. Below is the text of the proposed rule change. Proposed new language is in *italics*.

* * * * *

Rules of the Boston Stock Exchange

Rules of the Boston Options Exchange Facility

Chapter V. Doing Business on BOX

Sec. 20 Obvious Errors

(a) through (f). No change.

(g) Mutual Agreement. The determination as to whether a trade was executed in error may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results in an Obvious Error as provided for in this Section.

Supplementary Material: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX's Rules to provide parties to a particular transaction with the ability to nullify or adjust a trade if such nullification or adjustment is agreed to by all parties to the transaction at issue. In other words, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results in an Obvious Error as provided for in Chapter V, Section 20 of BOX's Rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] As required under Rule 19b–4(f)(6)(iii),[9] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to: *rule-comments@sec.gov.* Please include File Number SR–BSE–2007–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2007–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2007–19 and should be submitted on or before August 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E7–13881 Filed 7–17–07; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56050; File No. SR–CBOE–2007–76]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Short Term Option Series Pilot Program

July 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the period for its Short Term Options Series pilot program (''Pilot Program'') through July 12, 2008, and to amend the Pilot Program related to a restriction on overlapping expirations of Short Term Option Series with Quarterly Options Series and Quarterly Index Options (''QIX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's principal office, and at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 12, 2005, the Commission approved the Pilot Program.[5] The Pilot Program has since been extended and is currently scheduled to expire on July 12, 2007.[6]

The Exchange has selected the following four options classes to participant in the Pilot Program: S&P 500 Index options (SPX); S&P 100 Index American-style options (OEX); Mini-S&P 500 Index options (XSP); and S&P 100 Index European-style options (XEO). CBOE believes the Pilot Program has been successful and well received by its members and the investing public. Thus, CBOE proposes to extend the Pilot Program through July 12, 2008.

In support of the proposed rule change, and as required by the Pilot Program Approval Order, the Exchange is submitting to the Commission a Pilot Program report (the ''Report'') detailing the Exchange's experience with the Pilot Program. Specifically, the Report contains data and written analysis regarding the four options classes included in the Pilot Program. The Report is being submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand to extend the Pilot Program another year. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any capacity-related problems with respect to Short Term Option Series. The Exchange also represents that is has the necessary system capacity to support the option series listed under the Pilot Program.

Finally, the Exchange is proposing to amend the Pilot Program to provide that no Short Term Option Series may have an expiration that coincides with an expiration of Quarterly Options Series on the same class. Currently, the Exchange's rules do not have such a restriction. The Exchange is also proposing to amend the Pilot Program as it pertains to index options to provide that no Short Term Option Series may have an expiration that coincides with an expiration of QIX option series on the same class. Currently, the Exchange's rules provide that no Short Term Option Series may expire in the same week during which the QIXs expire. The Exchange believes these changes should provide consistency in the Exchange's rules with those of other exchanges sponsoring similar pilot programs.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extension of the Pilot Program will result in a continuing benefit to investors by allowing them additional means to manage their risk exposures and carry out their investment objectives, and will allow the Exchange to further study investor interest in Short Term Option Series.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] The Exchange has asked the Commission to waive the operative delay to permit the Pilot Program extension to become operative prior to the 30th day after filing.[12]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the benefits of the Pilot Program to continue without interruption.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

[5] *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (File No. SR–CBOE–2004–63) (''Pilot Program Approval Order'').

[6] *See* Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (File No. SR–CBOE–2006–48); *see also* Securities Exchange Act Release No. 54338 (August 21, 2006), 71 FR 50952 (August 28, 2006) (File No. SR–CBOE–2006–49) (order approving a modification to the Pilot Program that increased the number of series that may be listed for each class selected to participate in the Pilot Program from five series to seven series).

[7] *See, e.g.*, American Stock Exchange Rule 903, Commentary .09(b); International Securities Exchange Rule 504, Supplementary Material .03(b); and NYSE Arca Rule 5.19(a)(3).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business before doing so.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] As set forth in the Commission's original release providing notice filing of CBOE's proposal to adopt the Pilot Program, if the Exchange were to propose an extension, an expansion, or permanent approval of the Pilot Program, the Exchange would submit, along with any filing proposing such amendments to the program, a report that would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the option

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or other CBOE in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2007–76 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–76 and should be submitted on or before August 8, 2007.[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–13874 Filed 7–17–07; 8:45 am]

BILLING CODE 8010–01–P

classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The report must be submitted to the Commission at least sixty (60) days prior to the expiration date of the Pilot Program. *See* Securities Exchange Act Release No. 51172 (February 9, 2005), 70 FR 7979 (February 16, 2005) (File No. SR–CBOE–2004–63).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56054; File No. SR–NYSEArca–2007–52]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 2 Thereto Relating to Exchange Fees and Charges

July 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On June 12, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. On June 29, 2007, the Exchange withdrew Amendment No. 1 and submitted Amendment No. 2 to the proposed rule change.[3] This order provides notice of the proposed rule change, as modified by Amendment No. 2, and approves the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (''Schedule'') by charging Royalty Fees to all Intermarket Options Linkage orders (''Linkage Orders'') except Satisfaction Orders. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to allow the Exchange to assess Royalty Fees (aka Surcharge Fees or Licensing Fees) on Principal orders (''P Orders'') and Principal Acting as Agent orders (''P/A Orders'')[4] sent to the Exchange via the Intermarket Linkage System (''Linkage''). The Exchange proposes to add language to the footnote associated with Royalty Fees and also include a reference to said footnote, in the Linkage Fees section of the Schedule. These changes will explain that Royalty Fees will now be applicable to orders executed via Linkage, except for Satisfaction Orders.[5]

Certain classes of options listed on NYSE Arca have as their underlying security licensed products that require the Exchange to pay a Royalty Fee to the licensing entity for every contract traded in that particular class of options.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 replaced the original filing in its entirety.

[4] *See* Section 2(16)(a) and (b) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') for definitions of ''P Orders'' and ''P/A Orders.''

[5] *See* Section 2(16)(c) of the Linkage Plan for definition of ''Satisfaction Order.''

Royalty Fees are assessed to the Exchange by a licensing entity through an agreement which allows the Exchange to trade options on certain proprietary products. Royalty Fees are not Exchange transaction fees. A list of all Royalty Fees in place at NYSE Arca is published in the Schedule and available on the company Web site at *www.nyse.com*. Presently, Royalty Fees that are charged to the Exchange are passed on to trade participants on all Firm, Broker-Dealer and Market Maker transactions in issues that carry a Royalty Fee.

Linkage Orders (except for Satisfaction Orders) executed on NYSE Arca are subject to the same fees as other Broker-Dealer orders.[6] Accordingly, the Exchange now proposes to pass on any Royalty Fees to options exchanges sending P Orders and P/A Orders through Linkage. Assessing Royalty Fees on Linkage Orders is consistent with billing practices presently in place at the Chicago Board Options Exchange, the American Stock Exchange and the International Securities Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general,[7] and Section 6(b)(4) in particular,[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–52 and should be submitted on or before August 8, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that NYSE Arca's proposal to apply fees to P Orders and P/A Orders is consistent with the practices of other options exchanges.[11] The Commission also believes that NYSE Arca's proposal does not raise any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[12] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEArca–2007–52), as modified by Amendment No. 2, be and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–13878 Filed 7–17–07; 8:45 am]

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[6] Fees imposed on Linkage Orders are subject to an Exchange Pilot Program and will expire July 31, 2007. On July 10, 2007, the Exchange filed a proposed rule change with the Commission to extend the pilot until July 31, 2008. *See* SR–NYSEArca–2007–66.

[7] 15 U.S.C. 78f(b)(4).

[8] *Id.*

[9] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] *See, e.g.*, Securities Exchange Act Release Nos. 51351 (March 9, 2005), 70 FR 12917 (March 16, 2005) (SR–CBOE–2005–14) (applying license fees to P Orders and P/A Orders on MNX and NDX Indexes) and 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (applying license fees to P Orders and P/A Orders on RUI, RUT and RMN indexes) (SR–ISE–2005–26).

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56058; File No. SR–NYSEArca–2006–83]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to NYSE Arca Rules 2.17 and 4.5 Relating to Certain OTP Holder and OTP Firm Administrative Procedures

July 12, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2006, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rules 2.17 and 4.5(c) and (d). The text of the proposed rule change is set forth below. Italicized text indicates additions; brackets indicate deletions.

* * * * *

Rule 2.17 Amendments to OTP Firm or OTP Holder Documents

(a) All formation documents for OTP Firms *for which NYSE Arca, Inc. is the Designated Examining Authority,* such as articles of incorporation, by-laws, partnership agreements, limited liability company agreements, and all amendments thereto, now in effect or adopted in the future, shall be filed with the Exchange and shall be subject to Exchange approval.

* * * * *

Rule 4.5(c) Part II Quarterly Reports

[Two manually signed copies of] Part II of SEC Form X–17A–5 shall be filed *electronically with, and in a manner prescribed by, the Exchange* for each calendar quarter by any OTP Holder or OTP Firm which carries or clears accounts for customers. Such report shall be due by the seventeenth business day following the end of the calendar quarter being reported upon. *Original copies of such reports with manual signatures shall be maintained by the OTP Holder or OTP Firm, as applicable, in accordance with NYSE Arca Rule 11.16(a).*

* * * * *

Rule 4.5(d) Part IIA Quarterly Reports

[Two manually signed copies of] Part IIA of SEC Form X–17A–5 shall be filed e*lectronically with, and in a manner prescribed by, the Exchang*e for each calendar quarter by any OTP Holder or OTP Firm which does not carry or clear accounts for customers. Such report shall be due by the seventeenth business day following the end of the calendar quarter being reported upon. *Original copies of such reports with manual signatures shall be maintained by the OTP Holder or OTP Firm, as applicable, in accordance with NYSE Arca Rule 11.16(a).*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to amend NYSE Arca Rules 2.17 and 4.5(c) and (d) in order to simplify the administrative procedures that Options Trading Permit (''OTP'') Holders[3] and OTP Firms[4] must follow. The Exchange believes that such amendments will not compromise the Exchange's ability to regulate its OTP Holders and OTP Firms.

NYSE Arca Rule 2.17 currently provides that all OTP Firms must file their formation documents with the Exchange. The Exchange proposes to amend NYSE Arca Rule 2.17 in order to provide that only those OTP Firms for which the Exchange is the Designated Examining Authority must submit such formation documents to the Exchange. The Exchange believes that it is duplicative and unnecessary for an OTP Firm to submit documentation relating to its organizational structure to more than one SRO for review. Further, to the extent an OTP Firm is required to send organizational documents only to one SRO for review, NYSE Arca believes that the most appropriate SRO to perform that review is the OTP Firm's Designated Examining Authority.

NYSE Arca Rule 4.5(c) currently requires OTP Holders and OTP Firms that carry or clear accounts for customers to file two manually signed copies of Part II of SEC Form X–17A–5 with the Exchange on a quarterly basis. The Exchange proposes to amend NYSE Arca Rule 4.5(c) to provide that such reports shall be filed electronically with the Exchange, rather than manually, and that the OTP Holder or OTP Firm, as applicable, shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Rule 11.16(a).[5]

NYSE Arca Rule 4.5(d) currently requires OTP Holders and OTP Firms that do not carry or clear accounts for customers to file two manually signed copies of Part IIA of SEC Form X–17A–5 with the Exchange on a quarterly basis. The Exchange proposes to amend NYSE Arca Rule 4.5(d) to provide that such reports shall be filed electronically with the Exchange, rather than manually, and that the OTP Holder or OTP Firm, as applicable, shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Rule 11.16(a).[6]

The Exchange proposes amending NYSE Arca Rule 4.5(c) and (d) to codify procedural changes that have been implemented by the Exchange and to be consistent with guidance that has been provided previously to OTP Holders and OTP Firms.

(2) Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Exchange Act,[7] in general, and furthers the objectives of section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Arca Rule 1.1(q).

[4] *See* NYSE Arca Rule 1.1(r).

[5] NYSE Arca Rule 11.16(a) provides that each OTP Holder and OTP Firm must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 (the ''Exchange Act'') and the rules and regulations thereunder (including any interpretation relating thereto) as though such OTP Holder or OTP Firm were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act.

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed modifications, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to: *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site: (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–83 and should be submitted on or before August 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E7–13880 Filed 7–17–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56057; File No. SR–NYSEArca–2006–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to NYSE Arca Equities Rules 2.16 and 4.5 Relating to Certain ETP Holder Administrative Procedures

July 12, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2006, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, proposes to amend NYSE Arca Equities Rules 2.16 and 4.5(b) and (c). The text of the proposed rule change is set forth below. Italicized text indicate additions; brackets indicate deletions.

Rule 2.16 Amendments to ETP Holder Documents

(a) All formation documents for ETP Holders *for which NYSE Arca, Inc. is the Designated Examining Authority,* such as articles of incorporation, by-laws, partnership agreements, limited liability company agreements, and all amendments thereto, now in effect or adopted in the future, shall be filed with the Corporation and shall be subject to approval by the Corporation.

Rule 4.5(b) Part II Quarterly Reports

[Two manually signed copies of] Part II of SEC Form X–17A–5 shall be filed electronically with, and in a manner prescribed by, the Corporation for each calendar quarter by any ETP Holder which carries or clears accounts for customers. Such report shall be due by the seventeenth business day following the end of the calendar quarter being reported upon. Original copies of such reports with manual signatures shall be maintained by the ETP Holder in accordance with NYSE Arca Equities Rule 2.24.

Rule 4.5(c) Part IIA Quarterly Reports

[Two manually signed copies of] Part IIA of SEC Form X–17A–5 shall be filed electronically with, and in a manner prescribed by, the Corporation for each calendar quarter by any ETP Holder which does not carry or clear accounts for customers. Such report shall be due by the seventeenth business day following the end of the calendar quarter being reported upon. Original copies of such reports with manual signatures shall be maintained by the

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

ETP Holder in accordance with NYSE Arca Equities Rule 2.24.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to amend NYSE Arca Equities Rules 2.16 and 4.5(b) and (c) in order to simplify the administrative procedures that Equity Trading Permit (''ETP'') Holders [3] must follow. The Exchange believes that such amendments will not compromise the Exchange's ability to regulate its ETP Holders.

NYSE Arca Equities Rule 2.16 currently provides that all ETP Holders must file their formation documents with the Corporation. The Exchange proposes to amend NYSE Arca Equities Rule 2.16 in order to provide that only those ETP Holders for which the Exchange is the Designated Examining Authority must submit such formation documents to the Corporation. The Exchange believes that it is duplicative and unnecessary for an ETP Holder to submit documentation relating to its organizational structure to more than one SRO for review. Further, to the extent an ETP Holder is required to send organizational documents only to one SRO for review, NYSE Arca believes that the most appropriate SRO to perform that review is the ETP Holder's Designated Examining Authority.

NYSE Arca Equities Rule 4.5(b) currently requires ETP Holders that carry or clear accounts for customers to file two manually signed copies of Part II of SEC Form X–17A–5 with the Corporation on a quarterly basis. The Exchange proposes to amend NYSE Arca Equities Rule 4.5(b) to provide that such reports shall be filed electronically with the Corporation, rather than manually, and that the ETP Holder shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Equities Rule 2.24.[4]

NYSE Arca Equities Rule 4.5(c) currently requires ETP Holders that do not carry or clear accounts for customers to file two manually signed copies of Part IIA of SEC Form X–17A–5 with the Corporation on a quarterly basis. The Exchange proposes to amend NYSE Arca Equities Rule 4.5(c) to provide that such reports shall be filed electronically with the Corporation, rather than manually, and that the ETP Holder shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Equities Rule 2.24.[5]

The Exchange proposes amending NYSE Arca Equities Rule 4.5(b) and (c) to codify procedural changes that have been implemented by the Exchange and to be consistent with guidance that has been provided previously to ETP Holders.

(2) Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Exchange Act,[6] in general, and furthers the objectives of section 6(b)(5) [7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed modifications, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to: *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site: (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[3] *See* NYSE Arca Equities Rule 1.1(n).

[4] NYSE Arca Equities Rule 2.24 provides that each ETP Holder must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 (the ''Exchange Act'') and the rules and regulations thereunder (including any interpretation relating thereto) as though such ETP Holders were brokers or dealers registered with the SEC pursuant to Section 15 of the Exchange Act.

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–82 and should be submitted on or before August 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E7–13882 Filed 7–17–07; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Region IX Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The U.S. Small Business Administration (SBA) Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Thursday, July 19, 2007, at 10 a.m. The forum will take place at the Chamber of Commerce of Hawaii, 1132 Bishop Street Building Conference Room, 3rd Floor, Honolulu, HI 96813. The purpose of the meeting is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

Anyone wishing to attend or to make a presentation must contact Karen Sakihama, in writing or by fax in order to be placed on the agenda. Karen Sakihama, Deputy District Director, SBA, Hawaii District Office, 300 Ala Moana Boulevard, Room 2–235, Honolulu, HI 96850, phone (808) 541–2990, Ext. 209 and fax (202) 481–2849, e-mail: *Karen.sakihama@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–13920 Filed 7–17–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: August 9, 2007, 11 a.m. to 2 p.m., Eastern Daylight Time, and August 30, 2007, 11 a.m. to 2 p.m., Eastern Daylight Time.

PLACE: These meetings will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free numbers and pass codes needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Dated: July 13, 2007.

William A. Quade,

Acting Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 07–3520 Filed 7–16–07; 3:49 pm]

BILLING CODE 4910–EX–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—July 31, 2007, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Carolyn Bartholomew, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate, and report to Congress annually on ''the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on July 31, 2007 on ''Access to Information inside the People's Republic of China.''

Background

This event is the sixth in a series of public hearings the Commission will hold during its 2007 report cycle to collect input from leading experts in academia, business, industry, government and from the public on the impact of the economic and national security implications of the U.S. bilateral trade and economic relationship with China. The July 31 hearing is being conducted to examine contemporary developments in Chinese information control mechanisms, the factors motivating those systems, and the impact they have on America's ability to assure the safety of Chinese imports.

The hearing, entitled ''Access to Information in the People's Republic of China,'' will be co-chaired by Chairman Carolyn Bartholomew and Commissioner Kerri Houston.

Information on this hearing, including a detailed hearing agenda and information about panelists, will be made available on the Commission's Web site prior to the hearing date. Detailed information about the Commission, the texts of its annual reports and hearing records, and the products of research it has commissioned can be found on the Commission's Web site at *http://www.uscc.gov.*

Any interested party may file a written statement by July 31, 2007, by mailing to the contact below.

Date and Time: Tuesday, July 31, 2007, 9:00 a.m. to 4:30 p.m. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearings will be held on Capitol Hill in Room 385, Russell Senate Office Building, located at Delaware & Constitution Avenues, NE., Washington, DC 20510. Public seating is limited to approximately 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol

[8] 17 CFR 200.30–3(a)(12).

Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: July 13, 2007.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E7–13927 Filed 7–17–07; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Wednesday,
July 18, 2007

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Parts 305, 319 and 352
Revision of Fruits and Vegetables Import Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305, 319, and 352

[Docket No. APHIS–2005–0106]

RIN 0579–AB80

Revision of Fruits and Vegetables Import Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising and reorganizing the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. We are also making substantive changes to the regulations, including: Establishing criteria that, if met, will allow us to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries more effectively and expeditiously and doing away with the practice of listing in the regulations specific commodities that may be imported subject to certain types of phytosanitary measures. These changes are intended to simplify and expedite our processes for approving certain new imports and pest-free areas while continuing to allow for full public participation in the processes. This rule revises the structure of the fruits and vegetables import regulations and establishes a new process for approving certain new commodities for importation into the United States. It does not, however, allow the importation of any specific new fruits or vegetables, nor does it alter the conditions for importing currently approved fruits or vegetables except as specifically described in this document. To the extent that our trading partners consider the length of time it takes to conduct the rulemaking process a trade barrier, these changes may facilitate the export of U.S. agricultural commodities by reducing that time for fruits and vegetables that meet this rule's criteria. The changes do not alter the manner in which the risk associated with a commodity import request is evaluated, nor do they alter the manner in which those risks are ultimately mitigated.

EFFECTIVE DATE: August 17, 2007.

FOR FURTHER INFORMATION CONTACT: Regarding the commodity import request evaluation process, contact Mr. Matthew Rhoads, Program Manager, Planning, Analysis, and Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737; (301) 734–8790.

Regarding import conditions for particular commodities, contact Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ–PRI, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations or the fruits and vegetables regulations) the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA or the Department) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On April 27, 2006, we published in the **Federal Register** (71 FR 25010–25057, Docket No. APHIS–2005–0106) a proposal [1] to amend the regulations by revising and reorganizing the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. We also proposed to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow us to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries more effectively and expeditiously; (2) doing away with the practice of listing specific commodities that may be imported subject to certain types of phytosanitary measures; and (3) providing for the issuance of special use permits for fruits and vegetables.

We solicited comments on our proposal for 60 days ending on July 26, 2006. On August 1, 2006, we published a document in the **Federal Register** (71 FR 43385, Docket No. APHIS–2005–0106) reopening the comment period for our proposed rule until August 25, 2006. We received 49 comments by the close of the extended comment period. The comments were from representatives of State and foreign governments, industry organizations, importers and exporters, distributors, and private citizens. The majority of the commenters supported the proposed rule in terms of improving transparency and reorganizing the structure of part 319; however, some commenters also raised questions or concerns about our proposal, which are discussed below by topic.

Changes to the Proposed Rule

We made changes to the proposed rule which we will note in this paragraph as an easy reference for the reader. We established a notice-based approach for pest-free areas, added ''commercial consignments only'' as one of the measures eligible for the notice-based approach, removed proposed requirements that would have provided for the issuance of special use permits, and made several other nonsubstantive editorial and technical changes to our proposed rule. The reasons for those changes are discussed later in this document.

Pest-Free Areas

Proposed § 319.56–5 included provisions that would govern our recognition of pest-free areas. In those proposed provisions, we stated that after determining that an area was free of a specified pest, we would publish a notice in the **Federal Register** announcing that the area meets the criteria for pest freedom in § 319.56–5. Several commenters raised concerns with this approach because pest-free areas would be recognized by APHIS without an opportunity for public comment. The commenters asked that we allow for public input before taking such an action.

We agree with the commenters and have amended § 319.56–5(c) in this final rule to provide for a 60-day comment period following publication of a notice announcing that an exporting country has provided us with the documentation required by the regulations to support a determination that an area is free of a specified pest and that we have

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0106, then click ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

completed our evaluation of the request. Only after any comments received in response to the notice have been carefully considered and our initial conclusion affirmed, would we publish a notice recognizing the area's freedom from the particular pest. Removal of an area's pest-free status will continue to be effective immediately.

One commenter asked if APHIS will develop standards or requirements that countries will need to comply with when establishing pest-free areas. A second commenter stated that the proposed provisions were not strenuous enough in setting out how a pest-free area is identified and confirmed and relied too heavily on participants in the source country.

A country seeking APHIS recognition of a pest-free area must submit official documentation that establishes the pest-free status of that area in accordance with the criteria found in International Standards for Phytosanitary Measures (ISPM) No. 4 ''Requirements for the Establishment of Pest Free Areas,'' which is incorporated by reference into the regulations. Further, the country must provide us with the survey protocol used to determine and maintain pest-free status, as well as protocols for remedial actions to be performed upon detection of a pest. Assembling the documentation necessary to address the criteria of ISPM No. 4 and designing the required survey and response protocols is the responsibility of the national plant protection organization (NPPO) of the requesting country; we believe this is entirely appropriate and is not at all an indication of undue reliance on the requesting country. We note in this regard that the regulations provide that the submitted protocols require APHIS approval before an area would be recognized as pest free and that pest-free areas are subject to audit by APHIS to verify their status.

One commenter asked if we could presume that a pest was absent or had always been absent if there are no records of the pest's presence in any pest surveillance data.

If the pest surveillance data referred to by the commenter were collected using accepted and reliable methods and covered a reasonable time period, it is reasonable to expect that we could consider those data as supporting a claim of pest freedom. We would not, however, make a determination on the basis of those data alone; as noted in our response to the previous comment, there are several factors that must be addressed before we will recognize an area as free from a particular pest.

APHIS' Mission

Two commenters expressed the opinion that APHIS' mission has shifted from trying to prevent the introduction of foreign pests and diseases into the United States to one which enables the implementation of trade agreements that could have negative impacts on domestic producers. One of those commenters added that responding to foreign countries' claims, increasing the supply of foreign commodities, and increasing the variety of commodities in the United States are not part of APHIS' mission. Three other commenters stated that expediting and simplifying rulemaking does not correspond with APHIS' mission to safeguard American agriculture. The commenters stated that APHIS was not justified in proposing the notice-based approach.

APHIS' mission is to protect the health and value of American agriculture and natural resources, and we remain focused on preventing the introduction of pests and diseases into the United States. Without the activities that APHIS undertakes to protect America's animal and plant resources from agricultural pests and diseases, threats to our food supply and to our Nation's economy would be enormous. In recent years, the scope of APHIS' protection function has expanded beyond pest and disease exclusion and management. Because of its technical expertise and leadership in assessing and regulating the risks associated with agricultural imports, APHIS has an expanded role in the global agricultural arena. Now, the Agency must also respond effectively to other countries' animal and plant health import requirements and secure the acceptance of science-based standards that ensure America's agricultural exports, worth over $50 billion annually, are protected from unjustified trade restrictions. Nonetheless, APHIS has finite resources, and we must explore and implement proven and prudent measures to improve the regulatory process in order to allow us to allocate our available resources more effectively and to better address new risks as they emerge. We are convinced that simplifying the administrative process for dealing with low-risk commodity import issues will allow us to improve our effectiveness in protecting the plant health of American agriculture.

Eligible Measures for Notice-Based Approach

In the proposed rule, we noted that pest risk analyses for the importation of new commodities often consider only the risks posed by commercially produced and shipped fruit, and that noncommercial shipments may pose an entirely different pest risk than commercial shipments. For that reason, the regulations have provided that many fruits and vegetables could only be imported in commercial shipments, and the table in paragraph (a) of proposed § 319.56–13, ''Fruits and vegetables allowed importation subject to specified conditions,'' included a number of articles for which ''commercial shipments only'' was the only specified condition. We were open to the idea of including ''commercial shipments only'' as one of the designated phytosanitary measures listed in § 319.56–4 and specifically solicited comment on the subject.

We received two comments on the addition of ''commercial shipments only'' as a designated measure, both of which supported the idea. We have concluded that this approach has merit and we have added this measure as one of the measures eligible for the notice-based approach in § 319.56–4. (We note, however, that in the regulatory text of this final rule, we refer to ''consignments,'' rather than ''shipments.'' In our proposed rule, we discussed replacing the term ''shipment'' with ''consignment,'' but that change was not reflected consistently throughout the proposed rule. The terms *commercial consignment, consignment,* and *noncommercial consignment* are all defined in § 319.56–2 in this final rule, as they were in the proposal.)

In our proposal, we stated that if the notice-based process was adopted for use by APHIS, we would remove from the regulations those listed commodities that are currently approved for importation subject only to one or more of the designated measures. In keeping with that intent and to reflect our addition of ''commercial consignments only'' to the list of designated measures, we have amended the list in § 319.56–13(a) in this final rule by removing those articles that had been listed in the proposed rule for which ''commercial shipments only'' was the only specified condition. Those articles we have removed in this final rule, like other articles omitted from the proposed regulations by virtue if their being subject only to one or more designated measures, will continue to be listed in APHIS' fruits and vegetables manual, and the documentation supporting their approval will be made available on the Internet.

One commenter stated that he did not support the notice-based system because he believed that the determination as to which commodity import requests

could be addressed using the notice-based system and which must be addressed through rulemaking is a subjective one.

We strongly disagree with this commenter. After we receive a request from a foreign government, we will conduct a pest risk analysis. If the pest risk analysis finds that the commodity can be imported under one or more of the mitigation measures eligible for the notice-based approach, then we will follow the notice-based process. If we find that additional measures are required, then we will follow the rulemaking process.

One commenter stated that we did not provide enough information as to why the conditions we listed in the proposed rule warrant the notice-based process.

We designed this notice-based system to target commodities that will require mitigations that are widely accepted by plant health experts and have a proven track record of efficacy. As stated previously, APHIS is a regulatory agency that has finite resources, and we have been exploring ways to improve the regulatory process for several years. The notice-based process will simplify the administrative process, while having no adverse effects on the scientific rigor of our analysis, the transparency of the process, or the public's ability to comment and participate in the process.

Two commenters asked that we clarify that rulemaking will be required if the pest risk analysis process determines that a systems approach is necessary.

A systems approach utilizes a series of risk mitigation measures intended to individually and cumulatively reduce pest risk. Such measures include sampling regimens, pest surveys, packing requirements, and other measures determined to be necessary to mitigate the pest risk posed by the particular commodity. By this definition, a systems approach could be eligible for the notice-based process if the system consists only of the designated measures we have determined qualify for the notice-based process; *e.g.*, if a commodity requires origin from a pest-free area, pre-export inspection and certification, an approved post-harvest treatment, and inspection at the port of arrival in the United States. However, if additional mitigations such as field pest surveys, packinghouse safeguards, etc., were required, the commodity would not be eligible for the notice-based process.

One commenter asked how APHIS will consider approving additional measures for the notice-based process in the future.

Trading partners may petition us requesting specific additional measures to be included in the notice-based process and we would consider those requests at that time, or we may propose additional measures on our own initiative. Any additions to the list of designated measures would occur only through rulemaking. If we believe that additional measures should be eligible for the notice-based process, we would develop a new proposal, publish it in the **Federal Register** for comment, and follow with a final rule explaining our decision.

One commenter stated that we should consider adding systems approaches as one of the measures eligible for the notice-based process, especially in cases where similar species of fruits and vegetables are involved, or for which there is already an existing systems approach in a country. The commenter also asked about including places and sites of production that are free from specific pests and low pest prevalence areas in the notice-based approach.

We have chosen to initiate this new process with basic requirements and phytosanitary measures that are widely accepted and have a proven track record of efficacy, but may consider making the measures requested by the commenter part of the notice-based process in the future.

Information Provided to Public

On June 19, 2001, we published a notice in the **Federal Register** (66 FR 32923–32928, Docket No. 00–082–1) describing the procedures and standards that govern the consideration of import requests by the Agency's Plant Protection and Quarantine (PPQ) programs. That notice was published in response to a specific direction in sec. 412(d) of the Plant Protection Act (7 U.S.C. 7712(d)). One commenter stated that APHIS never published a followup to that notice and that the notice did not comply with all of the directives in the Plant Protection Act.

We revisited our June 2001 notice and reviewed the elements we were directed to address by sec. 412(d), and we believe, as we did at the time it was published, that our notice addressed all the elements specified in the Plant Protection Act. While we did not publish a document that formally responded to the comments we received on the notice, we have taken actions consistent with the recommendations made in some of those comments, such as developing and publishing amendments to our fruits and vegetables regulations, establishing a peer review system, and establishing regulations that govern the submission of import requests (see 7 CFR 319.5). We are in the process of developing a follow-up notice to our June 2001 notice that will offer an updated description of the procedures that govern our consideration of import requests. We will publish that notice in a future edition of the **Federal Register**.

Several commenters requested that APHIS routinely provide more information to the public in the form of country-specific operational work plans, internal communications within the Agency, and communications between APHIS and the petitioning country. One commenter specifically requested that we include country-specific work plans in our pest risk analyses as to allow for the public to comment on the work plans as well.

The operational work plans referred to by commenters (also known as bilateral work plans) are agreements between PPQ, officials of the NPPO of the foreign government involved, and, when necessary, foreign commercial entities that specify in detail the application of phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. An operational work plan is not finalized until after the final rule, or in the case of the notice-based approach, a final notice, has been published. As a longstanding matter of policy, APHIS does not make operational work plans available for public comment, but copies can be obtained by request. A more detailed description of how bilateral work plans are developed and used by APHIS can be found in a notice we published in the **Federal Register** on May 10, 2006 (71 FR 27221–27224). With respect to the suggestion that we routinely publish internal APHIS communications and bilateral communications between APHIS and foreign NPPOs, we strongly believe that it would not be appropriate or constructive. We must of course, communicate very clearly to the public the basis for our decisions. We will present our pest risk analyses and other documents supporting our regulatory decisionmaking in a manner that provides the public with a complete picture of what led to our decision. Furthermore, we will continue to answer questions and share additional background information whenever possible in response to specific requests. There will be no substantive alteration of the public's opportunity to review and comment on our conclusions.

One commenter asked how foreign governments could obtain the manual that includes the lists of names and production areas of enterable fruits and vegetables.

The manual, ''Fresh Fruits and Vegetables Import Manual,'' can be viewed on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf*.

In our proposed rule, we stated that we were in the early stages of converting APHIS' fruits and vegetables manual into a searchable database that will allow interested persons to search by commodity or by country, and that will list clearly the conditions that apply to each particular commodity from a specified country. One commenter asked when the import database will be available and how often it will be updated.

Our goal is to have the system operating as soon as possible after the publication of this rule. The import database will be updated whenever the fruits and vegetables manual is updated. In the meantime, a searchable database is currently available at: *https://manuals.cphst.org/q56/Q56Main.cfm*.

Operations in Other Countries

One commenter asked that we provide an outline of what information we would require from a foreign country to process an import request.

As noted previously, we have established regulations in § 319.5 that govern the submission of import requests. Those regulations provide that persons who wish to import plants, plant parts, or plant products that are not allowed importation under the conditions in part 319 (including the fruits and vegetables regulations) must file a request with APHIS in order for us to consider whether the new commodity can be safely imported into the United States. The completed request must address, among other things, questions about the party submitting the request, about the commodity proposed for importation into the United States, the proposed end use of the imported commodity (*e.g.*, propagation, consumption, milling, decorative, processing, etc.), shipping information, description of pests and diseases associated with the commodity, and current strategies for risk mitigation or management in order for us to consider their import requests.

Several commenters questioned the ability of all foreign countries to provide all the data necessary for the preparation of pest risk analyses. The commenters stated that APHIS should be required to provide an assessment of the quality of the data provided or a description of the effort that APHIS had to expend to gather the necessary data so as to better allow stakeholders to assess the relative comprehensiveness of the data.

It is APHIS' responsibility to ensure we have a sufficient and reliable body of data to enable us to prepare an analysis that provides an accurate picture of pest risk. In some cases, the NPPO or other entity making the request may provide a draft pest risk analysis along with their submission; in such cases, that pest risk analysis is subject to rigorous review by APHIS to verify the accuracy of the information. In other cases, APHIS will prepare a draft pest risk analysis using the information described above that is required by the regulations in § 319.5. In either case, we will conduct a literature search, examine interception records, and perform site visits as appropriate. All of this information will be used in preparation of the pest risk analysis and will be made available for public comment. We expect that stakeholders and other reviewers will focus on the content of the pest risk analysis and the comprehensiveness and quality of the data used in its preparation, rather than on a report as to the level of effort that went into its preparation.

One commenter stated that the pest risk analysis should contain a report that the NPPO of the exporting country has the resources, experience, staff, capability, and willingness to do the work to prevent pests and diseases from entering the United States. The commenters asked specifically how APHIS will determine that the NPPO has adequate and competent resources available to effectively carry out prescribed mitigation measures.

Our past experiences with an NPPO and the information gained through site visits allow us to determine if an exporting country's NPPO will have the appropriate staff and resources to carry out the actions it would need to comply with particular mitigation requirements; if it does not, then we would explore alternative mitigation measures or, if none were available, deny the import request. It would be an empty gesture if we were to approve the importation of a commodity subject to risk mitigation requirements that the exporting country was unable to meet effectively, just as it would be a failure of risk management from our perspective to assign risk mitigation requirements that we did not expect could be met or did not conclude would be met.

One commenter stated that APHIS assumes that NPPOs are similar to each other and that the pests and diseases are the same or similar and can be addressed with similar mitigation measures. The commenter stated that when assessing a country's risk, we should factor in resources that are available and past experience with the organization.

We disagree strongly and can assure all interested parties that APHIS makes no such assumptions. The commenter's suggestion appears to confuse risk assessment with the operational aspects of risk management. In the risk assessment phase, the risk presented by a particular commodity is assessed scientifically and objectively; the ability of an NPPO to undertake activities that will mitigate the identified risks does not become a factor until after the unmitigated risk has been assessed and risk management measures are being considered. At that point, we most certainly take an NPPO's capabilities into account when considering the import request. While we may require similar mitigation measures for the same commodity from two different locations when pest conditions and climate conditions in the two exporting countries are similar, we evaluate each import petition on an individual basis, taking into consideration the unique risks associated with the commodity and the efficacy, feasibility, and impacts of the risk mitigation options. As noted above, we evaluate very carefully the capability of the NPPO and its plant health infrastructure.

One commenter noted that proposed § 305.3(a) states that ''all treatments approved under part 305 are subject to monitoring and verification by APHIS.'' The commenter said that in the case of imports from Chile, that provision should not imply any additional actions will be required beyond those already performed by APHIS and Chile's Servicio Agricola y Ganadero (SAG) under current operational instructions for the existing preclearance program in Chile.

The provision pointed out by the commenter does not alter the existing preclearance program in Chile. We explained in the proposed rule that many sections of the fruits and vegetables regulations have required that treatments be monitored by an inspector, and that in establishing § 305.3(a), we were simply consolidating those requirements into a single new section.

Stakeholder Participation

Several commenters stated that the 60-day comment period APHIS would provide for pest risk analyses might not allow enough time for those outside of APHIS to conduct their own scientific review.

We note that the regulations would provide for a comment period of 60 days, which does not preclude us from

extending the comment period when necessary.

Several commenters said that we can improve transparency by allowing stakeholders to become involved during the pest risk analysis process. Those commenters asked that we take comments from the public on our pest risk analyses during the drafting stage. One commenter asked that APHIS notify stakeholders at the time an import request is received. Two other commenters stated that the proposed rule, if adopted, would reduce or eliminate stakeholder input.

With respect to allowing the public to comment on pest risk analyses during the drafting phase, such a process would have a serious adverse impact on the timely preparation of pest risk analyses. We believe a process in which an analysis is prepared, reviewed, and brought to a point where wider circulation and publication for comment is appropriate yields constructive comments that can be considered before any analysis is finalized. Therefore, we do not plan to take comments on pest risk analyses while they are under development.

With regard to notifying commenters at the time import requests are received, we will begin making available, on a quarterly basis, a document that lists all outstanding pest risk analysis import requests made by countries that have provided the information required under the regulations in § 319.5 for us to begin the risk analysis process. The list will be available on the Internet and will include contact information if stakeholders want additional information on the status of specific pest risk analyses.

Finally, we must again emphasize that the changes made in this rule will not reduce or impair in any way the opportunities that stakeholders will have to offer input or comments. As has been the case prior to this final rule, the public will be afforded ample opportunity to offer comments on any proposed import action. The only difference under this final rule will be that in some cases, comments will be solicited through the notice-based process.

One commenter stated that commenters often raise valid regulatory or science-based concerns during the comment period that tend to be discounted by APHIS and that commodities are permitted entry regardless of biological threats.

We disagree strongly with the view expressed by the commenter. First, we must point out that the comment does not address the substance of the rule, but the commenter's apparent disagreement with prior agency decisions. Second, it must be noted again that when we receive comments on a proposed rule or its supporting analyses, we consider carefully the individual issues raised in those comments and respond as comprehensively as we can to each of them in our final rule. In some cases, we agree with the points raised by the commenters and change our approach accordingly in the final rule; indeed, in some cases we will withdraw a particular proposal in light of new information offered by commenters. Conversely, when we do not agree with a point raised by a commenter, we provide an explanation in our final rule as to why we disagree and why we are continuing with a particular approach. We will continue to consider carefully all comments under the notice-based approach and to address those comments in the context of the final pest risk analyses that will be made available prior to the approval of new imports. We have stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. Our pest risk analysis process will identify and assign appropriate effective mitigations for any identified pest risks, i.e., the biological threats referred to by the commenter. If, based on our pest risk analysis, we conclude that the available mitigation measures against identified pest risks are insufficient to provide an appropriate level of protection, then we will not authorize the importation of the particular commodity.

Benefits of Implementing Notice-Based Approach

Several commenters stated that we cited benefits to consumers, but none to domestic producers. Three commenters stated that the benefits to consumers seem overstated and the risks to domestic agriculture from increased and expanded imports are downplayed. One of those commenters added that she was worried that we were opening the floodgates to cheap imports that would put domestic producers at a disadvantage.

The risks associated with new imports are not downplayed and will continue to be considered and addressed with scientific rigor. Benefits to domestic consumers were a factor in developing the notice-based approach, but certainly not the only one. APHIS can attest to the fact that many trading partners do at times consider the length of the process to be burdensome and indefensible. We emphasized in the proposed rule that to the extent that our trading partners consider the length of time it takes to conduct the import approval process through rulemaking a trade barrier, the changes to that process in this rule could facilitate the export of U.S. agricultural commodities by demonstrating our commitment to eliminating trade barriers and encouraging our trading partners to do the same. Such an outcome would be of benefit to domestic producers. While we recognize that new imports may occasionally have some negative economic impacts on some domestic producers due to increased competition, our decisionmaking is tied under our plant health authorities to the assessment of risk, not issues of economic competitiveness.

Several commenters stated that there are often barriers to domestic producers that are not always based on science and asked what assurances domestic producers had that facilitating our import approval process will prompt a similar response from foreign countries. Two commenters asked if each of the countries which have been granted access to the U.S. market have an equivalent and reciprocal process. Three commenters added that we should obtain assurances from our trading partners that they will simplify their import processes as well.

USDA actively and vigorously pursues foreign market access for U.S. products. While we anticipate that this rulemaking will support these efforts, there are no guarantees. We are obligated to follow the principles and procedures of World Trade Organization (WTO) agreements, including the obligation to base our regulations on science. Other members of the WTO are obligated to do so as well. We view this rule as a measure for improving the timeliness of our action on import requests, and of our emphasis on science as a basis for decisionmaking while maintaining the fullest practicable opportunity for all interested parties to participate in the process. We expect our trading partners to evaluate our requests with equivalent dispatch. Each country has its own process, with some being more complex than others; our process is one of the most scientifically rigorous, but one which will be improved by this final rule.

One commenter asked that we conduct yearly examinations of changes in market access, response to petitions, etc., and another asked that we identify instances in which foreign trading partners have substantially modified their approach to U.S. fruit and

vegetable exports on the basis of how APHIS has reduced the administrative burden on fruit and vegetable exports to the United States.

APHIS has produced reports that document our activities and accomplishments in support of both phytosanitary (plant health) and sanitary (zoonotics and animal health) trade activities on a regular basis for several years. Those reports describe the activities pertaining to U.S. export market access, retention, and expansion, as well as changes in import market access. Reports through fiscal year 2005 can be found at *http://www.aphis.usda.gov/is/tst/Publications.html*. We will continue to analyze our accomplishments in both import and export activities on a regular basis. These reports provide an opportunity for the public to evaluate our performance in facilitating imports and exports.

Several commenters disagreed that the current rulemaking process was an impediment to trade and stated that we need to allow maximum opportunity for public comment. One commenter stated that whether or not our rulemaking process was an impediment to trade is a matter for WTO, not foreign countries, to determine.

As stated previously, the notice-based approach will not in any way diminish the opportunity for public comment. We have stated and believe that some countries view our process for approval of import requests as a substantial impediment to trade. We proposed this action with the intent of making the Agency more effective and efficient, while still employing an exceptionally transparent, science-based risk analysis process with the widest possible opportunity for public input. We believe that by modifying the administrative part of our import evaluation process, we will be better able to focus our resources. Given the considerable improvements in risk management documentation and the increase in the number of personnel dedicated to risk management in PPQ in recent years, we are convinced that the notice-based process will expedite the import evaluation process and make it more open and transparent than it has ever been.

APHIS' Resources

Two commenters asked whether we had sufficient staff to handle expedited scientific reviews. The commenters asked that APHIS provide the number of scientists currently dedicated to fruit and vegetable pest and disease risk analyses. One of the commenters asked that this information be provided to the public each time a new import request is made. The commenter asked that we clarify the current backlog on risk analyses.

The commenters clearly misunderstand the purpose, intent, and import of this rule. As stated previously, the notice-based process is not an expedited scientific review. The science-based risk analysis process will remain the same—it is the administrative process that will be expedited. With regard to personnel, we have sufficient personnel available to handle the review of data and information for the completion of pest risk analyses. We are unable to provide the exact number of scientists dedicated to fruit and vegetable pest risk analyses because all are not dedicated to import-related issues. Some of those scientists are also completing assessments for issues related to the facilitation of exports [2] and crucial domestic programs. In addition, at any given time, the numbers can vary based on whether the scientists are assigned to one area or another in response to workload and changing priorities.

With regard to notifying the public of new import requests, we noted earlier in this document that we will be providing, on a quarterly basis, a document that lists all outstanding pest risk analysis import requests, by commodity and country, made by countries that have provided the information required under the regulations in § 319.5 for us to begin the risk analysis process. That document will be posted on the Internet and distributed to persons who have signed up to the PPQ stakeholder registry. To join the registry, go to PPQ's Internet home page (*http://www.aphis.usda.gov/plant_health/*) and follow the ''Join the PPQ Stakeholder Registry'' link.

With respect to the backlog of risk analyses, we noted in the proposed rule that we have approximately 400 ''requests'' in the queue. However, we received many of these requests some time ago but have been unable to take action on them because they were incomplete or otherwise lacking and a response to our inquiries has not yet been received from the requestor. If, for the purposes of estimating the backlog, we were to count only those official requests that are supported by required information at this time, we have approximately 70 that are pending assignment and prioritization and 110 in various stages of development.

Three commenters raised concerns with issues brought up in the National Plant Board (NPB) report titled, ''Safeguarding American Plant Resources (A Stakeholder Review of the APHIS–PPQ Safeguarding System).'' The report, published in July of 1999, examined APHIS' safeguarding system and made recommendations to improve upon the system. The commenters stated that there should be no changes to the regulations until the report is finalized and its recommendations are taken into full account. One of those commenters stated that the report contains references to fragmented and dispersed risk management functions; the need for a better process to monitor the efficacy of risk mitigation measures; and more training and actual field experience to ensure that mitigation measures chosen are operationally feasible. The commenter added that the risk analysis program is not yet adequately funded.

In August 2005, we reported that PPQ had completed the implementation process for the recommendations contained in the stakeholder review, with virtually all of the more than 300 recommendations in the Safeguarding Review fully evaluated and implemented or in the process of being implemented.[3] Among our accomplishments during the first 5 years of the implementation phase were the strengthening and restructuring of our risk assessment work and the building of a strong methods development program through our Center for Plant Health Science and Technology (CPHST). We have clarified roles and responsibilities for risk management in PPQ and dedicated additional resources to that function.

In terms of monitoring the efficacy of risk mitigation measures, we work closely with the Bureau of Customs and Border Protection (CBP) on measures such as fruit cutting at the port of entry and port of entry inspections. Inspection guidelines based on our pest risk analyses are developed for each new commodity allowed entry into the United States. In addition, APHIS' International Services staff also monitors programs in exporting countries to ensure that mitigation measures are being appropriately applied and that they are effective.

With regard to the need for more training and actual field experience to assure that the mitigation measures

[2] Pest risk analyses needed to help us address export issues are always assigned high priority, and there is no backlog of outstanding export issues.

[3] We made the decision not to implement a small number of recommendations after completing our evaluation, and a number of other recommendations were passed on to the Department of Homeland Security after the 2003 reorganization.

chosen are operationally feasible, we routinely provide opportunities for our risk managers, some of whom have extensive operational experience, to observe and participate in the application of field measures.

Finally, we disagree that the risk analysis program is not yet adequately funded. As noted previously, we believe that we have sufficient personnel available to handle the review of data and information for the completion of pest risk analyses and have recently hired several additional risk analysts.

Four commenters raised concerns with CBP having sufficient resources and staff to monitor the increased imports that would be associated with this rule. Three of those commenters referenced a recent Government Accountability Office (GAO) report in which GAO determined that despite some positive developments, ''the agencies face management and coordination problems that increase the vulnerability of U.S. agriculture to foreign pests. CBP has not developed sufficient performance measures that take into account the agency's expanded mission or that consider all pathways by which prohibited agricultural items or foreign pests may enter the country.'' The commenters stated CBP faces significant resource and performance issues and that this could lead to future pest infestations. One commenter stated that there would be an increased need for additional APHIS staff to monitor the imports and the conditions imposed on future imports. The commenter noted that if we were to presume that most of those requests are eligible for the notice-based process and the commodities start to enter the United States, it appears that APHIS does not have the staff to monitor its mitigation measures.

We consult with CBP at various stages of the rulemaking process, beginning once a regulatory work plan has been developed and through the publication of a final rule. We will similarly consult with CBP about actions that we may take based on the notice-based process established by this rule. CBP may raise any concerns with monitoring required for mitigation measures at those times. If CBP does not have the appropriate resources to monitor mitigations as determined by the pest risk analysis, then we will modify our mitigations or otherwise work with CBP to find efficacious mitigation measures that CBP can monitor.

Further, increased imports will also generate more revenue for APHIS and CBP through the collection of additional user fees. This increase in funds can be used to increase staffing and improve upon other resources that will be used to monitor mitigations. With regard to CBP not having developed sufficient performance measures, new performance measures were developed by CBP and were implemented on October 1, 2006.

One commenter asked if more resources would be devoted toward export petitions as a result of this final rule.

APHIS employs trade directors who are assigned specific geographic areas of responsibility, and each trade director works with one import specialist and one export specialist. There will be no changes to this structure as a result of this final rule. As noted previously, when pest risk analyses are needed for export issues, they are always assigned a high priority.

Import Requirements for Specific Commodities

One commenter wanted to clarify that pineapple from Thailand will be subject to general requirements under § 319.56–3 and proposed paragraphs (b)(2)(vi) and (b)(5)(vii) of § 319.56–13, but no other requirements. The commenter also asked why pineapple from Thailand has been restricted importation to Hawaii.

Section 319.56–13 of our proposed rule erroneously stated that pineapple from Thailand was prohibited entry into Hawaii only, when in fact it is currently prohibited entry into all U.S. States and territories except for Guam and the Commonwealth of the Northern Mariana Islands (CNMI). To correct this error, we are revising the entry in the table for pineapples from Thailand in § 319.56–13 to provide that pineapple from Thailand is allowed entry into Guam and CNMI only.

Two commenters requested that we remove the preclearance inspection requirement for sand pears from Korea because it had not been required previously.

The commenters are incorrect. As stated previously, the proposed rule did not make any changes to existing import requirements, except for those specifically mentioned in the rule. We have been requiring preclearance inspections for sand pears from Korea since 1990, and while that requirement was not listed in the regulations it has been contained in the fruits and vegetables manual and is implemented by administrative order.

We proposed to clarify that only *Allium* spp. without tops may be imported into Guam, due to the presence of the leaf tip die back disease, *Mycosphaerella schoenoprasi,* and exotic species of leaf miners of *Allium* spp. in countries that regularly trade with Guam. One commenter asked that we continue to allow *Allium* spp. from South Korea into Guam under the same conditions that we have in the past. The commenter added that tops of Welsh onion (*Allium fistulosum*) and stems of garlic (*Allium sativum*) have historically been allowed importation into Guam from South Korea and that the sudden prohibition of those vegetable parts as a result of the proposed changes would have an effect on Korean residents living in Guam.

We proposed to allow only *Allium* spp. without tops to be imported into Guam, due to the presence of the leaf tip die back disease, *Mycosphaerella schoenoprasi,* and exotic species of leaf miners of *Allium* spp. in countries that regularly trade with Guam. Those pests, which are associated with the *Allium* spp. tops and are not pests of *Allium* spp. bulbs, are not present in Guam. The restrictions on the importation of *Allium* spp. tops are necessary to prevent the introduction of *Mycosphaerella schoenoprasi* and exotic species of leaf miners into Guam.

One commenter asked that the regulations, where they provide for the importation of pineapples, be amended to cover all varieties of pineapple, not just varieties that are limited to at least 50 percent smooth Cayenne by lineage.

We cannot make such a change in this final rule. We would need to consider and document the risks associated with such a change and publish a proposed rule before we could amend the regulations to expand the number of pineapple varieties eligible for importation.

Two commenters asked that we remove the phytosanitary certificate requirement for peppers from the Netherlands because a method to ensure full traceability is still under discussion.

Following an interception of Mediterranean fruit fly (Medfly) in a consignment of habanero peppers shipped via the Netherlands, we began requiring consignments of peppers from the Netherlands to be accompanied by a phytosanitary certificate stating that the fruit had originated in a greenhouse in the Netherlands. When we began drafting our proposal, we believed it was necessary to reflect that administrative phytosanitary certificate requirement, which was cited in the fruits and vegetables manual, in the regulations. However, since the publication of the proposed rule, we have engaged in additional discussions with officials of the Dutch NPPO and have agreed that they have adequately addressed the Medfly issue that prompted the phytosanitary certificate requirement. That requirement had been

the only specified condition that necessitated peppers from the Netherlands being listed in the table in § 319.56–13, so that entry does not appear in this final rule. We have also removed proposed paragraph (b)(5)(xi) in § 319.56–13, which contained the phytosanitary requirement, because it is not applicable to any other entries in the table and have redesignated the remaining subparagraphs in paragraph (b)(5) accordingly.

Pest Risk Analyses

One commenter asked how we will handle issues raised in the comment period that call into question the use of the notice-based approach on an import request.

As established by this rule, the notice-based process is appropriate when we conclude, based on pest risk analysis, that the risks associated with a particular candidate for importation can be addressed using one or more of the designated measures listed in § 319.56–4(b). Accordingly, if information submitted during the comment period led us to change our conclusion about the appropriateness of those measures, then the notice-based process would end without the issuance of a permit. If the submitted information did not lead us to change our conclusions, we would likely proceed with a subsequent **Federal Register** notice announcing that we will begin issuing import permits; in that notice, we would discuss all the comments we received and our reasons for proceeding as we did.

One commenter asked under what specific circumstances would APHIS publish a notice in the **Federal Register**, revising import requirements for certain imports, or prohibiting or restricting the importation of certain products as provided for in § 319.56–4(d). The commenter also asked if APHIS would publish a followup notice if it resolves the problem which prompted publication of such an action and notice in the **Federal Register**.

Paragraph (d) of § 319.56–4 in the proposed rule and in this final rule provides that if we determine that one or more of the designated measures is not sufficient to mitigate the risk posed by any fruit or vegetable that has been authorized for importation under permit in accordance with § 319.56–4, then APHIS will prohibit or further restrict the importation of the fruit or vegetable, and that we may publish a notice to inform the public of our findings. That notice would specify the amended import requirements, provide an effective date for the change, and invite public comment on the subject. As for what specific circumstances might lead us to take the actions described in § 319.56–4(d), our proposed rule offered examples such as interceptions of new pests in imported fruits or vegetables or new evidence of risk or evidence of poor program implementation or performance. With respect to whether we would publish a followup notice following the resolution of a problem, we expect that such a decision would depend on the circumstances leading up to our initial action and the nature of our action (i.e., a prohibition on imports, a temporary suspension, the addition of new requirements, etc.). In any case, our goal will be to keep the public informed and ensure the transparency of our decisionmaking.

One commenter asked why we were requiring exporting countries to conduct pest risk analyses when ISPM standards require that importing countries do so.

We are not requiring that exporting countries conduct their own pest risk analyses, although an exporting country may provide substantial inputs and they may benefit by doing so. The main benefit of an exporting country assisting in conducting the pest risk analysis is that it can improve the quality of the data and conclusions and the validity and credibility of the analysis. In some cases, it might also expedite the approval of the commodity the country wishes to export. However, all externally prepared pest risk analyses are thoroughly evaluated by APHIS for completeness and consistency with APHIS-prepared analyses and revised as necessary.

Insect-Proof Packaging

Section 319.56–2dd has contained restrictions on the importation of tomatoes from certain countries. In our proposal, we discussed moving that section to new § 319.56–28 and stated that one of the changes we were proposing in conjunction with that move was to require the use of insect-proof containers or coverings, rather than fruit fly-proof containers or coverings. One commenter took issue with this proposed change, stating that it was unnecessary to address pest risk and citing significant economic costs that would be associated with covering tomatoes.

Our statement in the proposed rule that ''[t]he current regulations require packaging and containers to be fruit fly-proof, not insect-proof'' was in error; we should not have presented the subject as a proposed change in the regulations. The regulations in § 319.56–2dd have required insect-proof containers or coverings since June 25, 2003, when we published a final rule (68 FR 37904–37923, Docket No. 02–026–4) making that change among many others. Prior to that, fruit fly-proof coverings and containers had been required, and that requirement had been in place since the regulations in § 319.56–2dd were established in 1998.

One commenter stated that it is unnecessary to require that tomatoes be packed in insect-proof cartons or containers or covered by insect-proof mesh or plastic tarpaulins during transport to the airport and subsequent exportation to the United States because any harmful insects that are present in a greenhouse will leave the tomatoes at the time of harvesting due to the moving of the plants. The commenter added that tomatoes which have been picked and are subsequently transported with the production facility do not attract additional insects.

While the commenter may be correct with regard to specific targeted pests, the insect-proof mesh or plastic tarpaulin is intended to prevent hitchhiking pests that may attach to fruit while in transit, and not only pests that could attach at the time of growing, harvesting, or packing.

Use of Terms

One commenter noted that proposed § 319.56–6 provides that if APHIS is to be present in an exporting country to facilitate the exportation of fruits and vegetables and APHIS services are to be funded by the NPPO of the exporting country or a private export group, then the NPPO or private group must enter into a trust fund agreement with APHIS. The commenter contrasted that provision with proposed §§ 319.56–23(b) and 319.56–38(f), which specifically state that the importation of the authorized commodities from Chile would be possible only if the Servicio Agricola y Ganadero (SAG) has entered into a trust fund agreement. The commenter asked that we clarify that the same would be expected of a private export group.

We agree with the commenter and have amended §§ 319.56–23(b) and 319.56–38(f) in this final rule to be consistent with the wording of § 319.56–6.

One commenter noted that proposed § 319.56–29 refers to the Chinese Ministry of Agriculture, while § 319.56–39 refers to the NPPO of China.

For consistency's sake, both of those sections in this final rule refer to the NPPO of China.

Frozen Fruit and Quick Freezing

One commenter stated that there is some confusion around the concept of frozen fruit and asked that we add a definition of frozen fruit in § 319.56–2.

We use the term frozen fruits and vegetables as a description and quick freezing as the method used to obtain the frozen state. However, to provide clarification, this final rule includes a definition of *frozen fruit or vegetable* in § 319.56–2, i.e.: ''Any variety of raw fruit or vegetable preserved by commercially acceptable freezing methods in such a way that the commodity remains at −6.7 °C (20 °F) or below for at least 48 hours prior to release.''

Proposed § 319–56–12 provided that the importation from foreign countries of frozen fruits and vegetables is not authorized when such fruits and vegetables are subject to attack in the area of origin by plant pests that may not, in the judgment of the Administrator, be destroyed by quick freezing. One commenter asked how the Administrator will communicate the list of plant pests that are not destroyed by quick freezing.

Section 305.17(b) of our phytosanitary treatments regulations contains a list of fruits and vegetables and their countries of origin for which quick freezing is not an authorized treatment. We have amended § 319.56–12 in this final rule to provide that quick freezing is not an authorized treatment for those fruits and vegetables listed in § 305.17(b).

One commenter asked if quick freezing would also be subject to the monitoring and certification requirements under § 305.3.

Yes, quick freezing is considered a treatment and therefore, will be subject to the requirements in § 305.3, ''Monitoring and certification of treatments.''

General Comments

One commenter stated that we did not specify whether the notice published with APHIS' final determination will contain responses to public comments. The commenter noted that the opportunity for comment is meaningless unless the Agency responds to the significant points raised by the public.

We intend to carefully review all comments we receive on the risk analyses. We are soliciting comments to help us determine the appropriate course of action and may change course based on comments. While the flow chart we presented on page 25017 of the proposed rule makes reference to a discussion of the comments being included with the pest risk analysis in the second notice, our discussion of the process may not clearly communicate our intention to respond to the comments we receive. We did not intend to imply that the notice-based process would eliminate our responding to the comments we receive on the notices. We will continue to respond to all substantive comments and will make the comments and our responses available as attachments to draft or final pest risk analyses.

One commenter noted that proposed § 319.56–4(d) states that APHIS ''may'' prohibit or further restrict the importation of the fruit or vegetable that has been approved for importation under § 319.56–4 when we determine that additional risk mitigation measures are necessary. The commenter stated that the use of the word ''may'' made it unclear whether or not we would in fact act to prohibit or further restrict a commodity should it become necessary. The commenter suggested rewording the sentence to read that ''APHIS shall prohibit or further restrict importation * * *.''

We agree that our use of the word ''may'' could leave some doubt as to whether we will prohibit or further restrict imports if we determine that one of the designated phytosanitary measures is not sufficient to mitigate the risk posed by authorized imports. Therefore, we have amended § 319.56–4(d) in this final rule so that it reads ''APHIS will prohibit or further restrict importation of the fruit or vegetable. APHIS also may publish a notice in the **Federal Register** advising the public of its finding.''

One commenter stated that we should consider limiting consignments of fruits and vegetables into States like Florida that have crops that are highly susceptible to infestation by pests and diseases from countries which do not have equivalent plant pest agencies.

We consider limiting distribution of imports on a case-by-case basis when the findings of pest risk analysis indicate that such an action might be necessary and if it is operationally feasible. Limited distribution is not, however, one of the designated measures listed in this rule.

Our consideration of this comment brought to mind an issue that we believe bears clarifying. The pest risk analyses we use to inform our decisionmaking with respect to specific commodities are usually prepared by PPQ's Center for Plant Health Science and Technology (CPHST). In an effort to be as responsive as possible, CPHST routinely limits the scope of its analyses to the continental United States because doing so reduces the complexity of the analysis and thus saves time. (CPHST will, of course, broaden the scope of the analysis to include Hawaii and/or U.S. territories if the requesting country asks that they do so.) When scope of a pest risk analysis is limited to the continental United States, the scope of the import authorization we may issue for the commodity that was the subject of the analysis is likewise limited to the continental United States. Such a limitation on distribution is applied not as a mitigation in response to an identified pest risk, but rather because we have not examined the risks associated with the movement of that commodity into Hawaii and/or any U.S. territories or possessions. We view this as entirely distinct from those situations where the findings of a pest risk assessment lead our risk managers to recommend limited distribution as a risk mitigation measure, such as is the case, for example, with litchi from certain countries being prohibited from movement into Florida due to the litchi rust mite. We believe that the first situation—where distribution is authorized only within the continental United States due simply to the scope of pest risk analysis—does not preclude the use of the notice-based approach if the use of that approach is otherwise appropriate. In the latter situation, the notice-based approach would not be appropriate, given that limited distribution assigned as a mitigation measure in response to an identified risk is not among the designated measures.

One commenter stated that increasing amounts of imports have increased pest infestations and that APHIS' pest risk analyses and mitigation procedures do not always work, especially in the case of imports from developing countries.

The commenter provided no evidence to support the assertion that increasing imports have led to an increase in pest infestations. As stated previously in this document, there will always be some degree of pest risk associated with the movement of agricultural products; APHIS' goal is to provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States while facilitating trade in agricultural products. Further, there are several factors that contribute to pest infestations, including smuggling, undeclared fruits and vegetables in passenger baggage, and, as with soybean rust, climatic conditions. We also note that legal imports undergo a rigorous scientific evaluation before being approved for importation and are subject to mitigation measures to which illegal imports are not.

Three commenters stated that it was unfair to expedite the importation of foreign fruits and vegetables when changes in interstate consignments of produce governed by Federal quarantine continue to be subject to rulemaking. One of those commenters specifically

requested that we also allow imports from Hawaii and the territories to be eligible for a similar notice-based process in the final rule.

While we are not making any changes in this final rule in response to this comment, we are currently considering revising part 318 to provide the same notice-based process for Hawaii and the territories. Further, we are reviewing our domestic quarantine regulations in part 301 to determine whether opportunities exist to expedite movements of regulated products.

One commenter asked for clarification of the respective responsibilities of APHIS and CBP. Another commenter encouraged APHIS to provide increased compliance assistance to U.S. import companies and to exporting countries where new commodities are approved for entry.

CBP personnel at ports of entry have many responsibilities, among them examining agricultural imports for the protection of America's agriculture, environment, and food supply from pests, diseases, and agroterrorism. CBP conducts inspections and facilitates the clearance of most agricultural products. APHIS-staffed plant inspection stations are responsible for the inspection and clearance of the majority of propagative material consignments as well as certain material arriving under permit. CBP and APHIS work together as a team to safeguard U.S. agriculture, setting policy, training officers, and improving the import processes.

APHIS is currently studying and working with CBP on standard operating procedures that can be used by carriers to ensure that agricultural commodities are handled and transported in accordance with APHIS regulations. These new standards will allow carriers to more easily handle consignments in accordance with U.S. requirements. Importers, shippers, and ultimately the public will benefit from this new uniform policy.

We meet regularly with our counterparts in exporting countries to develop bilateral work plans detailing specific procedures when new commodities are approved for entry and we will continue to do so. In addition, we provide an individual contact person for each notice who can be reached should specific questions arise.

One commenter stated that fruits and vegetables should be subject to strict inspections. The commenter also suggested that we should conduct a trial run of the notice-based process in a few countries to see how effective this approach is.

All imported fruits and vegetables are currently and will continue to be subject to inspection at the port of entry. With regard to the suggested trial, the rule does not make any changes to operations or the pest risk analysis process, it is simply providing for an expedited administrative process. Accordingly, we do not believe that implementing this rule on a trial basis would be appropriate or useful. At the same time, we regularly review our processes to ensure their continued effectiveness and make changes whenever necessary.

One commenter asked what type of peer review process will be utilized under the notice-based approach.

If the information that will be disseminated in a pest risk analysis is determined to be ''influential'' or ''highly influential'' as those terms are used in the Office of Management and Budget's ''Final Information Quality Bulletin for Peer Review,'' (see 70 FR 2664–2667, published January 14, 2005), then a peer review will be conducted in accordance with USDA's peer review guidance (see *http://www.ocio.usda.gov/qi_guide/scientific_research.html*).

One commenter questioned the basis for APHIS decisionmaking regarding approval of import requests.

Under the Plant Protection Act, the Secretary may prohibit or restrict the importation of plants and plant products if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of a plant pest or noxious weed. Thus, our determinations as to whether a new agricultural commodity can be safely imported are based on the findings of pest risk analysis.

One commenter stated that the proposed changes did nothing to address the fact that APHIS' regulations continue to prohibit the importation of fruits and vegetables for which no import request has been made, or for which an import request has been made but an assessment of quarantine risk has not yet been completed. The commenter stated that this ''a priori'' prohibition on the importation of fresh fruits or vegetables into the United States is inconsistent with the APHIS' obligations under the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), as they are not based on an assessment of risks or scientific principles, nor maintained with sufficient scientific evidence.

We believe it is appropriate to make a distinction between commodities that are ''prohibited'' and disciplined by Article 5 of the SPS Agreement, and commodities that are ''not yet approved'' or ''pending evaluation'' and disciplined by Annex C of the SPS Agreement. Articles that are prohibited have been evaluated and prohibition is the measure that has been determined to be appropriate. This status may be changed based on new information and a reevaluation using pest risk analysis. Likewise, pest risk analysis is used to evaluate the risk associated with a request for a new commodity not previously evaluated. It is true that our regulations do not make the distinction between (1) commodities that have been evaluated and prohibited, (2) commodities that are not currently allowed importation but that are undergoing risk evaluation, and (3) commodities that are not allowed importation and for which no request for risk evaluation exists. We recognize that our regulatory terminology is not the same as that used in the SPS Agreement; however, regardless of the terminology, APHIS only allows new imports of fruits and vegetables following the completion of a risk analysis that enables us to determine that the pest risks posed by the commodity are known, and that the risks can and will be mitigated. We believe that this policy is entirely consistent with the SPS Agreement.

One commenter stated that phytosanitary certificates should be required for all consignments of imported fruits and vegetables.

On August 29, 2001, we published in the **Federal Register** (66 FR 45637–45648) a proposal to require phytosanitary certificates for all imported fruits and vegetables. During the comment period, some commenters raised issues that put into question whether this approach was warranted. In response to those commenters, we prepared a risk assessment that considered the plant pest risks associated with fruits and vegetables imported in passenger baggage and the probable impact of phytosanitary certification requirements. On May 24, 2006, we published in the **Federal Register** (71 FR 29846–29847) a notice of availability of that risk assessment. We are considering adopting only the proposed requirements that pertain to fruits and vegetables imported in air passenger baggage and are currently assessing the comments we received.

One commenter cautioned against the labeling requirements contained in proposed § 319.56–5. Specifically, the commenter took issue with our requiring the orchard or grove of origin/name of grower and the name of the municipality and State where the fruits or vegetables were produced. The commenter was concerned that our

trading partners would require the same of U.S. grain and grain products.

We made no changes to the labeling requirements that are now contained in § 319.56–5. The labeling requirements in § 319.56–5 apply to fruits and vegetables grown in pest-free areas. Therefore, we must require that information about the origin of the product be included on the label in order to verify that the fruit is indeed from a pest-free area. This information also allows us to work effectively with the NPPO of the exporting country to conduct tracebacks if quarantine pests are found in a consignment.

One commenter stated that the 60-day comment period was too long. The commenter asked that the comment period be reduced so that import approvals can be issued no later than 6 months after the completion of the pest risk analysis.

When developing our proposed rule, we wanted to ensure that we did not reduce the opportunity for public comment. We believe maintaining a 60-day comment period is reasonable and appropriate. Further, even with a 60-day comment period, import approvals could be issued within 6 months of announcing the availability of a pest risk analysis.

One commenter asked if we will still produce, as we have in the past, proposed rules covering a wide variety of articles (often referred to as ''periodic amendments'') and if so, how those periodic amendments will relate to the notice-based approach.

Implementation of the notice-based process will likely reduce the need to group import requests together in periodic amendments, but we expect we will continue to use periodic amendments (as opposed to standalone rulemakings) to add some commodities to the regulations that require mitigations beyond the designated measures.

One commenter asked how the notice-based process will affect pending import requests from Guatemala. The commenter asked if previously submitted import requests needed to be resubmitted for the commodity to qualify for the notice-based approach.

This rule will be applied to pending requests. If an import request has already been submitted and the results of our pest risk analysis lead us to conclude that the commodity can be safely imported under one or more designated measures, then we will follow the notice-based approach. It is not necessary to resubmit any import requests.

One commenter asked if the United States or the exporting country makes decisions on which products are to be exported.

While there may be instances where the impetus for a specific import request comes from an importer or other entity in the United States, it is the NPPO of the exporting country that submits the formal petition to APHIS.

One commenter asked if the exporting country needs to inspect the commodity as well.

Under some circumstances, we find that inspection prior to exportation is a necessary part of mitigating pest risk and the exporting country would need to inspect the commodity. Such an inspection requirement would be one of the mitigations included in the pest risk analysis.

One commenter disagreed with not conducting an economic analysis on future imports that are approved under the notice-based process. The commenter stated that the economic impacts on domestic producers should be part of any trade agreement the United States negotiates. The commenter added that foreign producers are not subject to the same environmental and phytosanitary restrictions under which U.S. domestic producers operate, which puts our domestic producers at a distinct competitive disadvantage.

As stated previously in this document, our determination as to whether a new agricultural commodity can be safely imported is based on the findings of pest risk analysis, not on economic factors. While the notices published using the notice-based approach will not contain economic analyses, we will certainly consider the potential economic consequences of pest introduction in the pest risk analysis.

One commenter stated that the measures listed for use at the port of Wilmington, NC, should incorporate measures to monitor any Medfly that may escape treatment and should include measures to ensure the cold treatment facility has a contingency plan for disposing of the fruit. The commenter stated that the measures employed at the Port of Wilmington should be at least as stringent as those for Seattle, WA, and Atlanta, GA.

We did not propose to make any changes to the cold treatment requirements performed at ports of entry in the United States, we simply proposed to move these requirements into a different section. Further, the measures to which the commenter refers are determined by risk and Wilmington, NC, is not considered a high pest risk port because it is unlikely that exotic fruit flies will become established in the Wilmington area.

Two commenters raised issues regarding the irradiation of fruits and vegetables. Specifically, one of the commenters questioned the use of irradiation because there is evidence that there is nutrient depletion when foods are subjected to it. The commenter also stated that certain fruits and vegetables may produce cyclobutanones when irradiated which in some studies have shown to act as tumor promoters. The second commenter stated that irradiation is not safe and allowing fruits and vegetables that have not been pretreated to enter the United States opens the doors to pest infestation.

The Food and Drug Administration (FDA) has primary regulatory responsibility for ensuring that approved irradiation doses do not render foods unsafe to eat. FDA regulations (21 CFR 179.26) establish a limit of 1.0 kilogray for disinfestation of arthropod pests in fresh fruits and vegetables. With respect to the second commenter's additional concern, we established the irradiation-related provisions in part 305 through earlier rulemakings and did not propose any changes to those provisions in our proposed rule.

Additional Changes

In addition to the changes discussed above in response to comments, we have made the following changes in this final rule:

- We have amended § 305.15(b) by removing Washington Dulles International Airport as a port where cold treatment may be conducted. There is not currently an approved cold treatment facility at that airport.
- Paragraph (a) of § 305.31 includes a list of several plant pests for which irradiation is an authorized treatment, but paragraph (n) of that section has referred to ''the listed fruit flies.'' Because the list also includes borers, weevils, moths, etc., we have amended § 305.31(n) by replacing the reference to fruit flies with a more general reference to plants pests.
- We have removed proposed paragraph (b)(7) of § 319.56–3, which would have provided for the issuance of special use permits to authorize the importation of small lots of otherwise prohibited fruits or vegetable under certain conditions. After reconsidering the issue, we no longer believe that we have adequate resources to devote to these types of permits.
- We have removed proposed paragraphs (b)(5)(i) and (b)(5)(xii) from § 319.56–13 and have renumbered the remaining paragraphs in § 319.56–

13(b)(5) accordingly. The first of those paragraphs referred to a phytosanitary certificate requirement that does not apply to any of the commodities listed in the table in paragraph (a) of that section. The second of those paragraphs referred to a phytosanitary certificate/additional declaration requirement regarding freedom from the gray pineapple mealybug (*Dysmicoccus neobrevipes*). That paragraph was cited only in the entry for honeydew melon from Peru in the table, and that honeydew melon entry also cites paragraph (b)(1)(iv), which includes, among other things, the same phytosanitary certificate requirement. Therefore, proposed (b)(5)(xii) was redundant and has been removed.

Changes to the Regulations Since the Publication of Our Proposal

Since the publication of the proposed rule, several final rules that amended the regulations in part 319 have become effective, and the changes made to the regulations in those final rules need to be reflected in this rule.

On May 1, 2006 (see 71 FR 25487–25495, Docket No. 03–113–3), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2pp, ''Conditions governing the importation of citrus from Peru,'' to allow the importation, under certain conditions, of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319–56–41.

On May 22, 2006 (see 71 FR 29241–29244, Docket No. 05–068–2), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2qq, ''Administrative instructions: Conditions governing the entry of peppers from the Republic of Korea,'' to allow the importation into the continental United States of peppers from the Republic of Korea under certain conditions. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319–56–42.

On May 24, 2006 (see 71 FR 29766–29769, Docket No. 05–059–2), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2f, ''Conditions governing the entry of baby corn and baby carrots from Zambia,'' to allow the importation into the continental United States of fresh, dehusked, immature (baby) sweet corn and fresh baby carrots from Zambia. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319–56–43.

On June 8, 2006 (see 71 FR 33172–33178, Docket No. 03–048–3), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2rr, ''Administrative instructions: Conditions governing the importation of untreated grapefruit, sweet oranges, and tangerines from Mexico for processing,'' to provide for the importation of untreated citrus (grapefruit, sweet oranges, and tangerines) from Mexico for processing under certain conditions. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319–56–44.

On August 23, 2006 (see 71 FR 49319–49326, Docket No. 00–086–2), we published a final rule that amended the plant quarantine safeguard regulations in 7 CFR part 352. Among other things, that final rule amended paragraph (e) of § 352.30 by removing a reference to the State of Sonora in order to make it clear that oranges, tangerines, and grapefruit that are moving in transit to foreign countries may be imported into the United States from any municipality in Mexico that has been recognized as a fruit fly-free area. To reflect that change, we have removed the reference to Sonora in this final rule's revision of § 352.30(e).

On August 25, 2006 (see 71 FR 50320–50328, Docket No. APHIS–2006–0096), we published an interim rule that, among other things, amended the general permit in § 319.56–2(c) for fruits and vegetables grown in Canada to state that Canadian-grown fruits and vegetables are subject to the inspection and other requirements of § 319.56–6 (§ 319.56–3(d) in this final rule). In this final rule, we have amended the text of the general permit for fruits and vegetables grown in Canada, which now appears in § 319.56–10(a), to reflect that change.

On August 28, 2006 (see 71 FR 50837–50843, Docket No. APHIS–2006–0009), we published a final rule that amended the regulations in § 319.56–2dd, ''Administrative instructions: Conditions governing the entry of tomatoes,'' by adding a new paragraph (f) to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as paragraph (f) of § 319.56–28.

On September 21, 2006 (see 71 FR 55087–55090, Docket No. APHIS 2006–0025), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2ss, ''Conditions governing the entry of grapes from Namibia,'' to allow for the importation into the United States of fresh table grapes from Namibia under certain conditions. The final rule required that the grapes be cold treated for specific pests, fumigated for specific pests, accompanied by a phytosanitary certificate, and imported in commercial consignments only, all of which are measures that are eligible for the notice-based approach. Therefore, the provisions regarding the entry of table grapes from Namibia do not appear in this final rule; rather, those conditions will be listed in the fruits and vegetables manual.

Section 319.56–30, ''Hass avocados from Michoacan, Mexico,'' has been updated to reflect the changes made in a technical amendment published on October 18, 2006 (see 71 FR 61373–61374, Docket No. 03–022–7).

On October 24, 2006 (see 71 FR 62197–62198, Docket No. APHIS–2006–0073), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2bb, ''Conditions governing the entry of shelled garden peas from Kenya,'' to allow for the importation into the United States of shelled garden peas from Kenya into the continental United States under certain conditions. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319.56–45.

On December 18, 2006 (see 71 FR 75649–75659, Docket No. 03–086–3), we published a final rule that made a number of amendments to the fruits and vegetables regulations that need to be reflected in this final rule. Specifically:

- We added a requirement that consignments of *Allium* spp. consisting of the whole plant or above ground parts be accompanied by a phytosanitary certificate issued by the NPPO of Canada with an additional declaration stating that the articles are free from

Acrolepipsis assectella (Zeller). That phytosanitary certificate requirement for *Allium* spp. from Canada appears in § 319.56–10 of this final rule as paragraph (a)(1).

• We amended the table that has appeared in § 319.56–2t by adding several fruits and vegetables and by revising existing entries for several fruits and vegetables. Many of those changes were reflected in our April 2006 proposed rule, and many of the commodities we added require only mitigations that are eligible for the notice-based approach, so it is not necessary to list them in this final rule. There was, however, one commodity added to the table—citrus (*Citrus* spp.) fruit from New Zealand—that must meet requirements that go beyond the designated measures, so we have added an entry for New Zealand citrus to the table in § 319.56–13 of this final rule. We also amended the entry for pineapple (*Ananas* spp.) fruit from South Africa to indicate that the fruit may only be imported into the continental United States. That change is also reflected in this final rule.

• We amended the conditions for importing tomatoes from Chile in § 319.56–2dd(d) by adding provisions to allow the importation of tomatoes from Chile without treatment for Medfly and other pests if the tomatoes are grown and packed in accordance with specified requirements and accompanied by a phytosanitary certificate. Because those import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as paragraph (d)(2) in § 319.56–28.

• We amended the conditions for importing mangoes from the Philippines in § 319.56–2ii by adding provisions to allow mangos to be imported from all areas of the Philippines, except the island of Palawan, into Guam and Hawaii under certain conditions. In this final rule, the provisions for importing mangoes from the Philippines, as amended by Docket No. 03–086–3, appear in § 319.56–33.

On March 12, 2007 (see 72 FR 10902–10907, Docket No. APHIS–2006–0121), we published a final rule that amended the regulations by adding a new § 319.56–2tt, ''Conditions governing the entry of mangoes from India,'' to allow the importation into the continental United States of mangoes from India under certain conditions. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319.56–46.

On June 21, 2007 (see 72 FR 34163–34176, Docket No. APHIS–2006–0040), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2uu, ''Administrative instructions: Conditions governing the entry of certain fruits from Thailand'' to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand under certain conditions. Mango, mangosteen, pineapple and rambutan require only mitigations that are eligible for the notice-based approach, so it is not necessary to list them in this final rule. Litchi and longan, however, have labeling requirements, which go beyond the designated measures, so we have added entries for litchi and longan from Thailand to the table in § 319.56–13 of this final rule.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this final rule. It provides a cost-benefit analysis as required by Executive Order 12866, as well as a final regulatory flexibility analysis that considers the potential economic effects of this final rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS–2005–0106 when requesting copies. The full analysis is also available on the Regulations.gov Web site (see footnote 1 at the beginning of this final rule for instructions for accessing Regulations.gov).

In accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the spread of plant pests into or through the United States, which includes regulating the importation of fruits and vegetables into the United States. The Secretary has delegated the responsibility for enforcing the Plant Protection Act to the Administrator of APHIS.

This rule revises and reorganizes the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. APHIS is also making substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries without undertaking rulemaking; and (2) doing away with the process of listing specific commodities that may be imported subject to certain types of risk management measures. These changes are necessary to make the APHIS process for approving new imports and pest-free areas more effective and efficient while continuing to provide for public participation in the process.

Summary of Cost-Benefit Analysis

International trade in fruits and vegetables—in particular, many new and newly traded commodities—expanded rapidly over the past two decades. This increased trade also reflects a marked change in the variety of products sought by American consumers. According to Food and Agriculture Organization (FAO) data, the average value share of fruits and vegetables (including pulses and tree nuts) in global agricultural exports increased from 11.7 percent in the period 1977–81 to 15.1 percent in 1987–91 and reached an all-time high of 16.5 percent in 1997–2001.[4] Imports have become increasingly important for domestic fresh fruit and vegetable consumption. In 2004, the United States imported more than $7 billion in fresh fruits and vegetables. Maintaining the current process will make it difficult to keep pace with this rapidly increasing volume of import requests.

The process for approving imports adopted in this rule will apply only to commodities that, based on the findings of our risk analyses, APHIS determines can be safely imported subject to one or more of the designated risk management measures.

By eliminating the need for specific prior rulemaking for notice-based

[4] Huang, Sophia Wu. Global Trade Patterns in Fruits and Vegetables. Chapter 2. Economic Research Service/USDA.

process commodities, considerable time savings could be reaped. The current process for approving new imports takes a notable period of time, ranging on average from 18 months to upwards of 3 years (beginning with the initial request and ending with the publication of the final rule). A significant portion of this time is accounted for in the rulemaking process. This rule will reduce the time needed for the administrative portion of the approval process of some fruits and vegetables for import without eliminating opportunity for public participation in our analysis of risk and without affecting the science-based review of the request. In addition, this rule will help relieve the burden on the APHIS regulatory mechanism, given the volume of new commodity import requests APHIS has been receiving, and the large volume of rulemaking initiatives already underway in APHIS.

Consumers benefit from the ability to purchase fruits and vegetables from a variety of sources, foreign as well as domestic. Consumer expenditures for fruit and vegetables are growing faster than for any food group other than meats. Many of the commodities that will be covered by this rule are niche products, currently unavailable or limited in availability in the United States. This rule allows importers to more quickly meet consumer demand for those niche products. In addition, climate causes most domestic fruit and vegetable production to be seasonal, with the largest harvests occurring during the summer and fall. Imports supplement domestic supplies, especially of fresh products during the winter, resulting in increased choices for consumers. Even where the new imports would compete directly with domestic production, consumers would benefit when increased competition results in lower prices.

In the current process, once APHIS has conducted a risk analysis and identified what phytosanitary measures are necessary to address the pest risk posed by the commodity subject to an import request, APHIS then proceeds through rulemaking. Through rulemaking, APHIS amends the fruits and vegetables regulations by listing the commodity from a specific part of the world as eligible, under specified conditions, for importation into the United States. Some import requests that might otherwise have very quickly led to new imports are delayed considerably by the rulemaking process. One reason for this is the complexities of the rulemaking process itself. There are certain statutory, executive branch, and departmental process requirements that are typically not required under a notice-based process. Another is the nature of the requests. Few if any of these requests warrant an entire rulemaking in and of themselves. These requests are primarily for small volume imports either because they are specialty crops or are grown in limited quantities in the requesting area. Therefore these requests, when their risk analyses have been completed and needed phytosanitary measures have been identified, are necessarily grouped together for movement through the rulemaking process. These changes, along with other minor regulatory changes, are covered in rulemakings referred to as periodic amendments to Q56.

A significant number of the commodity import requests that APHIS receives will likely fit the notice-based process criteria as laid out in this rule. The number of import requests has grown significantly. As noted previously, there are currently approximately 400 commodity import requests that are pending before APHIS, of which approximately 70 are awaiting assignment and prioritization and 110 are in various stages of development; the remaining requests are incomplete or otherwise lacking and a response to our inquiries has not yet been received from the requestor. Because of the nature of the import requests likely to qualify for the notice-based approach, those commodities would most likely otherwise be included in periodic amendments to Q56.

Included in the 11th periodic amendment [5] were numerous herbs from Central America, figs from Mexico, peppers from Chile, cape gooseberry from Colombia, longan from China, persimmon from Spain, yard-long-bean from Nicaragua, and yellow pitaya from Colombia. These commodities would fit the notice-based process criteria of this rule, subject only to designated mitigation measures. Had these commodities followed the notice-based process of this rule, these commodities would have been available to U.S. consumers far sooner than was actually the case. For example, all of the pest risk analyses and risk management decisions associated with the herbs from Central America were completed by the end of 2001. The final rule allowing the import of these commodities was not published and effective until June 25, 2003.

In 2004 and 2005, approximately 454,000 kg of the above commodities were imported into the United States from the countries covered in the amendment. It is estimated that the average monthly value per commodity of these consignments was about $3,900.[6] A significant percentage of commodity import requests currently being processed by APHIS may fit the notice-based process criteria of this rule. The rulemaking process is an inherently longer process than a notice-based process. There are complexities in the rulemaking process that are not present in the notice-based process. In addition, few if any of the requests that would fall into the notice-based process warrant an entire rulemaking in and of themselves, and are therefore grouped with other commodities for rulemaking. Therefore, a notice-based approach to commodity import approvals could be 6 to 12 months shorter than under a rulemaking approach.

For the purposes of estimating the benefits of a notice-based approach to approving commodity import requests, we make the following assumptions: The commodities that are approved for import under this notice-based process have values similar to those approved under the 11th periodic amendment; 30 to 50 percent (120 to 200) of current commodity import requests would be approved under this process; and those commodities approved in the notice-based process would reach the U.S. market 6 to 12 months earlier than they would under rulemaking.

Based on these assumptions, we could expect imports valued at between $2.8 million and $9.4 million to occur under a notice-based process that would not occur under the current rulemaking process. These added sales represent benefits of this rule. The rule will also have the benefit of improving trade relations with other countries by speeding import approvals. In addition, by moving to a notice-based process for certain commodities, fewer APHIS resources will have to be devoted to rulemaking for these commodities.

This rule does not alter the manner in which the risks associated with a commodity import request are evaluated, nor does it alter the manner in which those risks are ultimately mitigated. The change merely allows a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined

[5] Importation of Fruits and Vegetables. Final Rule. Docket No. 02–024–6. **Federal Register**/Vol. 68, No. 122/Wednesday, June 25, 2003/Rules and Regulations.

[6] Shipment information was obtained from APHIS' PQ280 database. Information on value is from the U.S. Census Bureau, Foreign Trade Statistics (for cowpeas, figs, fruit not elsewhere specified, other spices and herbs, other berries, and peppers) for 2004 and 2005, in 2005 dollars.

that the commodity can be safely imported subject to one or more designated risk management measures.

APHIS currently recognizes changes in the pest-free status of countries via rulemaking. Under this rule, APHIS will use **Federal Register** notices and public comment to acknowledge pest-free areas in foreign countries without undertaking rulemaking. This will allow APHIS to be more responsive in recognizing changes in the pest-free status of foreign areas.

This rule also clarifies and strengthens requirements regarding safeguarding of fruits and vegetables that are imported from pest-free areas. These safeguards provide necessary protection of imported commodities against pest infestations while they are in transit to the United States and are consistent with standard operating procedures of all current programs that export fruits and vegetables from pest-free areas. These changes should therefore have little, if any, impact on users of the system.

The commodities approved under the notice-based approach will no longer be listed in the regulations, nor will commodities that are currently approved for importation subject to one or more of the designated measures described previously be listed. Rather, the fruits and vegetables manual [7] will contain a listing of all commodities approved for importation into the United States and will serve as a comprehensive list and reference of enterable fruits and vegetables. In addition, as stated previously, we are in the process of converting APHIS' fruits and vegetables manual into a searchable database that will allow interested persons to search by commodity or by country, and that will list clearly the conditions that apply to each particular commodity from a specified country. We anticipate having the system operating by the end of 2007.

These changes will not alter the decisionmaking process for determining whether a commodity is approved for importation, merely how that decision is presented.

This rule makes several changes to the issuance of permits for the importation of fruits and vegetables. This rule amends the regulations pertaining to permits to state that certain dried, cured, or processed fruits and vegetables; certain fruits and vegetables grown in Canada; and certain fruits and vegetables grown in the British Virgin Islands that are imported into the U.S. Virgin Islands; may be imported without a permit, while all other fruits and vegetables must be imported under permit. Because this change merely removes an unnecessarily confusing distinction between specific and general written permits, the change should have little, if any, impact on users.

Other current provisions regarding application for permits; issuance of permits; amendment, denial, or withdrawal of permits; and appeals are relocated in this rule. The provisions for applying for permits are also updated to reflect the various means now available for applying for permits. These changes will not affect program operations, and should therefore have little, if any, impact on users of the system.

This rule revises, reorganizes, and updates some of the regulations, updates terms and removes outdated requirements and references, and makes various editorial and nonsubstantive changes to regulations to make them easier to use. The reorganization of the regulations does not affect any requirements for importing commodities but simplifies the regulations and organizes them to facilitate future revisions. In addition, this rule also clarifies treatment requirements in 7 CFR part 305. These changes do not represent a change in program operations and therefore should not affect users of the system.

This rule also amends the various restrictions on the importation of okra from countries where the pink bollworm is known to exist. The regulations were outdated and contained differing restrictions for the importation of okra from countries even though the regulations are all aimed at excluding pink bollworm from the United States. Under this rule, all imports from pink bollworm-infested areas are subject to the same requirements. The conditions are equivalent to our domestic regulations that pertain to pink bollworm.

In 2004, okra was imported from 11 countries into the United States with a value of $17.4 million. Mexico has been the primary source of these imports. In 2004, Mexico accounted for nearly 70 percent of the imports. Other major sources are El Salvador, Honduras, and Nicaragua, which together accounted for the remainder of the okra imports in 2004.

Currently, the regulations contain varying restrictions on the importation of okra from countries where pink bollworm is known to exist. These restrictions include fumigation of imports from pink bollworm infested countries that are moving into infested areas of the United States. This rule removes this restriction. This may reduce the cost associated with some imports. However, this change will primarily impact Mexican imports. Mexico is already, by far, the United States' largest foreign source of okra. In addition, this change only affects a limited portion of those okra imports. Therefore, this change should have at most a minor effect on okra imports and domestic okra prices.

This rule also updates the regulations to reflect current APHIS operating practices regarding biometric sampling of apricots, nectarines, peaches, plumcot, and plums from Chile. Under the rule, the current sampling regimens are removed and replaced with provisions that require sampling, but do not specify the percentage of fruit to be sampled or the confidence level of the inspection. Chile is the primary source of U.S. stone fruit imports, accounting for more than 97 percent $73 million in such imports in 2005. However, these modifications in this rule do not represent a change in current program operations and therefore should not affect users of the system.

In sum, APHIS expects little impact on the total volume of U.S. imports of fruits and vegetables, with small effects on U.S. marketers and consumers. In addition, those additional measures in this rule that affect specific commodities are also expected to have limited impact. The main portions of this rule represent a significant structural revision of the fruits and vegetables import regulations and establish a new process for approving certain new commodities for importation into the United States. However, those commodity import requests most likely to qualify for the notice-based process are for small volume imports. This is either because they are for specialty crops that are currently unavailable or limited in availability in the United States, or are for crops grown in limited quantities in the requesting area. In addition, the rule does not alter the conditions for importing the majority of currently approved fruits or vegetables.

Of particular note with respect to the changes to the approval process, the change merely allows a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures. The rule does not alter the manner in which the risk associated with a commodity import request is evaluated, nor does it alter the manner in which those risks are

[7] The manual, ''Fresh Fruits and Vegetables Import Manual,'' can be viewed on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf.*

ultimately mitigated. Consumers will have quicker access to imported fruits and vegetables, though risks will still be evaluated and appropriate mitigations required, as they are currently. Also, given the growing number of requests to ship foreign fruits and vegetables to the United States, some trading partners may perceive the time required to conduct the rulemaking process as a barrier to trade. Such perception may impede their consideration of U.S. requests to ship U.S. commodities to their markets. To the extent our trading partners consider the time it takes to conduct the rulemaking process a trade barrier, as many of them do, this rule may facilitate the export of U.S. agricultural commodities.

Summary of Regulatory Flexibility Analysis

Objectives of and Legal Basis

By eliminating the need for specific prior rulemaking for notice-based process commodities, considerable time savings could be reaped. The current process for approving new imports takes a notable period of time, ranging on average from 18 months to 3 years (beginning with the initial request and ending with the publication of the final rule).

Consumers benefit from the ability to purchase fruits and vegetables from a variety of sources, foreign as well as domestic. Many of the commodities that likely to be covered by this rule are niche products, unavailable or limited in availability in the United States. This rule will allow importers to more quickly meet consumer demand for those niche products. In addition, climate causes most domestic fruit and vegetable production to be seasonal, with the largest harvests occurring during the summer and fall. Imports supplement domestic supplies, especially of fresh products during the winter, resulting in increased choices for consumers. Even where the new imports would compete directly with domestic production, consumers would benefit when increased competition results in lower prices.

Under the regulations in ''Subpart-Fruits and Vegetables,'' APHIS prohibits or restricts the importation of fresh fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States. Those regulations are based on our authority under the Plant Protection Act.

Significant Issues Raised by Public Comments

In accordance with 5 U.S.C. 603, we prepared an initial regulatory flexibility analysis for the interim rule. We invited comments about the interim rule as it relates to small entities and stated that we were interested in determining the number and kind of small entities that may incur benefits or costs from implementation of the interim rule. We did not receive any comments that were responsive to our request for additional economic information.

Description and Estimate of Small Entities

Those entities most likely to be economically affected by the rule are domestic importers and producers of fruits and vegetables. The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. Import/export merchants, agents, and brokers are identified within the broader wholesaling trade sector. A firm primarily engaged in wholesaling fresh fruits and vegetables is considered small if it employs not more than 100 persons. In 1997,[8] more than 96 percent (5,456 of 5,657) of fresh fruit and vegetable wholesalers would be considered small by SBA standards.[9] All types of fruit and vegetable farms are considered small if they have annual receipts of $0.75 million or less. With some exceptions, vegetable and melon farms are largely individually owned and relatively small, with two-thirds harvesting fewer than 25 acres. In 2002, between 80 and 84 percent of vegetable and melon farms would be considered small. Similarly, although numbers have declined, fruit and tree nut production is still dominated by small family or individually run farm operations. In 2002, between 92 and 95 percent of all fruit and tree nut farms would be considered small.[10]

The number of entities that will be affected by this rule is unknown but those affected would likely be considered small entities. However, based on the information that is available, the effects of this rule should be small whether the entity affected is small or large. Those commodity import requests most likely to qualify for the notice-based process are for small volume imports. This is either because they are for specialty crops currently unavailable or limited in availability in the United States, or are for crops grown in limited quantities in the requesting area. This rule merely allows a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures. Hence, we expect little impact on the total volume of U.S. imports of fruits and vegetables, with small effects on U.S. marketers and consumers.

Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

These requirements are addressed in the proposed rule and later in this document under the heading ''Paperwork Reduction Act.''

Alternatives

One alternative to this rule considered was to simply continue under APHIS' current process of authorizing the importation of fruits and vegetables. In this case, we would continue to list all newly approved fruits and vegetables in the regulations through notice-and-comment rulemaking, as we have been doing since 1987. This approach is no longer satisfactory, because the number of requests we receive from foreign exporters and domestic importers to amend the regulations has been steadily increasing. Maintaining the current process will make it difficult to keep pace with the volume of import requests. Therefore, this alternative was rejected. We believe that the new approach will enable us to be more responsive to the import requests of our trading partners while maintaining the transparency of our decisionmaking afforded by notice-and-comment rulemaking.

Prior to 1987, APHIS authorized the importation of a fruit or vegetable by simply issuing a permit once the Agency was satisfied that the relevant criteria in the regulations had been met. Another alternative to this rule was to return to this method of authorizing fruit and vegetable importations. This approach is unsatisfactory, because it does not provide the opportunity for public analysis of and comment on the science associated with such imports. Therefore, this alternative was rejected. Again, we believe that the new approach will enable us to be more responsive to the import requests of our

[8] Establishment and firm size is not yet available for the 2002 Economic Census.

[9] 1997 Economic Census. Department of Commerce, U.S. Bureau of the Census. North American Industry Classification System (NAICS) Category 424480 (Fresh fruit & vegetable wholesalers).

[10] 1997 Census of Agriculture. USDA, National Agricultural Statistics Service. NAICS Categories 1112 (Vegetable and melon farming) and 1113 (Fruit and tree nut farming).

trading partners while maintaining the transparency of our decisionmaking afforded by notice-and-comment rulemaking.

Executive Orders 12988 and 13132

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform, and Executive Order 13132, Federalism. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Because the rule's preemptive effect is derived from an express statutory provision, this rule does not have federalism implications within the meaning of Executive Order 13132, and therefore does not warrant the preparation of a federalism summary impact statement.

Specifically, pursuant to section 436 of the Plant Protection Act, no State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, to eradicate a plant pest or noxious weed, or to prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed. State and local laws and regulations regarding fruits and vegetables imported under the provisions of this rule are preempted. USDA's longstanding interpretation of the scope of the preemption remains unchanged. Because fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, they remain in foreign commerce until sold to the ultimate consumer.

National Environmental Policy Act

The majority of the regulatory changes in this document are nonsubstantive, and would therefore have no effects on the environment. However, this rule will allow APHIS to approve certain new fruits and vegetables for importation into the United States without undertaking rulemaking. Despite the fact that those fruits and vegetable imports will no longer be contingent on the completion of rulemaking, the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) will still apply. As such, for each additional fruit or vegetable approved for importation, APHIS will make available to the public documentation related to our analysis of the potential environmental effects of such new imports. This documentation will likely be made available at the same time and via the same **Federal Register** notice as the risk analysis for the proposed new import.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0293.

E-Government Act Compliance

APHIS is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Lists of Subjects

7 CFR Part 305

Agricultural commodities, Chemical treatment, Cold treatment, Garbage treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR chapter III as follows:

PART 305—PHYTOSANITARY TREATMENTS

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

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 305.2 [Amended]

■ 2. In § 305.2, paragraph (h)(2)(i), the table is amended as follows:

■ a. In the entry for acorns and chestnuts from all countries, by removing the reference to ''§ 319.56–2b'' and adding a reference to ''§ 319.56–11'' in its place.

■ b. In the entry for yam from all countries, by removing the words ''(see § 319.56–2l of this chapter)''.

■ c. In the entry for papaya from Belize, by removing the words ''(see § 319.56–2(j) of this part)''.

■ d. In the entry for cherimoya from Chile, by removing the words ''(see § 319.56–2z of this chapter for additional treatment information)''.

■ 3. A new § 305.3 is added to read as follows:

§ 305.3 Monitoring and certification of treatments.

(a) All treatments approved under part 305 are subject to monitoring and verification by APHIS.

(b) Any treatment performed outside the United States must be monitored and certified by an inspector or an official from the national plant protection organization (NPPO) of the exporting country. If monitored and certified by an official of the NPPO of the exporting country, the treated commodities must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country certifying that treatment was applied in accordance with APHIS regulations. The phytosanitary certificate must be provided to an inspector when the commodity is offered for entry into the United States. During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by pests and noxious weeds.

■ 4. Section 305.15 is revised to read as follows:

§ 305.15 Treatment requirements.

(a) *Approval of treatment facilities.* All facilities or locations used for refrigerating fruits or vegetables in accordance with § 305.16 must be approved by APHIS. Re-approval of the facility or carrier is required annually, or as often as APHIS directs, depending on treatments performed, commodities handled, and operations conducted at the facility. In order to be approved, facilities and carriers must:

(1) Be capable of keeping treated and untreated fruits, vegetables, or other articles separate so as to prevent reinfestation of articles and spread of pests;

(2) Have equipment that is adequate to effectively perform cold treatment.

(b) *Places of treatment; ports of entry.* Precooling and refrigeration may be performed prior to, or upon arrival of fruits and vegetables in the United States, provided treatments are performed in accordance with applicable requirements of this section. Fruits and vegetables that are not treated prior to arrival in the United States must be treated after arrival only in cold storage warehouses approved by the Administrator and located in the area north of 39° longitude and east of 104° latitude or at one of the following ports: The maritime ports of Wilmington, NC; Seattle, WA; Corpus Christi, TX; and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; and Hartsfield-Atlanta International Airport, Atlanta, GA.

(c) *Cold treatment enclosures.* All enclosures in which cold treatment is performed, including refrigerated containers, must:

(1) Be capable of precooling and holding fruits or vegetables at temperatures less than or equal to 2.2 °C (36 °F) or the maximum temperature prescribed in an approved treatment schedule for any fruit or vegetable that is to be treated in the enclosure.

(2) Maintain pulp temperatures according to treatment schedules with no more than a 0.3 °C (0.54 °F) variation in temperature.

(3) Be structurally sound and adequate to maintain required temperatures.

(4) Be equipped with recording devices, such that automatic, continuous temperature records are maintained and secured. Recording devices must be capable of generating temperature charts for verification of treatment by an inspector.

(d) *Precooling.* Before loading in cold treatment containers, packages of fruit must be precooled to a treatment temperature or to a uniform temperature not to exceed 4.5 °C (40 °F) or precooled at the terminal to 2.2 °C (36 °F).

(1) *Treatment in transit.* Fruit that is to be treated in transit must be precooled either at a dockside refrigeration plant prior to loading aboard the carrying vessel, or aboard the carrying vessel. If precooling is accomplished prior to loading aboard the carrying vessel, an official authorized by the national plant protection organization (NPPO) of the country of origin must supervise the precooling operation and certify the treatment by recording pulp temperatures of fruit sampled at different locations of the lot to ensure that the precooling was complete and uniform.

(2) *Treatment upon arrival in the United States.* Fruit that is to be treated upon arrival in the United States must arrive at a temperature sufficiently low to prevent insect activity and must be promptly precooled and refrigerated. Fruit to be both precooled and refrigerated after arrival in the United States must be delivered to the treatment facility subject to safeguards required by an inspector.

(e) *Treatment procedures.* (1) All material, labor, and equipment for cold treatment performed on vessels must be provided by the vessel or vessel agent.

(2) Refrigeration must be completed in the container, compartment, or room in which it is begun.

(3) Fruit that may be cold treated must be safeguarded to prevent cross-contamination or mixing with other infested fruit.

(4) Breaks, damage, etc., in the treatment enclosure that preclude maintaining correct temperatures must be repaired before use.

(5) An inspector must approve loading of compartment, number and placement of sensors, and initial fruit temperature readings before beginning the treatment.

(6) At least three temperature sensors must be used in the treatment compartment during treatment.

(7) The time required to complete the treatment begins when the temperature inside the fruit reaches the required temperature. Refrigeration continues until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment.

(8) Only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers will be treated.

(9) Fruit must be stacked to allow cold air to be distributed throughout the enclosure, with no pockets of warmer air, and to allow random sampling of pulp temperature in any location in load. Temperatures must be recorded at intervals no longer than 1 hour apart. Gaps of longer than 1 hour may invalidate the treatment or indicate treatment failure.

(10) Cold treatment is not completed until so designated by an inspector or the certifying official of the foreign country; consignments of treated commodities may not be discharged until full APHIS clearance has been completed, including review and approval of treatment record charts.

(11) Pretreatment conditioning (heat shock or 100.4 °F for 10 to 12 hours) of fruits is optional and is the responsibility of the shipper.

(12) Cold treatment of fruits in break-bulk vessels or containers must be initiated by an inspector if there is not a treatment technician who has been trained to initiate cold treatments for either break-bulk vessels or containers.

(13) *Inspection of fruits after cold treatment for Mediterranean fruit fly.* An inspector will sample and cut fruit from each consignment cold treated for Mediterranean fruit fly (Medfly) to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section do not appear to be effective against the Medfly, APHIS may suspend the importation of fruits from the originating country and conduct an investigation into the cause of the deficiency.

(14) *Caution and disclaimer.* The cold treatments required for the entry of fruit are considered necessary for the elimination of plant pests, and no liability shall attach to the U.S. Department of Agriculture or to any officer or representative of that Department in the event injury results to fruit offered for entry in accordance with these instructions. In prescribing cold treatments of certain fruits, it should be emphasized that inexactness and carelessness in applying the treatments may result in injury to the fruit or its rejection for entry.

(15) *Additional requirements for treatments performed after arrival in the United States.*

(i) *Maritime port of Wilmington, NC.* Consignments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(A) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized consignments of fruit must be cold-treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(ii) *Maritime port of Seattle, WA.* Consignments of fruit arriving at the maritime port of Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(A) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized consignments of fruit must be cold-treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(E) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(F) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(iii) *Airports of Atlanta, GA, and Seattle, WA.* Consignments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(A) Bulk and containerized consignments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized consignments of fruit arriving for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of consignments from aircraft to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(D) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(E) The cold treatment facility must remain locked during non-working hours.

(F) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(G) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(iv) *Maritime ports of Gulfport, MS, and Corpus Christi, TX.* Consignments of fruit arriving at the ports of Gulfport, MS, and Corpus Christi, TX, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(A) All fruit entering the port for cold treatment must move in maritime containers. No bulk consignments (those consignments which are stowed and unloaded by the case or bin) are permitted.

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(C) All consignments of fruit arriving at the port for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(D) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of consignments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) Advance reservations for cold treatment space at the port must be made prior to the departure of a consignment from its port of origin.

(F) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(*1*) All containers must be unloaded within the cold treatment facility; and

(*2*) Untreated fruit may not be exposed to the outdoors under any circumstances.

(G) The cold treatment facility must remain locked during non-working hours.

(H) Blacklights or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility at the maritime port of Gulfport, MS, and within the 5 square miles surrounding the cold treatment facility at the maritime port of Corpus Christi, TX.

(I) During cold treatment, a backup system must be available to cold treat the consignments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(J) The cold treatment facility must have the ability to conduct methyl bromide fumigations on site.

(K) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(f) *Monitoring.* Treatment must be monitored by an inspector to ensure proper administration of the treatment. An inspector must also approve the recording devices and sensors used to monitor temperatures and conduct an operational check of the equipment before each use and ensure sensors are calibrated. An inspector may approve, adjust, or reject the treatment.

(g) *Compliance agreements.* Facilities located in the United States must operate under a compliance agreement with APHIS. The compliance agreement must be signed by a representative of the cold treatment facility and APHIS. The compliance agreement must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that treatments are administered properly. Compliance agreements must allow officials of APHIS to inspect the facility to monitor compliance with the regulations.

(h) *Work plans.* Facilities located outside the United States may operate in accordance with a bilateral work plan. The work plan, if and when required, must be signed by a representative of the cold treatment facility, the national plant protection organization (NPPO) of the country of origin, and APHIS. The work plans must contain requirements for equipment, temperature, circulation,

and other operational requirements for performing cold treatment to ensure that cold treatments are administered properly. Work plans for facilities outside the United States may also include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Work plans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

§ 305.17 [Amended]

■ 5. In (305.17, paragraph (a) is amended by removing the citation ''319.56–2c'' and adding the citation ''319.56–12'' in its place.

§ 305.31 [Amended]

■ 6. In § 305.31, paragraph (n), the first sentence after the paragraph heading is amended by removing the words ''fruit flies'' and adding the words ''plant pests'' in their place.

PART 319—FOREIGN QUARANTINE NOTICES

■ 7. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.28 [Amended]

■ 8. Section 319.28 is amended as follows:

■ a. In paragraph (a)(2), by removing the words ''(except as provided by § 319.56–2f of this part)''.

■ b. In paragraph (e), by removing the words ''the Fruits and Vegetables Quarantine (§ 319.56)'' and adding the words ''Subpart—Fruits and Vegetables of this part'' in their place.

§ 319.37–2 [Amended]

■ 9. In § 319.37–2, paragraph (a), in the table, the entry for ''*Cocos nucifera*'' is amended by removing the citation ''§ 319.56'' in column 1 and adding the citation ''§ 319.56–11'' in its place.

§ 319.40–2 [Amended]

■ 10. In § 319.40–2, paragraph (c) is amended by removing the words ''§§ 319.56 through 319.56–8,''.

§ 319.40–9 [Amended]

■ 11. In § 319.40–9, paragraph (a)(4)(i), footnote 4 is amended by removing the words ''§§ 319.56 through 319.56–8,''.

§ 319.41a [Amended]

■ 12. In § 319.41a, paragraph (c) is amended by removing the citation ''§ 319.56–2'' and adding the citation ''§ 319.56–3'' in its place.

■ 13. Subpart—Fruits and Vegetables, §§ 319.56 through 319.56–8, is revised to read as follows:

Subpart—Fruits and Vegetables

Sec.

319.56–1 Notice of quarantine.
319.56–2 Definitions.
319.56–3 General requirements for all imported fruits and vegetables.
319.56–4 Approval of certain fruits and vegetables for importation.
319.56–5 Pest-free areas.
319.56–6 Trust fund agreements.
319.56–7 Territorial applicability and exceptions.
319.56–8 through 319.56–9 [Reserved]
319.56–10 Importation of fruits and vegetables from Canada.
319.56–11 Importation of dried, cured, or processed fruits, vegetables, nuts, and legumes.
319.56–12 Importation of frozen fruits and vegetables.
319.56–13 Additional requirements for certain fruits and vegetables.
319.56–14 through 319.56–19 [Reserved]
319.56–20 Apples and pears from Australia (including Tasmania) and New Zealand.
319.56–21 Okra from certain countries.
319.56–22 Apples and pears from certain countries in Europe.
319.56–23 Apricots, nectarines, peaches, plumcot, and plums from Chile.
319.56–24 Lettuce and peppers from Israel.
319.56–25 Papayas from Central America and Brazil.
319.56–26 Melon and watermelon from certain countries in South America.
319.56–27 Fuji variety apples from Japan and the Republic of Korea.
319.56–28 Tomatoes from certain countries.
319.56–29 Ya variety pears from China.
319.56–30 Hass avocados from Michoacan, Mexico.
319.56–31 Peppers from Spain.
319.56–32 Peppers from New Zealand.
319.56–33 Mangoes from the Philippines.
319.56–34 Clementines from Spain.
319.56–35 Persimmons from the Republic of Korea.
319.56–36 Watermelon, squash, cucumber, and oriental melon from the Republic of Korea.
319.56–37 Grapes from the Republic of Korea.
319.56–38 Clementines, mandarins, and tangerines from Chile.
319.56–39 Fragrant pears from China.
319.56–40 Peppers from certain Central American countries.
319.56–41 Citrus from Peru.
319.56–42 Peppers from the Republic of Korea.
319.56–43 Baby corn and baby carrots from Zambia.
319.56–44 Untreated grapefruit, sweet oranges, and tangerines from Mexico for processing.
319.56–45 Shelled garden peas from Kenya.
319.56–46 Mangoes from India.

Subpart—Fruits and Vegetables

§ 319.56–1 Notice of quarantine.

(a) Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

(b) The Secretary has determined that it is necessary to prohibit the importation into the United States of fruits and vegetables and associated plants and portions of plants except as provided in this part.

§ 319.56–2 Definitions.

Above ground parts. Any plant parts, such as stems, leaves, fruit, or inflorescence (flowers), that grow solely above the soil surface.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the United States Department of Agriculture delegated to act in his or her stead.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

Commercial consignment. A lot of fruits or vegetables that an inspector identifies as having been imported for sale and distribution. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Commodity. A type of plant, plant product, or other regulated article being moved for trade or other purpose.

Consignment. A quantity of plants, plant products, and/or other articles, including fruits or vegetables, being moved from one country to another and covered, when required, by a single phytosanitary certificate (a consignment may be composed of one or more commodities or lots).

Country of origin. Country where the plants from which the plant products are derived were grown.

Cucurbits. Any plants in the family Cucurbitaceae.

Field. A plot of land with defined boundaries within a place of production on which a commodity is grown.

Frozen fruit or vegetable. Any variety of raw fruit or vegetable preserved by commercially acceptable freezing methods in such a way that the

commodity remains at −6.7 °C (20 °F) or below for at least 48 hours prior to release.

Fruits and vegetables. A commodity class for fresh parts of plants intended for consumption or processing and not for planting.

Import and importation. To move into, or the act of movement into, the territorial limits of the United States.

Inspector. Any individual authorized by the Administrator of APHIS or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this subpart.

Lot. A number of units of a single commodity, identifiable by its homogeneity of composition and origin, forming all or part of a consignment.

National plant protection organization (NPPO). Official service established by a government to discharge the functions specified by the International Plant Protection Convention.

Noncommercial consignment. A lot of fruits or vegetables that an inspector identifies as having been imported for personal use and not for sale.

Permit. A written, oral, or electronically transmitted authorization to import fruits or vegetables in accordance with this subpart.

Phytosanitary certificate. A document, including electronic versions, that is related to a consignment and that:

(1) Is patterned after the model certificate of the International Plant Protection Convention (IPPC), a multilateral convention on plant protection under the authority of the Food and Agriculture Organization of the United Nations (FAO);

(2) Is issued by an official of a foreign national plant protection organization in one of the five official languages of the FAO;

(3) Is addressed to the plant protection service of the United States (Animal and Plant Health Inspection Service);

(4) Describes the consignment;

(5) Certifies the place of origin for all contents of the consignment;

(6) Certifies that the consignment has been inspected and/or tested according to appropriate official procedures and is considered to be free from quarantine pests of the United States;

(7) Contains any additional declarations required by this subpart; and

(8) Certifies that the consignment conforms with the phytosanitary requirements of the United States and is considered eligible for importation pursuant to the laws and regulations of the United States.

Phytosanitary measure. Any legislation, regulation, or official procedure having the purpose to prevent the introduction and/or spread of quarantine pests, or to limit the economic impact of regulated non-quarantine pests.

Place of production. Any premises or collection of fields operated as a single production or farming unit. This may include a production site that is separately managed for phytosanitary purposes.

Plant debris. Detached leaves, twigs, or other portions of plants, or plant litter or rubbish as distinguished from approved parts of clean fruits and vegetables, or other commercial articles.

Port of first arrival. The first port within the United States where a consignment is offered for consumption entry or offered for entry for immediate transportation in bond.

Production site. A defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, or premises.

Quarantine pest. A pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled.

United States. All of the States of the United States, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, and any other territory or possession of the United States.

West Indies. The foreign islands lying between North and South America, the Caribbean Sea, and the Atlantic Ocean, divided into the Bahamas, the Greater Antilles (including Hispaniola), and the Lesser Antilles (including the Leeward Islands, the Windward Islands, and the islands north of Venezuela).

§ 319.56–3 General requirements for all imported fruits and vegetables.

All fruits and vegetables that are allowed importation under this subpart must be imported in accordance with the following requirements, except as specifically provided otherwise in this subpart.

(a) *Freedom from plant debris.* All fruits and vegetables imported under this subpart, whether in commercial or noncommercial consignments, must be free from plant debris, as defined in § 319.56–2.

(b) *Permit.* (1) All fruits and vegetables imported under this subpart, whether commercial or noncommercial consignments, must be imported under permit issued by APHIS, must be imported under the conditions specified in the permit, and must be imported in accordance with all applicable regulations in this part; *except* for:

(i) Dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables), including cured figs and dates, raisins, nuts, and dried beans and peas, except certain acorns and chestnuts subject to § 319.56–11 of this subpart;

(ii) Fruits and vegetables grown in Canada (except potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road, which are prohibited importation into the United States); and

(iii) Fruits and vegetables, except mangoes, grown in the British Virgin Islands that are imported into the U.S. Virgin Islands.

(2) *Applying for a permit.* Permit applications must be submitted in writing or electronically as provided in this paragraph and must be submitted in advance of the proposed importation. Applications must state the country or locality of origin of the fruits or vegetables, the anticipated port of first arrival, the name and address of the importer in the United States, and the identity (scientific name preferred) and quantity of the fruit or vegetable. Use of PPQ Form 587 or Internet application is preferred.

(i) *By mail.* Persons who wish to apply by mail for a permit to import fruits or vegetables into the United States must submit their application to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Services, 4700 River Road Unit 136, Riverdale, MD 20737–1236.

(ii) *Via the Internet.* Persons who wish to apply for a permit to import fruits or vegetables into the United States via the internet must do so using APHIS Plant Protection and Quarantine's permit Web site at *http://www.aphis.usda.gov/plant_health/permits/index.shtml.*

(iii) *By fax.* Persons who wish to apply by fax for a permit to import fruits or vegetables into the United States must do so by faxing their application to: Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Services, (301) 734–5786.

(3) *Issuance of permits.* If APHIS approves a permit application, APHIS will issue a permit specifying the

conditions applicable to the importation of the fruit or vegetable.

(4) *Issuance of oral permits.* Oral permits may be issued at ports of entry for noncommercial consignments if the commodity is admissible with inspection only. Oral permits may be issued for commercial consignments of fruits and vegetables that are not accompanied by a written permit upon arrival in the United States if all applicable entry requirements are met and proof of application for a written permit is supplied to an inspector.

(5) *Amendment, denial, or withdrawal of permits.* The Administrator may amend, deny, or withdraw a permit at any time if he or she determines that conditions exist that present an unacceptable risk of the fruit or vegetable introducing quarantine pests or noxious weeds into the United States. If the withdrawal is oral, the withdrawal of the permit and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow.

(6) *Appeals.* Any person whose permit has been amended, denied, or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the decision. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully amended, denied, or withdrawn. The Administrator will grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal, as promptly as circumstances permit. If there is a conflict as to any material fact and the person who has filed an appeal requests a hearing, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. The permit withdrawal will remain in effect pending resolution of the appeal or the hearing.

(c) *Ports of entry.* (1) Fruits and vegetables must be imported into specific ports if so required by this subpart or by part 305 of this chapter, or if so required by a permit issued under paragraph (b) of this section for the importation of the particular fruit or vegetable. If a permit issued for the importation of fruits or vegetables names specific port(s) where the fruits or vegetables must be imported, the fruits and vegetables may only be imported into the port(s) named in the permit. If a permit issued for the importation of fruits or vegetables does not name specific port(s) where the fruits or vegetables must be imported, the fruits and vegetables may be imported into any port referenced in paragraph (c)(2) of this section.

(2) Fruits and vegetables imported under this subpart may be imported into any port listed in 19 CFR 101.3(b)(1), except as otherwise provided by part 319 or by a permit issued in accordance with part 319, and except as provided in § 330.104 of this chapter. Fruits and vegetables that are to be cold treated at ports in the United States may only be imported into specific ports as provided in § 305.15 of this chapter.

(d) *Inspection, treatment, and other requirements.* All imported fruits or vegetables are subject to inspection, are subject to such disinfection at the port of first arrival as may be required by an inspector, and are subject to reinspection at other locations at the option of an inspector. If an inspector finds plants or portions of plants, or a plant pest or noxious weed, or evidence of a plant pest or noxious weed on or in any fruit or vegetable or its container, or finds that the fruit or vegetable may have been associated with other articles infested with plant pests or noxious weeds, the owner or agent of the owner of the fruit or vegetable must clean or treat the fruit or vegetable and its container as required by an inspector, and the fruit or vegetable is also subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place until all applicable requirements of this subpart have been accomplished.

(1) *Notice of arrival; assembly for inspection.* Any person importing fruits and vegetables into the United States must offer those agricultural products for inspection and entry at the port of first arrival. The owner or agent must assemble the fruits and vegetables for inspection at the port of first arrival, or at any other place designated by an inspector, and in a manner designated by the inspector. All fruits and vegetables must be accurately disclosed and made available to an inspector for examination. The owner or the agent must provide an inspector with the name and address of the consignee and must make full disclosure of the type, quantity, and country and locality of origin of all fruits and vegetables in the consignment, either orally for noncommercial consignments or on an invoice or similar document for commercial consignments.

(2) *Refusal of entry.* If an inspector finds that an imported fruit or vegetable is prohibited, or is not accompanied by required documentation, or is so infested with a plant pest or noxious weed that, in the judgment of the inspector, it cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot or consignment may be refused entry into the United States.

(3) *Release for movement.* No person may move a fruit or vegetable from the port of first arrival unless an inspector has either:

(i) Released it;

(ii) Ordered treatment at the port of first arrival and, after treatment, released the fruit or vegetable;

(iii) Authorized movement of the fruit or vegetable to another location for treatment, further inspection, or destruction; or

(iv) Ordered the fruit or vegetable to be reexported.

(4) *Notice to owner of actions ordered by inspector.* If an inspector orders any disinfection, cleaning, treatment, reexportation, recall, destruction, or other action with regard to imported fruits or vegetables while the consignment is in foreign commerce, the inspector will issue an emergency action notification (PPQ Form 523) to the owner of the fruits or vegetables or to the owner's agent. The owner must, within the time and in the manner specified in the PPQ Form 523, destroy the fruits and vegetables, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments or other safeguards to the fruits and vegetables as prescribed to prevent the introduction of plant pests or noxious weeds into the United States.

(e) *Costs and charges.* APHIS will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty.[1] The owner of imported fruits or vegetables is responsible for all additional costs of inspection, treatment, movement, storage, destruction, or other measures ordered by an inspector under this subpart, including any labor, chemicals, packing materials, or other supplies required. APHIS will not be responsible for any costs or charges, other than those identified in this section.

(f) *APHIS not responsible for damage.* APHIS assumes no responsibility for any damage to fruits or vegetables that results from the application of treatments or other measures required under this subpart (or under part 305 of this chapter) to protect against the introduction of plant pests into the United States.

(Approved by the Office of Management and Budget under control number 0579–0049)

[1] Provisions relating to costs for other services of an inspector are contained in part 354 of this chapter.

§ 319.56–4 Approval of certain fruits and vegetables for importation.

(a) *Determination by the Administrator.* The Administrator has determined that the application of one or more of the designated phytosanitary measures cited in paragraph (b) of this section to certain imported fruits and vegetables mitigates the risk posed by those commodities, and that such fruits and vegetables may be imported into the United States subject to one or more of those measures, as provided in paragraphs (c) and (d) of this section. The name and origin of all fruits and vegetables authorized importation under this section, as well as the applicable requirements for their importation, may be found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf.* Commodities that require phytosanitary measures other than one or more of the designated phytosanitary measures cited in paragraph (b) of this section may only be imported in accordance with applicable requirements in § 319.56–3 and commodity-specific requirements contained elsewhere in this subpart.

(b) *Designated phytosanitary measures.* (1) Fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3.

(2) The fruits or vegetables are imported from a pest-free area in the country of origin and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.

(3) The fruits or vegetables are treated in accordance with part 305 of this chapter.

(4) The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by risk analysis as likely to follow the import pathway.

(5) The fruits or vegetables are imported as commercial consignments only.

(c) *Fruits and vegetables authorized importation under this section.* (1) *Previously approved fruits and vegetables.* Fruits and vegetables that were authorized importation under this subpart either directly by permit or by specific regulation as of August 17, 2007 and that were subject only to one or more of the designated phytosanitary measures cited in paragraph (b) of this section and the general requirements of § 319.56–3, may continue to be imported into the United States under the same requirements that applied before August 17, 2007, except as provided in paragraph (d) of this section.

(2) *Other fruits and vegetables.* Fruits and vegetables that do not meet the criteria in paragraph (c)(1) of this section may be authorized importation under this section as follows:

(i) *Pest risk analysis.* The risk posed by the particular fruit or vegetable from a specified country or other region has been evaluated and publicly communicated as follows:

(A) *Availability of pest risk analysis.* APHIS published in the **Federal Register**, for 60 days public comment, a notice announcing the availability of a pest risk analysis that evaluated the risks associated with the importation of the particular fruit or vegetable.

(B) *Determination of risk; factors considered.* The Administrator determined, and announced in the notice referred to in the previous paragraph, that, based on the information available, the application of one or more of the designated phytosanitary measures described in paragraph (b) of this section is sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated within the United States via the imported fruit or vegetable. In order for the Administrator to make the determination described in this paragraph, he or she must conclude based on the information presented in the risk analysis for the fruit or vegetable that the risk posed by each quarantine pest associated with the fruit or vegetable in the country or other region of origin is mitigated by one or more of the following factors:

(*1*) *Inspection.* A quarantine pest is associated with the commodity in the country or region of origin, but the pest can be easily detected via inspection;

(*2*) *Pest freedom.* No quarantine pests are known to be associated with the fruit or vegetable in the country or region of origin, or a quarantine pest is associated with the commodity in the country or region of origin but the commodity originates from an area in the country or region that meets the requirements of § 319.56–5 for freedom from that pest;

(*3*) *Effectiveness of treatment.* A quarantine pest is associated with the fruit or vegetable in the country or region of origin, but the risk posed by the pest can be reduced by applying an approved post-harvest treatment to the fruit or vegetable.

(*4*) *Pre-export inspection.* A quarantine pest is associated with the commodity in the country or region of origin, but the commodity is subject to pre-export inspection, and the commodity is to be accompanied by a phytosanitary certificate that contains an additional declaration that the commodity has been inspected and found free of such pests in the country or region of origin.

(*5*) *Commercial consignments.* A quarantine pest is associated with the fruit or vegetable in the country or region of origin, but the risk posed by the pest can be reduced by commercial practices.

(ii) *Issuance of import permits.* The Administrator will announce his or her decision in a subsequent **Federal Register** notice. If appropriate, APHIS would begin issuing permits for importation of the fruit or vegetable subject to requirements specified in the notice because:

(A) No comments were received on the pest risk analysis;

(B) The comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or

(C) Changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

(d) *Amendment of import requirements.* If, after August 17, 2007, the Administrator determines that one or more of the designated phytosanitary measures is not sufficient to mitigate the risk posed by any of the fruits and vegetables that are authorized importation into the United States under this section, APHIS will prohibit or further restrict importation of the fruit or vegetable. APHIS may also publish a notice in the **Federal Register** advising the public of its finding. The notice will specify the amended import requirements, provide an effective date for the change, and will invite public comment on the subject.

(Approved by the Office of Management and Budget under control number 0579–0293)

§ 319.56–5 Pest-free areas.

As provided elsewhere in this subpart, certain fruits and vegetables may be imported into the United States provided that the fruits or vegetables originate from an area that is free of a specific pest or pests. In some cases, fruits or vegetables may only be imported if the area of export is free of all quarantine pests that attack the fruit or vegetable. In other cases, fruits and vegetables may be imported if the area of export is free of one or more quarantine pests that attack the fruit or vegetable, and provided that the risk posed by the remaining quarantine pests that attack the fruit or vegetable is mitigated by other specific

phytosanitary measures contained in the regulations in this subpart.

(a) *Application of international standard for pest free areas.* APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standard for Phytosanitary Measures No. 4, ''Requirements for the establishment of pest free areas.'' The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in § 300.5 of this chapter.

(b) *Survey protocols.* APHIS must approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

(c) *Determination of pest freedom.* (1) For an area to be considered free of a specified pest for the purposes of this subpart, the Administrator must determine, and announce in a notice or rule published in the **Federal Register** for 60 days public comment, that the area meets the criteria of paragraphs (a) and (b) of this section.

(2) The Administrator will announce his or her decision in a subsequent **Federal Register** notice. If appropriate, APHIS would begin issuing permits for importation of the fruit or vegetable from a pest-free area because:

(i) No comments were received on the notice or

(ii) The comments on the notice did not affect the overall conclusions of the notice and the Administrator's determination of risk.

(d) *Decertification of pest-free areas; reinstatement.* If a pest is detected in an area that is designated as free of that pest, APHIS would publish in the **Federal Register** a notice announcing that the pest-free status of the area in question has been withdrawn, and that imports of host crops for the pest in question are subject to application of an approved treatment for the pest. If a treatment for the pest is not available, importation of the host crops would be prohibited. In order for a decertified pest-free area to be reinstated, it would have to meet the criteria of paragraphs (a) and (b) of this section.

(e) *General requirements for fruits and vegetables imported from pest-free areas.*

(1) *Labeling.* Each box of fruits or vegetables that is imported into the United States from a pest-free area under this subpart must be clearly labeled with:

(i) The name of the orchard or grove of origin, or the name of the grower; and

(ii) The name of the municipality and State in which the fruits or vegetables were produced; and

(iii) The type and amount of fruit the box contains.

(2) *Phytosanitary certificate.* A phytosanitary certificate must accompany the imported fruits or vegetables, and must contain an additional declaration that the fruits originate from a pest-free area that meets the requirements of paragraphs (a) and (b) of this section.

(3) *Safeguarding.* If fruits or vegetables are moved from a pest-free area into or through an area that is not free of that pest, the fruits or vegetables must be safeguarded during the time they are present in a non-pest-free area by being covered with insect-proof mesh screens or plastic tarpaulins, including while in transit to the packinghouse and while awaiting packaging. If fruits or vegetables are moved through an area that is not free of that pest during transit to a port, they must be packed in insect-proof cartons or containers or be covered by insect-proof mesh or plastic tarpaulins during transit to the port and subsequent export to the United States. These safeguards described in this section must be intact upon arrival in the United States.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0316 and 0579–0293)

§ 319.56–6 Trust fund agreements.

If APHIS personnel need to be physically present in an exporting country or region to facilitate the exportation of fruits or vegetables and APHIS services are to be funded by the national plant protection organization (NPPO) of the exporting country or a private export group, then the NPPO or the private export group must enter into a trust fund agreement with APHIS that is in effect at the time the fruits or vegetables are exported. Under the agreement, the NPPO of the exporting country or the private export group must pay in advance all estimated costs that APHIS expects to incur in providing inspection services in the exporting country. These costs will include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing services. The agreement must require the NPPO of the exporting country or region or a private export group to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. The agreement must further specify that, if the deposit is not sufficient to meet all costs incurred by APHIS, the NPPO of the exporting country or a private export group must deposit with APHIS, before the services will be completed, a certified or cashier's check for the amount of the remaining costs, as determined by APHIS. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO of the exporting country or region or a private export group, or held on account.

§ 319.56–7 Territorial applicability and exceptions.

(a) The regulations in this subpart apply to importations of fruits and vegetables into any area of the United States, except as provided in this section.

(b) *Importations of fruits and vegetables into Guam.* (1) The following fruits and vegetables may be imported into Guam without treatment, except as may be required under § 319.56–3(d), and in accordance with all the requirements of this subpart as modified by this section:

(i) All leafy vegetables and root crops from the Bonin Islands, Volcano Islands, and Ryukyu Islands.

(ii) All fruits and vegetables from Palau and the Federated States of Micronesia (FSM), except *Artocarpus* spp. (breadfruit, jackfruit, and chempedak), citrus, curacao apple, guava, Malay or mountain apple (*Syzygium* spp.), mango, and papaya, and except dasheen from the Yap district of FSM and from Palau, and bitter melon (*Momordica charantia*) from Palau. The excepted products are approved for entry into Guam after treatment with an approved treatment listed in part 305 of this chapter.

(iii) *Allium* (without tops), artichokes, bananas, bell peppers, cabbage, carrots, celery, Chinese cabbage, citrus fruits, eggplant, grapes, lettuce, melons, okra, parsley, peas, persimmons, potatoes, rhubarb, squash (*Cucurbita maxima*), stone and pome fruits, string beans, sweetpotatoes, tomatoes, turnip greens, turnips, and watermelons from Japan and Korea.

(iv) Leafy vegetables, celery, and potatoes from the Philippine Islands.

(v) Carrots (without tops), celery, lettuce, peas, potatoes, and radishes (without tops) from Australia.

(vi) Arrowroot, asparagus, bean sprouts, broccoli, cabbage, carrots (without tops), cassava, cauliflower, celery, chives, cow-cabbage, dasheen, garlic, gingerroot, horseradish, kale,

kudzu, leek, lettuce, onions, Portuguese cabbage, turnip, udo, water chestnut, watercress, waterlily root, and yam bean root from Taiwan.

(vii) Lettuce from Papua New Guinea.

(viii) Carrots (without tops), celery, lettuce, loquats, onions, persimmons, potatoes, tomatoes, and stone fruits from New Zealand.

(ix) Asparagus, carrots (without tops), celery, lettuce, and radishes (without tops) from Thailand.

(x) Green corn on the cob.

(xi) All other fruits and vegetables approved for entry into any other part or port of the United States, and except any which are specifically designated in this subpart as not approved.

(2) An inspector in Guam may accept an oral application and issue an oral permit for products listed in paragraph (a) of this section, which is deemed to fulfill the requirements of § 319.56–3(b) of this subpart. The inspector may waive the documentation required in § 319.56–3 for such products whenever the inspector finds that information available from other sources meets the requirements under this subpart for the information normally supplied by such documentation.

(3) The provisions of § 319.56–11 do not apply to chestnuts and acorns imported into Guam, which are enterable into Guam without permit or other restriction under this subpart. If chestnuts or acorns imported under this paragraph are found infected, infested, or contaminated with any plant pest and are not subject to disposal under this subpart, disposition may be made in accordance with § 330.106 of this chapter.

(4) Baskets or other containers made of coconut fronds are not approved for use as containers for fruits and vegetables imported into Guam. Fruits and vegetables in such baskets or containers offered for importation into Guam will not be regarded as meeting § 319.56–3(a).

(c) *Importation of fruits and vegetables into the U.S. Virgin Islands.* (1) Fruits and vegetables grown in the British Virgin Islands may be imported into the U.S. Virgin Islands in accordance with § 319.56–3, except that:

(i) Such fruits and vegetables are exempt from the permit requirements of § 319.56–3(b); and

(ii) Mangoes grown in the British Virgin Islands are prohibited entry into the U.S. Virgin Islands.

(2) Okra produced in the West Indies may be imported into the U.S. Virgin Islands without treatment but are subject to inspection at the port of arrival.

§§ 319.56–8 through 319.56–9 [Reserved]

§ 319.56–10 Importation of fruits and vegetables from Canada.

(a) *General permit for fruits and vegetables grown in Canada.* Fruits and vegetables grown in Canada and offered for entry into the United States will be subject to the inspection, treatment, and other requirements of § 319.56–3(d), but may otherwise be imported into the United States without restriction under this subpart; provided, that:

(1) Consignments of *Allium* spp. consisting of the whole plant or above ground parts must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Canada with an additional declaration stating that the articles are free from *Acrolepipsis assectella* (Zeller).

(2) Potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road are prohibited importation into the United States in accordance with § 319.37–2 of this part.

(b) [Reserved]

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§ 319.56–11 Importation of dried, cured, or processed fruits, vegetables, nuts, and legumes.

(a) Dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables), including cured figs and dates, raisins, nuts, and dried beans and peas, may be imported without permit, phytosanitary certificate, or other compliance with this subpart, except as specifically provided otherwise in this section or elsewhere in this part.

(b) *Acorns and chestnuts.* (1) *From countries other than Canada and Mexico; treatment required.* Acorns and chestnuts intended for purposes other than propagation, except those grown in and shipped from Canada and Mexico, must be imported into the United States under permit, and subject to all the requirements of § 319.56–3, and must be treated with an approved treatment listed in part 305 of this chapter.[2]

(2) *From Canada and Mexico.* Acorns and chestnuts grown in and shipped from Canada and Mexico for purposes other than propagation may be imported in accordance with paragraph (a) of this section.

(3) *For propagation.* Acorns and chestnuts from any country may be imported for propagation only in accordance with the applicable requirements in §§ 319.37 through 319.37–14 of this part.

(c) *Macadamia nuts.* Macadamia nuts in the husk or shell are prohibited importation into the United States unless the macadamia nuts were produced in, and imported from, St. Eustatius.

§ 319.56–12 Importation of frozen fruits and vegetables.

Frozen fruits and vegetables may be imported into the United States in accordance with §319.56–3. Such fruits and vegetables must be held at a temperature not higher than 20 °F during shipping and upon arrival in the United States, and in accordance with the requirements for importing frozen fruits and vegetables in part 305 of this chapter. Paragraph (b) of § 305.17 lists frozen fruits and vegetables for which quick freezing is not an authorized treatment.

§ 319.56–13 Fruits and vegetables allowed importation subject to specified conditions.

(a) The following fruits and vegetables may be imported in accordance with § 319.56–3 and any additional requirements specified in paragraph (b) of this section.

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Algeria	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Angola	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Antigua and Barbuda	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Argentina	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Australia (Tasmania only).	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Austria	Asparagus, white	*Asparagus officinalis*	Shoot	(b)(4)(iii).
Bahamas	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).

[2] Acorns and chestnuts imported into Guam are subject to the requirements of § 319.56–7(b).

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Barbados	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Belgium	Apricot	*Prunus armeniaca*	Fruit	(b)(5)(xi).
	Fig	*Ficus carica*	Fruit	(b)(5)(xi).
	Nectarine	*Prunus persica* var. *nucipersica*	Fruit	(b)(5)(xi).
	Peach	*Prunus persica*	Fruit	(b)(5)(xi).
	Plum	*Prunus domestica*	Fruit	(b)(5)(xi).
Belize	Papaya	*Carica papaya*	Fruit	(b)(1)(i), (b)(2)(iii).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(ii).
Benin	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Bolivia	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Brazil	Cantaloupe	*Cucumis melo* var. *cantaloupensis*	Fruit	(b)(1)(v), (b)(3).
	Cassava	*Manihot esculenta*	Fruit	(b)(2)(vii).
	Honeydew melon	*Cucumis melo*	Fruit	(b)(1)(v), (b)(3).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Watermelon	*Citrullus lanatus* var. *lanatus*	Fruit	(b)(1)(v), (b)(3).
Burkina Faso	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Cameroon	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Cayman Islands	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Chile	African horned cucumber.	*Cucumis metuliferus*	Fruit	(b)(2)(i).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
China	Litchi	*Litchi chinensis*	Fruit	(b)(2)(v).
Columbia	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Yellow pitaya	*Selinicereus megalanthus*	Fruit	(b)(5)(xiii).
Congo, Democratic Republic of.	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Cook Islands	Ginger	*Zingiber officinalis*	Root	(b)(2)(ii).
	Banana	*Musa* spp.	Fruit	(b)(4)(i).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi), (b)(5)(vi).
Costa Rica	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(ii).
Cote d'Ivoire	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Dominica	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Dominican Republic	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Papaya	*Carica papaya*	Fruit	(b)(2)(iii), (b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(iii), (b)(2)(vi).
Ecuador	Pineapple	*Ananas comosus*	Fruit	(b)(2)(iii), (b)(2)(vi).
Egypt	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
El Salvador	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i).
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla*	Flower and leaf	(b)(2)(i).
	Oregano or sweet marjoram.	*Origanum* spp.	Leaf and stem	(b)(2)(i).
	Parsley	*Petroselinum crispum*	Leaf and stem	(b)(2)(i).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(ii).
	Rosemary	*Rosmarinus officinalis*	Leaf and stem	(b)(2)(i).
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i).
	Yam-bean or jicama	*Pachyrhizus* spp.	Roots without soil	(b)(2)(i).
Fiji	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi), (b)(5)(vi).
France	Bean	*Glycine max* (Soybean); *Phaseolus coccineus*, (Scarlet or french runner bean); *Phaseolus lunatus* (lima bean); *Phaseolus vulgaris* (green bean, kidney bean, navy bean, pinto bean, red bean, string bean, white bean); *Vicia faba* (faba bean, broadbean, haba, habichuela, horsebean, silkworm bean, windsor bean; *Vigna radiata* (mung bean); *Vigna unguiculata* (includes: ssp. *cylindrica,* ssp. *dekintiana*, ssp. *sesquipedalis* (yard-long bean, asparagus bean, long bean), ssp. *unguiculata* (southern pea, black-eyed bean, black-eyed pea, cowpea, crowder pea)).	Fruit	(b)(5)(x).
	Tomato	*Lycopersicon esculentum*	Fruit, stem, and leaf	(b)(4)(ii).
French Guiana	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
French Polynesia, including Tahiti.	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi), (b)(5)(vi).
Ghana	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Grenada	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Guadeloupe	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Guatemala	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i).
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla*	Flower and leaf	(b)(2)(i).
	Papaya	*Carica papaya*	Fruit	(b)(1)(i), (b)(2)(iii).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(ii).
	Rosemary	*Rosmarinus officinalis*	Leaf and stem	(b)(2)(i).
	Tomato	*Lycopersicon esculentum*	Fruit	(b)(3), (b)(4)(ii).
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i).
	Yam-bean or jicama	*Pachyrhizus* spp	Roots without soil	(b)(2)(i)
Guinea	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Guyana	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Haiti	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Honduras	Basil	*Ocimum basilicum*	Leaf and stem	(b)(2)(i), (b)(5)(iii).
	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla*	Flower and leaf	(b)(2)(i).
	Oregano or sweet marjoram.	*Origanum* spp.	Leaf and stem	(b)(2)(i).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(ii).
	Tomato	*Lycopersicon esculentum*	Fruit	(b)(3), (b)(4)(ii).
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i).
	Yam-bean or jicama	*Pachyrhizus* spp.	Roots without soil	(b)(2)(i).
India	Litchi	*Litchi chinensis*	Fruit	(b)(2)(v).
Indonesia	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Tuber	(b)(2)(iv).
Israel	Melon	*Cucumis melo* only	Fruit	(b)(5)(vii).
	Tomato (green)	*Lycopersicon esculentum*	Fruit	(b)(3), (b)(4)(ii) or (b)(3), (b)(5)(xiv).
	Tomato (red or pink)	*Lycopersicon esculentum*	Fruit	(b)(3), (b)(5)(viii) or (b)(3), (b)(5)(xiv).
Italy	Garlic	*Allium sativum*	Bulb	(b)(5)(v)[1].
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Tomato	*Lycopersicon esculentum*	Fruit	(b)(3), (b)(4)(ii).
Jamaica	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Papaya	*Carica papaya*	Fruit	(b)(2)(iii), (b)(2)(iv), (b)(3).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Japan	Bean (garden)	*Phaseolus vulgaris*	Fruit	(b)(2)(x), (b)(5)(xi).
	Cucumber	*Cucumis sativas*	Fruit	(b)(2)(x), (b)(5)(xii).
	Pepper	*Capsicum* spp.	Fruit	(b)(2)(x), (b)(5)(xi).
	Sand pear	*Pyrus pyrifolia* var. *culta*	Fruit	(b)(5)(ix).
	Tomato	*Lycopersicon esculentum*	Fruit	(b)(2)(x), (b)(5)(xii).
Kenya	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Liberia	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Mali	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Martinique	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Mauritania	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Mexico	Coconut	*Cocos nucifera*	Fruit with milk and husk[2].	(b)(5)(iv).
	Fig	*Ficus carica*	Fruit	(b)(1)(iii), (b)(2)(i).
	Pitaya	*Hylocereus* spp.	Fruit	(b)(1)(iv), (b)(2)(i).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(ii).
Montserrat	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Morocco	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Morocco and Western Sahara.	Tomato	*Lycopersicon esculentum*	Fruit, stem, and leaf	(b)(4)(ii).
Netherlands	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Peach	*Prunus persica*	Fruit	(b)(5)(xi).
Netherlands Antilles	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
New Zealand	Citrus	*Citrus* spp.	Fruit	(b)(3), (b)(5)(xvi).
	Passion fruit	*Passiflora* spp.	Fruit	(b)(2)(vi).
Nicaragua	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i).
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla*	Flower and leaf	(b)(2)(i).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(ii).
	Tomato	*Lycopersicon esculentum*	Fruit	(b)(3), (b)(4)(ii).
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i).

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
	Yam-bean or jicama	*Pachyrhizus* spp.	Roots without soil	(b)(2)(i).
Niger	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Nigeria	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Panama	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(ii).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Tomato	*Lycopersicon esculentum*	Fruit	(b)(3), (b)(4)(ii).
Paraguay	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Peru	Honeydew melon	*Cucumis melo*	Fruit	(b)(1)(v), (b)(2)(i), (b)(3).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Philippines	Pineapple	*Ananas comosus*	Fruit	(b)(5)(vi).
Portugal (including Azores).	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Portugal (Azores only)	Tomato	*Lycopersicon esculentum*	Fruit	(b)(3), (b)(4)(ii).
Republic of Korea	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Root	(b)(2)(iv).
	Sand pear	*Pyrus pyrifolia* var. *culta*	Fruit	(b)(5)(ix).
	Strawberry	Fragaria spp.	Fruit	(b)(5)(i).
St. Kitts and Nevis	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
St. Lucia	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
St. Martin	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Barbados cherry	*Malpighia glabra*	Fruit	(b)(2)(vi).
St. Vincent	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Senegal	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Sierra Leone	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
South Africa	Pineapple	*Ananas comosus*	Fruit	(b)(2)(xii).
Spain	Garlic	*Allium sativum*	Bulb	(b)(5)(v)[1].
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Tomato	*Lycopersicon esculentum*	Fruit	(b)(4)(ii).
Sri Lanka	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi), (b)(5)(vi).
Taiwan	Brassica	*Brassica oleracea*	Above ground parts	(b)(2)(viii).
	Carambola	*Averrhoa carambola*	Fruit	(b)(2)(ix), (b)(5)(xv).
	Litchi	*Litchi chinensis*	Fruit	(b)(2)(v).
Thailand	Pineapple	*Ananas comosus*	Fruit	(b)(2)(xi), (b)(5)(vi).
	Litchi	*Litchi chinensis*	Fruit	(b)(2)(v).
	Longan	*Dimocarpus longan*	Fruit	(b)(2)(v).
Togo	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Trinidad and Tobago	Cassava	*Manihot esculenta*	Fruit	(b)(2)(vi).
	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3).
	Papaya	*Carica papaya*	Fruit	(b)(2)(vi).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Tunisia	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Turkey	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Uruguay	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
Venezuela	Cantaloupe	*Cucumis melo* var. *cantaloupensis*	Fruit	(b)(1)(v), (b)(3).
	Honeydew melon	*Cucumis melo*	Fruit	(b)(1)(v), (b)(3).
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(vi).
	Watermelon	*Citrullus lanatus* var. *lanatus*	Fruit	(b)(1)(v), (b)(3).

[1]Also eligible for importation if treated with an approved treatment listed in part 305 of this chapter.
[2] Fruit without husk may be imported subject to the requirements of § 319.56–5.

(b) Additional restrictions for applicable fruits and vegetables as specified in paragraph (a) of this section.

(1) *Pest-free areas.*

(i) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from the Mediterranean fruit fly (Medfly), and must meet applicable requirements of § 319.56–5.

(ii) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from the Mediterranean fruit fly (Medfly), and must meet applicable requirements of § 319.56–5. Fruit from outside Medfly-free areas must be treated in accordance with an approved treatment listed in part 305 of this chapter.

(iii) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from fruit flies, and must meet applicable requirements of § 319.56–5.

(iv) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from fruit flies, and must meet applicable requirements of § 319.56–5. The phytosanitary certificate must also include an additional declaration stating: ''Upon inspection, these articles were found free of *Dysmicoccus neobrevipes* and *Planococcus minor*.''

(v) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from the South American cucurbit fly, and must meet applicable requirements of § 319.56–5.

(2) *Restricted importation and distribution.*

(i) Prohibited entry into Puerto Rico, U.S. Virgin Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within PR, VI, HI, or Guam.''

(ii) Prohibited entry into Puerto Rico, U.S. Virgin Islands, and Guam. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within PR, VI, or Guam.''

(iii) Prohibited entry into Hawaii. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within HI.''

(iv) Prohibited entry into Guam. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within Guam.''

(v) Prohibited entry into Florida. Cartons in which commodity is packed must be stamped ''Not for importation into or distribution within FL.''

(vi) Prohibited entry into Hawaii.

(vii) Prohibited entry into Puerto Rico, U.S. Virgin Islands, and Hawaii.

(viii) Prohibited entry into Alaska.

(ix) Prohibited entry into Florida.

(x) Allowed importation into Hawaii only.

(xi) Allowed importation into Guam and Commonwealth of the Northern Mariana Islands only.

(xii) Prohibited entry into Puerto Rico, Virgin Islands, Northern Mariana Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped ''For distribution in the continental United States only.''

(3) Commercial consignments only.

(4) *Stage of development.*

(i) The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if:

(A) Bananas shipped by air are still green upon arrival in the United States; and

(B) Bananas shipped by sea are either still green upon arrival in the United States or yellow but firm.

(ii) The tomatoes must be green upon arrival in the United States. Pink or red fruit may only be imported in accordance with other provisions of § 319.56–13 or § 319.56–28 of this subpart.

(iii) No green may be visible on the shoot.

(5) *Other conditions.*

(i) Entry permitted only from September 15 to May 31, inclusive, to prevent the introduction of a complex of exotic pests including, but not limited to a thrips (*Haplothrips chinensis*) and a leafroller (*Capua tortrix*).

(ii) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and all damaged fruit was removed from the consignment prior to export under the supervision of the national plant protection organization.

(iii) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the fruit is free from *Planococcus minor.*

(iv) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety (=F_1 hybrid, Malayan Dwarf × Panama Tall) (which are resistant to lethal yellowing disease) based on verification of the parent stock.

(v) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the commodity is free of living stages of *Brachycerus* spp. and *Dyspessa ulula* (Bkh.), based on field inspection and certification and reexamination at the port of departure prior to exportation.

(vi) Only the Tahiti Queen cultivar and varieties which are at least 50 percent smooth Cayenne by lineage are admissible. The importer or the importer's agent must provide the inspector with documentation that establishes the variety's lineage. This document is necessary only with the first importation.

(vii) Prohibited from the Palestinian controlled portions of the West Bank and Gaza Strip; otherwise, must be accompanied by a phytosanitary certificate which declares that the melons were grown in approved areas in the Arava Valley or the Kadesh–Barnea area of Israel, the fields where the melons were grown were inspected prior to harvest, and the melons were inspected prior to export and found free of pests.

(viii) Prohibited from the Palestinian controlled portions of the West Bank and Gaza Strip; otherwise must be accompanied by a phytosanitary certificate which declares that only tomato varieties 111, 121, 124, 139, and 144 are included in the consignment and the tomatoes were packed into fruit-fly-proof containers within 24 hours after harvesting.

(ix) Only precleared consignments are authorized. The consignment must be accompanied by a PPQ Form 203 signed by the APHIS inspector on site in the exporting country.

(x) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country that includes a declaration certifying that the products were grown and packed in the exporting country.

(xi) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country that includes a declaration certifying that the products were grown in a greenhouse in the exporting country.

(xii) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country that includes a declaration certifying that the products were grown in a greenhouse in the exporting country on Honshu Island or north thereof.

(xiii) Only precleared consignments that have been treated with an approved treatment listed in 7 CFR part 305 are authorized. The consignment must be accompanied by a PPQ Form 203 signed by the APHIS inspector on site in the exporting country.

(xiv) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Israel that declares ''These tomatoes were grown in registered greenhouses in the Arava Valley of Israel.''

(xv) Must be treated with an approved treatment listed in 7 CFR part 305.

(xvi) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin and with an additional declaration stating that the fruit is free from *Cnephasia jactatana, Coscinoptycha improbana, Ctenopseustis obliquana, Epiphyas postvittana, Pezothrips kellyanus,* and *Planotortrix excessana;* must undergo a port of entry inspection with a biometric sampling of 100 percent of 30 boxes selected randomly from each consignment; and the randomly selected boxes must be examined for hitchhiking pests.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0236, 0579–0264, and 0579–0316)

§§ 319.56–14 through 319.56–19 [Reserved]

§ 319.56–20 Apples and pears from Australia (including Tasmania) and New Zealand.

Apples and pears from Australia (including Tasmania) and New Zealand may be imported only in accordance with this section and all other applicable provisions of this subpart.

(a) *Inspection and treatment for pests of the family Tortricidae.* An inspector must take a biometrically designed sample from each lot of apples or pears that are offered for entry into the United States. If inspection of the sample discloses that pests of the family Tortricidae (fruit-leaf roller moths) are not present in the lot sampled, the fruit may be imported without treatment. If any such pests are found upon inspection, the lot must be treated with methyl bromide as prescribed in part 305 of this chapter.

(b) *Treatment of apples and pears from Australia for fruit flies.* (1) Apples from Australia (including Tasmania) may be imported without treatment for the following fruit flies if they are imported from an area in Australia that meets the requirements of § 319.56–5 for pest freedom: Mediterranean fruit fly (*Ceratitis capitata*), the Queensland fruit fly (*Bactrocera tryoni*), *Bactrocera aquilonis,* and *B. neohumeralis.*

(2) Pears from Australia (including Tasmania) may be imported without treatment for the following fruit flies if they are imported from an area in Australia that meets the requirements of § 319.56–5 for pest freedom: Mediterranean fruit fly (*Ceratitis capitata*), the Queensland fruit fly (*Dacus tryoni*), *Bactrocera jarvisi,* and *B. neohumeralis.*

(3) Apples and pears from Australia that do not originate from an area that is free of fruit flies must be treated for such pests in accordance with part 305 of this chapter. If an authorized treatment does not exist for a specific fruit fly, the importation of such apples and pears is prohibited.

§ 319.56–21 Okra from certain countries.

Okra from Brazil, Colombia, Ecuador, Guyana, Mexico, Peru, Suriname, Venezuela, and the West Indies may be imported into the United States in accordance with this section and all other applicable provisions of this subpart.

(a) *Importations into pink bollworm generally infested or suppressive areas in the United States.* Okra may be imported into areas defined in § 301.52–2a as pink bollworm generally infested or suppressive areas, provided the okra is imported in accordance with the requirements of § 319.56–3. Upon entry into the United States, such okra is immediately subject to the requirements of Subpart—Pink Bollworm (§§ 301.52 through 301.52–10) of this chapter.

(b) *Importations into areas south of the 38th parallel that are not pink bollworm generally infested or suppressive areas.*

(1) During December 1 through May 15, inclusive, okra may be imported into areas of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel subject to the requirements of § 319.56–3.

(2) During May 16 through November 30, inclusive, okra may be imported into areas of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel if treated for the pink bollworm in accordance with an approved treatment listed in part 305 of this chapter.

(c) *Importations into areas north of the 38th parallel.* Okra may be imported into Alaska, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the District of Columbia, or the U.S. Virgin Islands, or any part of Illinois, Kentucky, Missouri, or Virginia, north of the 38th parallel, subject to the requirements of § 319.56–3.

(d) *Importations into areas of California that are not pink bollworm generally infested or suppressive areas.*

(1) During January 1 through March 15, inclusive, okra may be imported into California subject to the requirements of § 319.56–3.

(2) During March 16 through December 31, inclusive, okra may be imported into California if it is treated for the pink bollworm in accordance with an approved treatment listed in part 305 of this chapter.

(e) *Imports from Andros Island of the Bahamas.* Okra produced on Andros Island, Commonwealth of the Bahamas, may be imported into the United States in accordance with § 319.56–3.

§ 319.56–22 Apples and pears from certain countries in Europe.

(a) *Importations allowed.* The following fruits may be imported into the United States in accordance with this section and all other applicable provisions of this subpart:

(1) Apples from Belgium, Denmark, France, Germany, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Spain, Sweden, and Switzerland;

(2) Pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain.

(b) *Trust fund agreement.* Except as provided in paragraph (h) of this section, the apples or pears may be imported only if the national plant protection organization (NPPO) of the exporting country has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

(c) *Responsibilities of the exporting country.* The apples or pears may be imported in any single shipping season only if all of the following conditions are met:

(1) Officials of the NPPO must survey each orchard producing apples or pears for shipment to the United States at least twice between spring blossoming and harvest. If the officials find any leaf miners that suggest the presence of Leucoptera malifoliella in an orchard, the officials must reject any fruit harvested from that orchard during that growing season for shipment to the United States. If the officials find evidence in an orchard of any other plant pest referred to in paragraph (g) of this section, they must ensure that the orchard and all other orchards within 1 kilometer of that orchard will be treated for that pest with a pesticide approved by the APHIS, in accordance with label directions and under the direction of the plant protection organization. If the officials determine that the treatment program has not been applied as required or is not controlling the plant pest in the orchard, they must reject any fruit harvested from that orchard during that growing season for shipment to the United States.

(2) The apples or pears must be identified to the orchard from which they are harvested (the producing orchard) until the fruit arrives in the United States.

(3) The apples or pears must be processed and inspected in approved packing sheds as follows:

(i) Upon arrival at the packing shed, the apples or pears must be inspected for insect pests as follows: For each grower lot (all fruit delivered for processing from a single orchard at a given time), packing shed technicians must examine all fruit in one carton on every third pallet (there are approximately 42 cartons to a pallet), or at least 80 apples or pears in every third bin (if the fruit is not in cartons on pallets). If they find any live larva or pupa of *Leucoptera malifoliella,* they must reject the entire grower lot for shipment to the United States, and the NPPO must reject for shipment any additional fruit from the producing

orchard for the remainder of the shipping season.

(ii) The apples or pears must be sorted, sized, packed, and otherwise handled in the packing sheds on grading and packing lines used solely for fruit intended for shipment to the United States, or, if on grading and packing lines used previously for other fruit, only after the lines have been washed with water.

(iii) During packing operations, apples and pears must be inspected for insect pests as follows: All fruit in each grower lot must be inspected at each of two inspection stations on the packing line by packing shed technicians. In addition, one carton from every pallet in each grower lot must be inspected by officials of the plant protection service. If the inspections reveal any live larva or pupa of *Leucoptera malifoliella,* the entire grower lot must be rejected for shipment to the United States, and the plant protection service must reject for shipment any additional fruit from the producing orchard for the remainder of that shipping season. If the inspections reveal any other insect pest referred to in paragraph (g) of this section, and a treatment authorized in part 305 of this chapter is available, the fruit will remain eligible for shipment to the United States if the entire grower lot is treated for the pest under the supervision of an inspector. However, if the entire grower lot is not treated in this manner, or if a plant pest is found for which no treatment authorized in part 305 of this chapter is available, the entire grower lot will be rejected for shipment to the United States.

(4) Apples or pears that pass inspection at approved packing sheds must be presented to an inspector for preclearance inspection as prescribed in paragraph (d) of this section or for inspection in the United States as prescribed in paragraph (h) of this section.

(5) Apples and pears presented for preclearance inspection must be identified with the packing shed where they were processed, as well as with the producing orchard, and this identity must be maintained until the apples or pears arrive in the United States.

(6) Facilities for the preclearance inspections prescribed in paragraph (d) of this section must be provided in the exporting country at a site acceptable to APHIS.

(7) Any apples or pears rejected for shipment into the United States may not, under any circumstance, be presented again for shipment to the United States.

(d) *Preclearance inspection.* Preclearance inspection will be conducted in the exporting country by an inspector. Preclearance inspection will be conducted for a minimum of 6,000 cartons of apples or pears, which may represent multiple grower lots from different packing sheds. The cartons examined during any given preclearance inspection will be known as an inspection unit. Apples or pears in any inspection unit may be shipped to the United States only if the inspection unit passes inspection as follows:

(1) Inspectors will examine, fruit by fruit, a biometrically designed statistical sample of 300 cartons drawn from each inspection unit.

(i) If inspectors find any live larva or pupa of *Leucoptera malifoliella*, they will reject the entire inspection unit for shipment to the United States. The inspectors also will reject for shipment any additional fruit from the producing orchard for the remainder of the shipping season. However, other orchards represented in the rejected inspection unit will not be affected for the remainder of the shipping season because of that rejection. Additionally, if inspectors reject any three inspection units in a single shipping season because of *Leucoptera malifoliella* on fruit processed by a single packing shed, no additional fruit from that packing shed will be accepted for shipment to the United States for the remainder of that shipping season.

(ii) If the inspectors find evidence of any other plant pest referred to in paragraph (g) of this section, and a treatment authorized in part 305 of this chapter is available, fruit in the inspection unit will remain eligible for shipment to the United States if the entire inspection unit is treated for the pest under the supervision of an inspector. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no treatment authorized in part 305 of this chapter is available, the inspectors will reject the entire inspection unit for shipment to the United States. Rejection of an inspection unit because of pests other than *Leucoptera malifoliella* will not be cause for rejecting additional fruit from an orchard or packing shed.

(iii) Apples and pears precleared for shipment to the United States as prescribed in this paragraph will not be inspected again in the United States (except as necessary to ensure that the fruit has been precleared) unless the preclearance program with the exporting country is terminated in accordance with paragraph (e) of this section. If the preclearance program is terminated with any country, precleared fruit in transit to the United States at the time of termination will be spot-checked by inspectors upon arrival in the United States for evidence of plant pests referred to in paragraph (g) of this section. If any live larva or pupa of *Leucoptera malifoliella* is found in any carton of fruit, inspectors will reject that carton and all other cartons in that consignment that are from the same producing orchard. In addition, the remaining cartons of fruit in that consignment will be reinspected as an inspection unit in accordance with the preclearance procedures prescribed in paragraph (d) of this section.

(2) [Reserved]

(e) *Termination of preclearance programs.* The Administrator may terminate the preclearance program in a country if he or she determines that any of the conditions specified in paragraph (c) of this section are not met or because of pests found during preclearance inspections. Termination of the preclearance program will stop consignments of apples or pears from that country for the remainder of that shipping season. Termination of the preclearance program for findings of *Leucoptera malifoliella* in preclearance inspections in any country will be based on rates of rejection of inspection units as follows:

(1) Termination because of findings of *Leucoptera malifoliella.* The preclearance program will be terminated with a country when, in one shipping season, inspection units are rejected because of *Leucoptera malifoliella* as follows:

(i) Five inspection units in sequence among inspection units 1–20, or a total of 8 or more of the inspection units 1–20;

(ii) Five inspection units in sequence among inspection units 21–40, or a total of 10 or more of the inspection units 1–40;

(iii) Five inspection units in sequence among inspection units 41–60, or a total of 12 or more of the inspection units 1–60;

(iv) Five inspection units in sequence among inspection units 61–80, or a total of 14 or more of the inspection units 1–80;

(v) Five inspection units in sequence among inspection units 81–100, or a total of 16 or more of the inspection units 1–100;

(vi) Five inspection units in sequence among inspection units 101–120, or a total of 18 or more of the inspection units 1–120.

(vii) Sequence can be continued in increments of 20 inspection units by increasing the number of rejected inspection units by 2.

(2) Termination because of findings of other plant pests. The preclearance program will be terminated with a country when, in one shipping season, inspection units are rejected because of other insect pests as follows:

(i) Ten or more of the inspection units 1–20;

(ii) Fifteen or more of the inspection units 1–40;

(iii) Twenty or more of the inspection units 1–60;

(iv) Twenty-five or more of the inspection units 1–80;

(v) Thirty or more of the inspection units 1–100; or

(vi) Thirty-five or more of the inspection units 1–120.

(vii) Sequence can be continued in increments of 20 inspection units by increasing the number of rejected inspection units by 5.

(f) *Cold treatment.* In addition to all other requirements of this section, apples or pears may be imported into the United States from France, Italy, Portugal, or Spain only if the fruit is cold treated for the Mediterranean fruit fly in accordance with part 305 of this chapter.

(g) *Plant pests; authorized treatments.* (1) Apples from Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Spain, Sweden, Switzerland, and Germany; and pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain may be imported into the United States only if they are found free of the following pests or, if an authorized treatment is available, they are treated for: The pear leaf blister moth (*Leucoptera malifoliella* (O.G. Costa) (Lyonetiidae)), the plum fruit moth (*Cydia funebrana* (Treitschke) (Tortricidae)), the summer fruit tortrix moth (*Adoxophyes orana* (Fischer von Rosslertamm) (Tortricidae)), a leaf roller (*Argyrotaenia pulchellana* (Haworth) (Tortricidae)), and other insect pests that do not exist in the United States or that are not widespread in the United States.

(2) Authorized treatments are listed in part 305 of this chapter.

(h) *Inspection in the United States.* Notwithstanding provisions to the contrary in paragraphs (c) and (d) of this section, the Administrator may allow apples or pears imported under this section to be inspected at a port of arrival in the United States, in lieu of a preclearance inspection, under the following conditions:

(1) The Administrator has determined that inspection can be accomplished at the port of arrival without increasing the risk of introducing insect pests into the United States;

(2) Each pallet of apples or pears must be completely enclosed in plastic, to prevent the escape of insects, before it is offloaded at the port of arrival;

(3) The entire consignment of apples or pears must be offloaded and moved to an enclosed warehouse, where adequate inspection facilities are available, under the supervision of an inspector.

(4) The Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required.

(5) The method of inspection will be the same as prescribed in paragraph (d) of this section for preclearance inspections.

§ 319.56–23 Apricots, nectarines, peaches, plumcot, and plums from Chile.

(a) *Importations allowed.* Apricots, nectarines, peaches, plumcot, and plums may be imported into the United States from Chile in accordance with this section and all other applicable provisions of this subpart.[3]

(b) *Trust fund agreement.* Apricots, nectarines, peaches, plumcot, and plums may be imported under the regulations in this section only if the national plant protection organization of Chile (Servicio Agricola y Ganadero, referred to in this section as SAG) or a private export group has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

(c) *Responsibilities of Servicio Agricola y Ganadero.* SAG will ensure that:

(1) Apricots, nectarines, peaches, plumcot, or plums are presented to inspectors for preclearance in their shipping containers at the shipping site as prescribed in paragraph (d) of this section.

(2) Apricots, nectarines, peaches, plumcot, and plums presented for inspection are identified in shipping documents accompanying each load of fruit that identify the packing shed where they were processed and the orchards where they were produced; and this identity is maintained until the apricots, nectarines, peaches, plumcot, or plums are released for entry into the United States.

(3) Facilities for the inspections prescribed in paragraph (d) of this section are provided in Chile at an inspection site acceptable to APHIS.

(d) *Preclearance inspection.* Preclearance inspection will be conducted in Chile under the direction of inspectors. An inspection unit will consist of a lot or consignment from which a statistical sample is drawn and examined. An inspection unit may represent multiple grower lots from different packing sheds. Apricots, nectarines, peaches, plumcot, or plums in any inspection unit may be shipped to the United Sates only if the inspection unit passes inspection as follows:

(1) Inspectors will examine the contents of the cartons based on a biometric sampling scheme established for each inspection unit.

(i) If the inspectors find evidence of any plant pest for which a treatment authorized in part 305 of this chapter is available, fruit in the inspection unit will remain eligible for shipment to the United States if the entire inspection unit is treated for the pest in Chile. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no treatment authorized in part 305 of this chapter is available, the entire inspection unit will not be eligible for shipment to the United States.

(ii) Apricots, nectarines, peaches, plumcot, and plums precleared for shipment to the United States as prescribed in this paragraph will not be inspected again in the United States except as necessary to ensure that the fruit has been precleared and for occasional monitoring purposes.

(2) [Reserved]

(e) *Termination of preclearance programs.* Consignments of apricots, nectarines, peaches, plumcot, and plums will be individually evaluated regarding the rates of infestation of inspection units of these articles presented for preclearance. The inspection program for an article will be terminated when inspections establish that the rate of infestation of inspection units of the article by pests listed in paragraph (f) of this section exceeds 20 percent calculated on any consecutive 14 days of actual inspections (not counting days on which inspections are not conducted). Termination of the inspection program for an article will require mandatory treatment in Chile, prior to shipment to the United States, of consignments of the article for the remainder of that shipping season. If a preclearance inspection program is terminated with Chile, precleared fruit in transit to the United States at the time of termination will be spot-checked by inspectors upon arrival in the United States for evidence of plant pests

[3] As provided in § 319.56–4, apricots, nectarines, peaches, plumcot, and plums from Chile may also be imported if treated in accordance with a treatment listed in part 305 of this chapter and subject to other applicable regulations in this subpart.

referred to in paragraph (f) of this section.

(f) *Plant pests; authorized treatments.* (1) Apricots, nectarines, peaches, plumcot, or plums from Chile may be imported into the United States only if they are found free of the following pests or, if an authorized treatment is available, they are treated for: *Proeulia* spp., *Leptoglossus chilensis, Megalometis chilensis, Naupactus xanthographus, Listroderes subcinctus,* and *Conoderus rufangulus,* and other insect pests that the Administrator has determined do not exist, or are not widespread, in the United States.

(2) Authorized treatments are listed in part 305 of this chapter.

(g) *Inspection in the United States.* Notwithstanding provisions to the contrary in paragraphs (c) and (d) of this section, the Administrator may, in emergency or extraordinary situations, allow apricots, nectarines, peaches, plumcot, or plums imported under this section to be inspected at a port of arrival in the United States, in lieu of a preclearance inspection or fumigation in Chile, under the following conditions:

(1) The Administrator is satisfied that a unique situation exists which justifies a limited exception to mandatory preclearance;

(2) The Administrator has determined that inspection and/or treatment can be accomplished at the intended port of arrival without increasing the risk of introducing quarantine pests into the United States;

(3) The entire consignment of apricots, nectarines, peaches, plumcot, or plums must be offloaded and moved to an enclosed warehouse, where inspection and treatment facilities are available.

(4) The Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required.

(5) The method of sampling and inspection will be the same as prescribed in paragraph (d) of this section for preclearance inspections.

§ 319.56–24 Lettuce and peppers from Israel.

(a) Lettuce may be imported into the United States from Israel without fumigation for leafminers, thrips, and *Sminthuris viridis* only in accordance with this section and all other applicable provisions of this subpart.

(1) *Growing conditions.* (i) The lettuce must be grown in insect-proof houses covered with 50 mesh screens, double self-closing doors, and hard walks (no soil) between the beds;

(ii) The lettuce must be grown in growing media that has been sterilized by steam or chemical means;

(iii) The lettuce must be inspected during its active growth phase and the inspection must be monitored by a representative of the Israeli national plant protection organization;

(iv) The crop must be protected with sticky traps and prophylactic sprays approved for the crop by Israel;

(v) The lettuce must be moved to an insect-proof packinghouse at night in plastic containers covered by 50 mesh screens;

(vi) The lettuce must be packed in an insect-proof packinghouse, individually packed in transparent plastic bags, packed in cartons, placed on pallets, and then covered with shrink wrapping; and

(vii) The lettuce must be transported to the airport in a closed refrigerated truck for shipment to the United States.

(2) Each consignment of lettuce must be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization stating that the conditions of paragraph (a)(1) of this section have been met.

(b) Peppers (fruit) (*Capsicum* spp.) from Israel may be imported into the United States only under the following conditions:

(1) The peppers have been grown in the Arava Valley by growers registered with the Israeli Department of Plant Protection and Inspection (DPPI).

(2) Malathion bait sprays shall be applied in the residential areas of the Arava Valley at 6–to 10–day intervals beginning not less than 30 days before the harvest of backyard host material in residential areas and shall continue through harvest.

(3) The peppers have been grown in insect-proof plastic screenhouses approved by the DPPI and APHIS. Houses shall be examined periodically by DPPI or APHIS personnel for tears in either plastic or screening.

(4) Trapping for Mediterranean fruit fly (Medfly) shall be conducted by DPPI throughout the year in the agricultural region along Arava Highway 90 and in the residential area of Paran. The capture of a single Medfly in a screenhouse will immediately cancel export from that house until the source of the infestation is delimited, trap density is increased, pesticide sprays are applied, or other measures acceptable to APHIS are taken to prevent further occurrences.

(5) Signs in English and Hebrew shall be posted along Arava Highway 90 stating that it is prohibited to throw out/discard fruits and vegetables from passing vehicles.

(6) Sorting and packing of peppers shall be done in the insect-proof screenhouses in the Arava Valley.

(7) Prior to movement from approved insect-proof screenhouses in the Arava Valley, the peppers must be packed in either individual insect-proof cartons or in non-insect-proof cartons that are covered by insect-proof mesh or plastic tarpaulins; covered non-insect-proof cartons must be placed in shipping containers.

(8) The packaging safeguards required by paragraph (b)(7) of this section must remain intact at all times during the movement of the peppers to the United States and must be intact upon arrival of the peppers in the United States.

(9) Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization stating that the conditions of paragraphs (b)(1) through (b)(7) of this section have been met.

(Approved by the Office of Management and Budget under control number 0579–0210)

§ 319.56–25 Papayas from Central America and Brazil.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands only in accordance with this section and all other applicable provisions of this subpart.

(a) The papayas were grown and packed for shipment to the United States in one of the following locations:

(1) *Brazil:* State of Espirito Santo; all areas in the State of Bahia that are between the Jequitinhonha River and the border with the State of Espirito Santo and all areas in the State of Rio Grande del Norte that contain the following municipalities: Touros, Pureza, Rio do Fogo, Barra de Maxaranguape, Taipu, Ceara Mirim, Extremoz, Ielmon Marinho, Sao Goncalo do Amarante, Natal, Maciaba, Parnamirim, Veracruz, Sao Jose de Mipibu, Nizia Floresta, Monte Aletre, Areas, Senador Georgino Avelino, Espirito Santo, Goianinha, Tibau do Sul, Vila Flor, and Canguaretama e Baia Formosa.

(2) *Costa Rica:* Provinces of Guanacaste, Puntarenas, San Jose.

(3) *El Salvador:* Departments of La Libertad, La Paz, and San Vicente.

(4) *Guatemala:* Departments of Escuintla, Retalhuleu, Santa Rosa, and Suchitepéquez.

(5) *Honduras:* Departments of Comayagua, Cortés, and Santa Bárbara.

(6) *Nicaragua:* Departments of Carazo, Granada, Leon, Managua, Masaya, and Rivas.

(7) *Panama:* Provinces of Cocle, Herrera, and Los Santos; Districts of Aleanje, David, and Dolega in the Province of Chiriqui; and all areas in the Province of Panama that are west of the Panama Canal.

(b) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were one-half or more ripe (more than one-fourth of the shell surface yellow), and all culled and fallen fruits were buried, destroyed, or removed from the farm at least twice a week.

(c) The papayas were held for 20 minutes in hot water at 48 °C (118.4 °F).

(d) When packed, the papayas were less than one-half ripe (the shell surface was no more than one-fourth yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(e) The papayas were safeguarded from exposure to fruit flies from harvest to export, including being packaged so as to prevent access by fruit flies and other injurious insect pests. The package containing the papayas does not contain any other fruit, including papayas not qualified for importation into the United States.

(f) All cartons in which papayas are packed must be stamped ''Not for importation into or distribution in HI.''

(g) All activities described in paragraphs (a) through (f) of this section were carried out under the supervision and direction of plant health officials of the national plant protection organization (NPPO).

(h) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the NPPO. Fifty percent of the traps were of the McPhail type and 50 percent of the traps were of the Jackson type. If the average Jackson trap catch was greater than seven Medflies per trap per week, measures were taken to control the Medfly population in the production area. The NPPO kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(i) If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

(j) In the State of Espirito Santo, Brazil, if the average McPhail trap catch was greater than seven South American fruit flies (*Anastrepha fraterculus*) per trap per week, measures were taken to control the South American fruit fly population in the production area. If the average McPhail trap catch exceeds 14 South American fruit flies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer South American fruit flies per trap per week.

(k) All consignments must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

(Approved by the Office of Management and Budget under control number 0579–0128)

§ 319.56–26 Melon and watermelon from certain countries in South America.

(a) *Cantaloupe and watermelon from Ecuador.* Cantaloupe (*Cucumis melo*) and watermelon (fruit) (*Citrullus lanatus*) may be imported into the United States from Ecuador only in accordance with this paragraph and all other applicable provisions of this subpart:

(1) The cantaloupe or watermelon may be imported in commercial consignments only.

(2) The cantaloupe or watermelon must have been grown in an area where trapping for the South American cucurbit fly (*Anastrepha grandis*) has been conducted for at least the previous 12 months by the national plant protection organization (NPPO) of Ecuador, under the direction of APHIS, with no findings of the pest.[4]

(3) The following area meets the requirements of paragraph (a)(2) of this section: The area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through E1 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guayaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja, and Zapotal to El Azucar.

[4] Information on the trapping program may be obtained by writing to the Animal and Plant Health Inspection Service, International Services, Stop 3432, 1400 Independence Avenue, SW., Washington, DC 20250–3432.

(4) The cantaloupe or watermelon may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. The boxes in which the cantaloupe or watermelon is packed must be stamped with the name of the commodity followed by the words ''Not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI''.

(b) *Cantaloupe, netted melon, vegetable melon, winter melon, and watermelon from Peru.* Cantaloupe, netted melon, vegetable melon, and winter melon (*Cucumis melo* L. subsp. *melo*) and watermelon may be imported into the United States from Peru only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The fruit may be imported in commercial consignments only.

(2) The fruit must have been grown in an area of Peru considered by APHIS to be free of the South American cucurbit fly, must be accompanied by a phytosanitary certificate declaring its origin in such an area, and must be safeguarded and labeled, each in accordance with § 319.56–5 of this subpart.

(3) The phytosanitary certificate required under § 319.56–5 must also include a declaration by the NPPO of Peru indicating that, upon inspection, the fruit was found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*).

(4) All consignments of fruit must be labeled in accordance with § 319.56(5(e) of this subpart, and the boxes in which the fruit is packed must be labeled ''Not for distribution in HI, PR, VI, or Guam.''

(Approved by the Office of Management and Budget under control number 0579–0236)

§ 319.56–27 Fuji variety apples from Japan and the Republic of Korea.

Fuji variety apples may be imported into the United States from Japan and the Republic of Korea only in accordance with this section and all other applicable provisions of this subpart.

(a) *Treatment and fumigation.* The apples must be cold treated and then fumigated, under the supervision of an APHIS inspector, either in Japan or the Republic of Korea, for the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), and the fruit tree spider mite (*Tetranychus viennensis*), in accordance with part 305 of this chapter.

(b) *APHIS inspection.* The apples must be inspected upon completion of the treatments required by paragraph (a) of this section, prior to export from Japan or the Republic of Korea, by an APHIS inspector and an inspector from the national plant protection agency of Japan or the Republic of Korea. The apples shall be subject to further disinfection in the exporting country if plant pests are found prior to export. Imported Fuji variety apples inspected in Japan or the Republic of Korea are also subject to inspection and disinfection at the port of first arrival, as provided in § 319.56–3.

(c) *Trust fund agreements.* The national plant protection agency of the exporting country must enter into a trust fund agreement with APHIS in accordance with § 319.56–6 before APHIS will provide the services necessary for Fuji variety apples to be imported into the United States from Japan or the Republic of Korea.

§ 319.56–28 Tomatoes from certain countries.

(a) *Tomatoes (fruit) (Lycopersicon esculentum) from Spain.* Pink or red tomatoes may be imported into the United States from Spain only in accordance with this section and all other applicable provisions of this subpart.[5]

(1) The tomatoes must be grown in the Almeria Province, the Murcia Province, or the municipalities of Albuñol and Carchuna in the Granada Province of Spain in greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(2) The tomatoes may be shipped only from December 1 through April 30, inclusive;

(3) Two months prior to shipping, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all areas outside the greenhouses and within 8 kilometers, including urban and residential areas, MAFF must place Medfly traps at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(4) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse and within a 1-month time period will result in cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of infestation is determined and the Medfly infestation is eradicated;

(5) MAFF must maintain records of trap placement, checking of traps, and any Medfly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded from harvest to export by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packinghouse and while awaiting packaging. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulins for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States; and

(7) MAFF is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by MAFF and bearing the declaration, ''These tomatoes were grown in registered greenhouses in Almeria Province, the Murcia Province, or the municipalities of Albuñol and Carchuna in the Granada Province in Spain.''

(b) *Tomatoes (fruit) (Lycopersicon esculentum) from France.* Pink or red tomatoes may be imported into the United States from France only in accordance with this section and other applicable provisions of this subpart.[6]

(1) The tomatoes must be grown in the Brittany Region of France in greenhouses registered with, and inspected by, the Service de la Protection Vegetaux (SRPV);

(2) From June 1 through September 30, SRPV must set and maintain one Medfly trap baited with trimedlure inside and one outside each greenhouse and must check the traps every 7 days;

(3) Capture of a single Medfly inside or outside a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation;

(4) SRPV must maintain records of trap placement, checking of traps, and any Medfly captures, and must make them available to APHIS upon request;

(5) From June 1 through September 30, the tomatoes must be packed within 24 hours of harvest. They must be safeguarded by insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh screen or plastic tarpaulin. These safeguards must be intact upon arrival in the United States; and

(6) SRPV is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by SRPV and bearing the declaration, ''These tomatoes were grown in registered greenhouses in the Brittany Region of France.''

(c) *Tomatoes (fruit) (Lycopersicon esculentum) from Morocco and Western Sahara.* Pink tomatoes may be imported into the United States from Morocco and Western Sahara only in accordance with this section and other applicable provisions of this subpart.[7]

(1) The tomatoes must be grown in the provinces of El Jadida or Safi in Morocco or in the province of Dahkla in Western Sahara in insect-proof greenhouses registered with, and inspected by, the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF);

(2) The tomatoes may be shipped from Morocco and Western Sahara only between December 1 and April 30, inclusive;

(3) Beginning 2 months prior to the start of the shipping season and continuing through the end of the shipping season, DPVCTRF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In Morocco, traps must also be placed outside registered greenhouses within a 2-kilometer radius at a rate of four traps per square kilometer. In Western Sahara, a single trap must be placed outside in the immediate proximity of each registered greenhouse. All traps in Morocco and Western Sahara must be checked every 7 days;

[5] The surface area of a pink tomato is more than 30 percent but not more than 60 percent pink and/or red. The surface area of a red tomato is more than 60 percent pink and/or red. Green tomatoes from Spain, France, Morocco, and Western Sahara may be imported in accordance with §§ 319.56–3 and 319.56–4.

[6] See footnote 5 to paragraph (a) of this section.

[7] See footnote 5 to paragraph (a) of this section.

(4) DPVCTRF must maintain records of trap placement, checking of traps, and any Medfly captures, and make the records available to APHIS upon request;

(5) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 200 meters of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Six additional traps must be placed within a radius of 200 meters surrounding the trap where the Medfly was captured. Capture of two Medflies within 200 meters of a registered greenhouse and within a 1-month time period will necessitate Malathion bait sprays in the area every 7 to 10 days for 60 days to ensure eradication;

(6) The tomatoes must be packed within 24 hours of harvest and must be pink at the time of packing. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and export to the United States. These safeguards must be intact upon arrival in the United States; and

(7) The Moroccan Ministry of Agriculture, Fresh Product Export (EACCE) is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by EACCE and bearing the declaration, ''These tomatoes were grown in registered greenhouses in El Jadida or Safi Province, Morocco, and were pink at the time of packing'' or ''These tomatoes were grown in registered greenhouses in Dahkla Province, Western Sahara and were pink at the time of packing.''

(d) *Tomatoes from Chile.* Tomatoes (fruit) (*Lycopersicon esculentum*) from Chile, whether green or at any stage of ripeness, may be imported into the United States with treatment in accordance with paragraph (d)(1) of this section or if produced in accordance with the systems approach described in paragraph (d)(2) of this section.

(1) *With treatment.* (i) The tomatoes must be treated in Chile with methyl bromide in accordance with part 305 of this chapter. The treatment must be conducted in facilities registered with the Servicio Agricola y Ganadero (SAG) and with APHIS personnel monitoring the treatments;

(ii) The tomatoes must be treated and packed within 24 hours of harvest. Once treated, the tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and awaiting packing. They must be packed in insect-proof cartons or containers, or insect-proof mesh or plastic tarpaulin under APHIS monitoring for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States; and

(iii) Tomatoes may be imported into the United States from Chile with treatment in accordance with this paragraph (d)(1) only if SAG has entered into a trust fund agreement with APHIS for that shipping season in accordance with § 319.56–6. This agreement requires SAG to pay in advance all costs that APHIS estimates it will incur in providing the preclearance services prescribed in this section for that shipping season.

(2) *Systems approach.* The tomatoes may be imported without fumigation for *Tuta absoluta, Rhagoletis tomatis,* and Mediterranean fruit fly (Medfly, *Ceratitis capitata*) if they meet the following conditions:

(i) The tomatoes must be grown in approved production sites that are registered with SAG. Initial approval of the production sites will be completed jointly by SAG and APHIS. SAG will visit and inspect the production sites monthly, starting 2 months before harvest and continuing until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato production sites must consist of pest-exclusionary greenhouses, which must have double self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(iii) The tomatoes must originate from an area that has been determined by APHIS to be free of Medfly in accordance with the procedures described in § 319.56–5 or an area where Medfly trapping occurs. Production sites in areas where Medfly is known to occur must contain traps for both Medfly and *Rhagoletis tomatis* in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. Production sites in all other areas do not require trapping for Medfly. The trapping protocol for the detection of Medfly in infested areas is as follows:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse.

(B) Medfly traps with trimedlure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap/10 ha and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near a greenhouse. Traps must be set for at least 2 months before export and trapping and continue to the end of the harvest season.

(C) Medfly prevalence levels in the surrounding areas must be 0.7 Medflies per trap per week or lower. If levels exceed this before harvest, the production site will be prohibited from shipping under the systems approach. If the levels exceed this after the 2 months prior to harvest, the production site would be prohibited from shipping under the systems approach until APHIS and SAG agree that the pest risk has been mitigated.

(iv) Registered production sites must contain traps for *Rhagoletis tomatis* in accordance with the following provisions:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse. Traps inside greenhouses will use the same bait for Medfly and *Rhagoletis tomatis* because the bait used for *R. tomatis* is sufficient for attracting both types of fruit fly within the confines of a greenhouse; therefore, it is unnecessary to repeat this trapping protocol in production sites in areas where Medfly is known to occur.

(B) McPhail traps with an approved protein bait must be placed inside a 500 meter buffer zone at a density of 1 trap/10 ha surrounding the production site. At least one of the traps must be near a greenhouse. Traps must be set for at least 2 months before export until the end of the harvest season and must be checked at least every 7 days. In areas where Medfly trapping is required, traps located outside of greenhouses must contain different baits for Medfly and *Rhagoletis tomatis.* There is only one approved bait for *R. tomatis* and the bait is not strong enough to lure Medfly when used outside greenhouses; therefore, separate traps must be used for each type of fruit fly present in the area surrounding the greenhouses.

(C) If within 30 days of harvest a single *Rhagoletis tomatis* is captured

inside the greenhouse or in a consignment or if two *R. tomatis* are captured or detected in the buffer zone, shipments from the production site will be suspended until APHIS and SAG determine that risk mitigation is achieved.

(v) Registered production sites must conduct regular inspections for *Tuta absoluta* throughout the harvest season and find these areas free of *T. absoluta* evidence (e.g., eggs or larvae). If within 30 days of harvest, two *T. absoluta* are captured inside the greenhouse or a single *T. absoluta* is found inside the fruit or in a consignment, shipments from the production site will be suspended until APHIS and SAG determine that risk mitigation is achieved.

(vi) SAG will ensure that populations of *Liriomyza huidobrensis* inside greenhouses are well managed by doing inspections during the monthly visits specifically for *L. huidobrensis* mines in the leaves and for visible external pupae or adults. If *L. huidobrensis* is found to be generally infesting the production site, shipments from the production site will be suspended until APHIS and SAG agree that risk mitigation is achieved.

(vii) All traps must be placed at least 2 months prior to harvest and be maintained throughout the harvest season and be monitored and serviced weekly.

(viii) SAG must maintain records of trap placement, checking of traps, and of any *Rhagoletis tomatis* or *Tuta absoluta* captures for 1 year for APHIS review. SAG must maintain an APHIS approved quality control program to monitor or audit the trapping program. APHIS must be notified when a production site is removed from or added to the program.

(ix) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin for transit to the United States. These safeguards must remain intact until arrival in the United States.

(x) During the time the packinghouse is in use for exporting fruit to the United States, the packinghouse may only accept fruit from registered approved production sites.

(xi) SAG is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by SAG with an additional declaration, ''These tomatoes were grown in an approved production site in Chile.'' The shipping box must be labeled with the identity of the production site.

(e) *Tomatoes (fruit) (Lycopersicon esculentum) from Australia.* Tomatoes may be imported into the United States from Australia only in accordance with this section and other applicable provisions of this subpart.

(1) The tomatoes must be grown in greenhouses registered with, and inspected by, the Australian Quarantine Inspection Service (AQIS);

(2) Two months prior to shipping, AQIS must inspect the greenhouse to establish its freedom from the following quarantine pests: *Bactrocera aquilonis, B. cucumis, B. jarvis, B. neohumeralis, B. tryoni, Ceratitis capitata, Chrysodeixis argentifera, C. erisoma, Helicoverpa armigera, H. punctigera, Lamprolonchaea brouniana, Sceliodes cordalis,* and *Spodoptera litura.* AQIS must also set and maintain fruit fly traps inside the greenhouses and around the perimeter of the greenhouses. Inside the greenhouses, the traps must be APHIS-approved fruit fly traps, and they must be set at the rate of six per hectare. In all areas outside the greenhouse and within 8 kilometers of the greenhouse, fruit fly traps must be placed on a 1-kilometer grid. All traps must be checked at least every 7 days;

(3) Within a registered greenhouse, capture of a single fruit fly or other quarantine pest will result in immediate cancellation of exports from that greenhouse until the source of the infestation is determined, the infestation has been eradicated, and measures are taken to preclude any future infestation;

(4) Outside of a registered greenhouse, if one fruit fly of the species specified in paragraph (e)(2) of this section is captured, the trap density and frequency of trap inspection must be increased to detect a reproducing colony. Capture of two Medflies or three of the same species of *Bactrocera* within 2 kilometers of each other and within 30 days will result in the cancellation of exports from all registered greenhouses within 2 kilometers of the finds until the source of the infestation is determined and the fruit fly infestation is eradicated;

(5) AQIS must maintain records of trap placement, checking of traps, and any fruit fly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse or while awaiting packing. They must be placed in insect-proof cartons or containers, or securely covered with insect-proof mesh or plastic tarpaulin for transport to the airport or other shipping point. These safeguards must be intact upon arrival in the United States; and

(7) Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by AQIS stating ''These tomatoes were grown, packed, and shipped in accordance with the requirements of § 319.56–28(e) of 7 CFR.''

(f) *Tomatoes (fruit) (Lycopersicon esculentum) from certain countries in Central America.* Pink or red tomatoes may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama only under the following conditions:

(1) From areas free of Mediterranean fruit fly:

(i) The tomatoes must be grown and packed in an area that has been determined by APHIS to be free of Mediterranean fruit fly (Medfly) in accordance with the procedures described in § 319.56–5.

(ii) A pre-harvest inspection of the production site must be conducted by the national plant protection organization (NPPO) of the exporting country for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests are found to be generally infesting the production site, the NPPO may not allow exports from that production site until the NPPO and APHIS have determined that risk mitigation has been achieved.

(iii) The tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(iv) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These tomatoes were grown in an area recognized to be free of Medfly and the consignment has been inspected and found free of the pests listed in the requirements.''

(2) From areas where Medfly is considered to exist:

(i) The tomatoes must be grown in approved registered production sites. Initial approval of the production sites will be completed jointly by the

exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato production sites must consist of pest-exclusionary greenhouses, which must have double self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(iii) Registered sites must contain traps for the detection of Medfly both within and around the production site as follows:

(A) Traps with an approved protein bait for Medfly must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(B) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export tomatoes to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(C) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(D) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of tomatoes from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(E) The greenhouse must be inspected prior to harvest for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, exports from that production site will be halted until the exporting country's NPPO and APHIS determine that the pest risk has been mitigated.

(iv) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Medfly captures in addition to production site and packinghouse inspection records. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS's review.

(v) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(vi) During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered approved production sites.

(vii) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These tomatoes were grown in an approved production site and the consignment has been inspected and found free of the pests listed in the requirements.'' The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0131, 0579–0316, and 0579–0286)

§ 319.56–29 Ya variety pears from China.

Ya variety pears may be imported into the United States from China only in accordance with this section and all other applicable provisions of this subpart.

(a) *Growing and harvest conditions.* (1) The pears must have been grown by growers registered with the national plant protection organization (NPPO) of China in an APHIS-approved export growing area in the Hebei or Shandong Provinces.

(2) Field inspections for signs of pest infestation must be conducted by the national plant protection organization (NPPO) of China during the growing season.

(3) The registered growers shall be responsible for following the phytosanitary measures agreed upon by APHIS and the NPPO of China, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for pests to attack the fruit during the growing season. The bags must remain on the pears through the harvest and during their movement to the packinghouse.

(4) The packinghouses in which the pears are prepared for exportation shall not be used for any fruit other than Ya variety pears from registered growers during the pear export season. The packinghouses shall accept only those pears that are in intact bags as required by paragraph (a)(3) of this section. The pears must be loaded into containers at the packinghouse and the containers then sealed before movement to the port of export.

(b) *Treatment.* Pears from Shandong Province must be cold treated for Bactrocera dorsalis in accordance with part 305 of this chapter.

(c) Each consignment of pears must be accompanied by a phytosanitary certificate issued by the NPPO of China stating that the conditions of this section have been met.

§ 319.56–30 Hass avocados from Michoacan, Mexico.

Fresh Hass variety avocados (*Persea americana*) may be imported from Michoacan, Mexico, into the United States in accordance with the requirements of § 319.56–3 of this subpart, and only under the following conditions:

(a) *Shipping restrictions.* (1) The avocados may be imported in commercial consignments only;

(2) The avocados may be imported into and distributed in all States, but not Puerto Rico or any U.S. Territory.

(b) *Trust fund agreement.* The avocados may be imported only if the Mexican avocado industry association representing Mexican avocado growers, packers, and exporters has entered into a trust fund agreement with APHIS for that shipping season in accordance with § 319.56–6.

(c) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan in an orchard located in a municipality that meets the requirements of paragraph (c)(1) of this section. The orchard in which the avocados are grown must meet the requirements of paragraph (c)(2) of this section. The avocados must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (c)(3) of this section. The Mexican national plant protection organization (NPPO) must provide an annual work plan to APHIS that details the activities that the Mexican NPPO will, subject to APHIS' approval of the work plan, carry out to meet the requirements of this section; APHIS will be directly involved with the Mexican NPPO in the monitoring and supervision of those activities. The

personnel conducting the trapping and pest surveys must be hired, trained, and supervised by the Mexican NPPO or by the Michoacan State delegate of the Mexican NPPO.

(1) *Municipality requirements.* (i) The municipality must be listed as an approved municipality in the bilateral work plan provided to APHIS by the Mexican NPPO.

(ii) The municipality must be surveyed at least semiannually (once during the wet season and once during the dry season) and found to be free from the large avocado seed weevil *Heilipus lauri,* the avocado seed moth *Stenoma catenifer,* and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae.*

(iii) Trapping must be conducted in the municipality for Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) at the rate of 1 trap per 1 to 4 square miles. Any findings of Medfly must be reported to APHIS.

(2) *Orchard and grower requirements.* The orchard and the grower must be registered with the Mexican NPPO's avocado export program and must be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed semiannually and found to be free from the avocado stem weevil *Copturus aguacatae.*

(ii) Trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens, A. serpentina,* and *A. striata* at the rate of one trap per 10 hectares. If one of those fruit flies is trapped, at least 10 additional traps must be deployed in a 50-hectare area immediately surrounding the trap in which the fruit fly was found. If within 30 days of the first finding any additional fruit flies are trapped within the 260-hectare area surrounding the first finding, malathion bait treatments must be applied in the affected orchard in order for the orchard to remain eligible to export avocados.

(iii) Avocado fruit that has fallen from the trees must be removed from the orchard at least once every 7 days and may not be included in field boxes of fruit to be packed for export.

(iv) Dead branches on avocado trees in the orchard must be pruned and removed from the orchard.

(v) Harvested avocados must be placed in field boxes or containers of field boxes that are marked to show the official registration number of the orchard. The avocados must be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

(vi) The avocados must be protected from fruit fly infestation during their movement from the orchard to the packinghouse and must be accompanied by a field record indicating that the avocados originated from a certified orchard.

(3) *Packinghouse requirements.* The packinghouse must be registered with the Mexican NPPO's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the packinghouse must meet the following conditions:

(i) During the time the packinghouse is used to prepare avocados for export to the United States, the packinghouse may accept fruit only from orchards certified by the Mexican NPPO for participation in the avocado export program.

(ii) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents insects from entering the packinghouse.

(iii) The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(iv) Prior to the culling process, a biometric sample, at a rate determined by APHIS, of avocados per consignment must be selected, cut, and inspected by the Mexican NPPO and found free from pests.

(v) The identity of the avocados must be maintained from field boxes or containers to the shipping boxes so the avocados can be traced back to the orchard in which they were grown if pests are found at the packinghouse or the port of first arrival in the United States.

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the official registration number of the packinghouse.

(vii) The avocados must be packed in clean, new boxes, or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter. Between January 31, 2005, and January 31, 2007, the boxes or crates must be clearly marked with the statement ''Not for importation or distribution in CA, FL, HI, Puerto Rico or U.S. Territories.'' After January 31, 2007, the boxes or crates must be clearly marked with the statement ''Not for importation or distribution in Puerto Rico or U.S. Territories.''

(viii) The boxes must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States. Prior to leaving the packinghouse, the truck or container must be secured by the Mexican NPPO with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain unopened until it reaches the port of first arrival in the United States.

(ix) Any avocados that have not been packed or loaded into a refrigerated truck or refrigerated container by the end of the workday must be kept in the screened packing area.

(d) *Certification.* All consignments of avocados must be accompanied by a phytosanitary certificate issued by the Mexican NPPO with an additional declaration certifying that the conditions specified in this section have been met.

(e) *Pest detection.* (1) If any of the avocado seed pests *Heilipus lauri, Conotrachelus aguacatae, C. perseae,* or *Stenoma catenifer* are discovered in a municipality during the semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The municipality in which the pests are discovered will lose its pest-free certification and avocado exports from that municipality will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated.

(2) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, the Mexican NPPO must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard in which the pest was found will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been

effective and that the pest risk within that orchard has been eliminated.

(3) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, the Mexican NPPO must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(f) *Ports.* The avocados may enter the United States only through a port of entry located in a State where the distribution of the fruit is authorized pursuant to paragraph (a)(2) of this section.

(g) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival. At the port of first arrival, an inspector will sample and cut avocados from each consignment to detect pest infestation.

(h) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to an approved State, and upon arrival at the terminal market in the approved States. At the port of first arrival, an inspector will sample and cut avocados from each consignment to detect pest infestation.

(i) *Repackaging.* If any avocados are removed from their original shipping boxes and repackaged, the stickers required by paragraph (c)(3)(vi) of this section may not be removed or obscured and the new boxes must be clearly marked with all the information required by paragraph (c)(3)(vii) of this section.

§ 319.56–31 Peppers from Spain.

Peppers (fruit) (*Capsicum* spp.) may be imported into the United States from Spain only under permit, and only in accordance with this section and all other applicable requirements of this subpart:

(a) The peppers must be grown in the Alicante or Almeria Province of Spain in pest-proof greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(b) The peppers may be shipped only from December 1 through April 30, inclusive;

(c) Beginning October 1, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (*Ceratitis capitata*) (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all outside areas, including urban and residential areas, within 8 kilometers of the greenhouses, MAFF must set and maintain Medfly traps baited with trimedlure at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(d) Capture of a single Medfly in a registered greenhouse will immediately halt exports from that greenhouse until the Administrator determines that the source of infestation has been identified, that all Medflies have been eradicated, and that measures have been taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increased trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse during a 1-month period will halt exports from all registered greenhouses within 2 kilometers of the capture, until the source of infestation is determined and all Medflies are eradicated;

(e) The peppers must be safeguarded from harvest to export by insect-proof mesh or plastic tarpaulin, including while in transit to the packinghouse and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States;

(f) The peppers must be packed for shipment within 24 hours of harvest;

(g) During shipment, the peppers may not transit other fruit fly-supporting areas unless shipping containers are sealed by MAFF with an official seal whose number is noted on the phytosanitary certificate; and

(h) A phytosanitary certificate issued by MAFF and bearing the declaration, ''These peppers were grown in registered greenhouses in Alicante or Almeria Province in Spain,'' must accompany the consignment.

(Approved by the Office of Management and Budget under control number 0579–0210)

§ 319.56–32 Peppers from New Zealand.

Peppers (fruit) (*Capsicum* spp.) from New Zealand may be imported into the United States only in accordance with this section and all other applicable provisions of this subpart.

(a) The peppers must be grown in New Zealand in insect-proof greenhouses approved by the New Zealand Ministry of Agriculture and Forestry (MAF).

(b) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double self-closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(c) The greenhouses must be examined periodically by MAF to ensure that the screens are intact.

(d) Each consignment of peppers must be accompanied by a phytosanitary certificate of inspection issued by MAF bearing the following declaration: ''These peppers were grown in greenhouses in accordance with the conditions in § 319.56–32.''

§ 319.56–33 Mangoes from the Philippines.

Mangoes (fruit) (*Mangifera indica*) may be imported into the United States from the Philippines only in accordance with this section and other applicable provisions of this subpart.

(a) *Limitation of origin.* The mangoes must have been grown on the island of Guimaras, which the Administrator has determined meets the criteria set forth in § 319.56–5 with regard to the mango seed weevil (*Sternochetus mangiferae*). Mangoes from all other areas of the Philippines except Palawan are eligible for importation into Hawaii and Guam only. Mangoes from Palawan are not eligible for importation into the United States.

(b) *Treatment.* The mangoes must be treated for fruit flies of the genus *Bactrocera* with vapor heat under the supervision of an inspector in accordance with the regulations in part 305 of this chapter.

(c) *Inspection.* Mangoes from the Philippines are subject to inspection under the direction of an inspector, either in the Philippines or at the port of first arrival in the United States. Mangoes inspected in the Philippines are subject to reinspection at the port of first arrival in the United States as provided in § 319.56–3.

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56–5(e)(1). Consignments originating from approved areas other than Guimaras must be labeled ''For distribution in Guam and Hawaii only.''

(e) *Phytosanitary certificate.* Mangoes originating from all approved areas must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains an additional declaration stating that the mangoes have been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section. Phytosanitary certificates accompanying consignments of mangoes originating

from the island of Guimaras must also contain an additional declaration stating that the mangoes were grown on the island of Guimaras.

(f) *Trust fund agreement.* Mangoes that are treated or inspected in the Philippines may be imported into the United States only if the Republic of the Philippines Department of Agriculture has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

(Approved by the Office of Management and Budget under control numbers 0579–0172 and 0579–0316)

§ 319.56–34 Clementines from Spain.

Clementines (*Citrus reticulata*) from Spain may only be imported into the United States in accordance with this section and all other applicable provisions of this subpart.

(a) *Trust fund agreement.* Clementines from Spain may be imported only if the Government of Spain or its designated representative enters into a trust fund agreement with APHIS before each shipping season in accordance with § 319.56–6.

(b) *Grower registration and agreement.* Persons who produce clementines in Spain for export to the United States must:

(1) Be registered with the Government of Spain; and

(2) Enter into an agreement with the Government of Spain whereby the producer agrees to participate in and follow the Mediterranean fruit fly management program established by the Government of Spain.

(c) *Management program for Mediterranean fruit fly; monitoring.* The Government of Spain's Mediterranean fruit fly (*Ceratitis capitata*) management program must be approved by APHIS, and must contain the fruit fly trapping and recordkeeping requirements specified in this paragraph. The program must also provide that clementine producers must allow APHIS inspectors access to clementine production areas in order to monitor compliance with the Mediterranean fruit fly management program.

(1) *Trapping and control.* In areas where clementines are produced for export to the United States, traps must be placed in Mediterranean fruit fly host plants at least 6 weeks prior to harvest. Bait treatments using malathion, spinosad, or another pesticide that is approved by APHIS and the Government of Spain must be applied in the production areas at the rate specified by Spain's Medfly management program.

(2) *Records.* The Government of Spain or its designated representative must keep records that document the fruit fly trapping and control activities in areas that produce clementines for export to the United States. All trapping and control records kept by the Government of Spain or its designated representative must be made available to APHIS upon request.

(3) *Compliance.* If APHIS determines that an orchard is not operating in compliance with the regulations in this section, it may suspend exports of clementines from that orchard.

(d) *Phytosanitary certificate.* Clementines from Spain must be accompanied by a phytosanitary certificate stating that the fruit meets the conditions of the Government of Spain's Mediterranean fruit fly management program and applicable APHIS regulations.

(e) *Labeling.* Boxes in which clementines are packed must be labeled with a lot number that provides information to identify the orchard where the fruit was grown and the packinghouse where the fruit was packed. The lot number must end with the letters ''US.'' All labeling must be large enough to clearly display the required information and must be located on the outside of the boxes to facilitate inspection.

(f) *Pre-treatment sampling; rates of inspection.* For each consignment of clementines intended for export to the United States, prior to cold treatment, inspectors will cut and inspect 200 fruit that are randomly selected from throughout the consignment. If inspectors find a single live Mediterranean fruit fly in any stage of development during an inspection, the entire consignment of clementines will be rejected. If a live Mediterranean fruit fly in any stage of development is found in any two lots of fruit from the same orchard during the same shipping season, that orchard will be removed from the export program for the remainder of that shipping season.

(g) *Cold treatment.* Clementines must be cold treated in accordance with part 305 of this chapter. Upon arrival of clementines at a port of entry into the United States, inspectors will examine the cold treatment data for each consignment to ensure that the cold treatment was successfully completed. If the cold treatment has not been successfully completed, the consignment will be held until appropriate remedial actions have been implemented.

(h) *Port of entry sampling.* Clementines imported from Spain are subject to inspection by an inspector at the port of entry into the United States. At the port of first arrival, an inspector will sample and cut clementines from each consignment to detect pest infestation according to sampling rates determined by the Administrator. If a single live Mediterranean fruit fly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented.

(i) *Suspension of program.* If APHIS determines at any time that the safeguards contained in this section are not protecting against the introduction of Medflies into the United States, APHIS may suspend the importation of clementines and conduct an investigation into the cause of the deficiency.

(j) *Definitions.* The following are definitions for terms used in this section:

Consignment. (1) *Untreated fruit.* For untreated fruit, the term means one or more lots (containing no more than a combined total of 200,000 boxes of clementines) that are presented to an inspector for pre-treatment inspection.

(2) *Treated fruit.* For treated fruit, the term means one or more lots of clementines that are imported into the United States on the same conveyance.

Lot. For the purposes of this section, a number of units of clementines that are from a common origin (i.e., a single producer or a homogenous production unit.)[8]

Orchard. A plot on which clementines are grown that is separately registered in the Spanish Medfly management program.

Shipping season. For the purposes of this section, a shipping season is considered to include the period beginning approximately in mid-September and ending approximately in late February of the next calendar year.

(Approved by the Office of Management and Budget under control number 0579–0203)

§ 319.56–35 Persimmons from the Republic of Korea.

Persimmons (fruit) (*Disopyros khaki*) may be imported into the United States from the Republic of Korea only in accordance with this section and all other applicable provisions of this subpart.

(a) The production site, which is an orchard, where the persimmons are grown must have been inspected at least once during the growing season and before harvest for the following pests: *Conogethes punctiferalis, Planococcus*

[8] A homogeneous production unit is a group of adjacent orchards in Spain that are owned by one or more growers who follow a homogenous production system under the same technical guidance.

kraunhiae, Stathmopoda masinissa, and *Tenuipalpus zhizhilashiviliae.*

(b) After harvest, the persimmons must be inspected by the Republic of Korea's national plant protection organization (NPPO) and found free of the pests listed in paragraph (a) of this section before the persimmons may be shipped to the United States;

(c) Each consignment of persimmons must be accompanied by a phytosanitary certificate issued by the Republic of Korea's NPPO stating that the fruit is free of *Conogethes punctiferalis, Planococcus kraunhiae, Stathmopoda masinissa,* and *Tenuipalpus zhizhilashiviliae.*

(d) If any of the pests listed in paragraph (a) of this section are detected in an orchard, exports from that orchard will be canceled until the source of infestation is determined and the infestation is eradicated.

(Approved by the Office of Management and Budget under control number 0579–0210)

§ 319.56–36 Watermelon, squash, cucumber, and oriental melon from the Republic of Korea.

Watermelon (*Citrullus lanatus*), squash (*Cucurbita maxima*), cucumber (*Cucumis sativus*), and oriental melon (*Cucumis melo*) may be imported into the United States from the Republic of Korea only in accordance with this paragraph and all other applicable provisions of this subpart:

(a) The fruit must be grown in pest-proof greenhouses registered with the Republic of Korea's national plant protection organization (NPPO).

(b) The NPPO must inspect and regularly monitor greenhouses for plant pests. The NPPO must inspect greenhouses and plants, including fruit, at intervals of no more than 2 weeks, from the time of fruit set until the end of harvest.

(c) The NPPO must set and maintain McPhail traps (or a similar type with a protein bait that has been approved for the pests of concern) in greenhouses from October 1 to April 30. The number of traps must be set as follows: Two traps for greenhouses smaller than 0.2 hectare in size; three traps for greenhouses 0.2 to 0.5 hectare; four traps for greenhouses over 0.5 hectare and up to 1.0 hectare; and for greenhouses greater than 1 hectare, traps must be placed at a rate of four traps per hectare.

(d) The NPPO must check all traps once every 2 weeks. If a single pumpkin fruit fly is captured, that greenhouse will lose its registration until trapping shows that the infestation has been eradicated.

(e) The fruit may be shipped only from December 1 through April 30.

(f) Each consignment must be accompanied by a phytosanitary certificate issued by NPPO, with the following additional declaration: ''The regulated articles in this consignment were grown in registered greenhouses as specified by 7 CFR 319.56–36.''

(g) Each consignment must be protected from pest infestation from harvest until export. Newly harvested fruit must be covered with insect-proof mesh or a plastic tarpaulin while moving to the packinghouse and awaiting packing. Fruit must be packed within 24 hours of harvesting in an enclosed container or vehicle or in insect-proof cartons or cartons covered with insect-proof mesh or plastic tarpaulin, and then placed in containers for shipment. These safeguards must be intact when the consignment arrives at the port in the United States.

(Approved by the Office of Management and Budget under control number 0579–0236)

§ 319.56–37 Grapes from the Republic of Korea.

Grapes (*Vitis* spp.) may be imported into the United States from the Republic of Korea only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) The fields where the grapes are grown must be inspected during the growing season by the Republic of Korea's national plant protection organization (NPPO). The NPPO will inspect 250 grapevines per hectare, inspecting leaves, stems, and fruit of the vines.

(b) If evidence of *Conogethes punctiferalis, Eupoecilia ambiguella, Sparganothis pilleriana, Stathmopoda auriferella,* or *Monilinia fructigena* is detected during inspection, the field will immediately be rejected, and exports from that field will be canceled until visual inspection of the vines shows that the infestation has been eradicated.

(c) Fruit must be bagged from the time the fruit sets until harvest.

(d) Each consignment must be inspected by the NPPO before export. For each consignment, the NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the consignment was found free of *C. punctiferalis, E. ambiguella, S. pilleriana, S. auriferella, M. fructigena,* and *Nippoptilia vitis.*

(Approved by the Office of Management and Budget under control number 0579–0236)

§ 319.56–38 Clementines, mandarins, and tangerines from Chile.

Clementines (*Citrus reticulata* Blanco var. Clementine), mandarins (*Citrus reticulata* Blanco), and tangerines (*Citrus reticulata* Blanco) may be imported into the United States from Chile only under the following conditions:

(a) The fruit must be accompanied by a permit issued in accordance with § 319.56–3(b).

(b) If the fruit is produced in an area of Chile where Mediterranean fruit fly (*Ceratitis capitata*) is known to occur, the fruit must be cold treated in accordance with part 305 of this chapter. Fruit for which cold treatment is required must be accompanied by documentation indicating that the cold treatment was initiated in Chile (a PPQ Form 203 or its equivalent may be used for this purpose).

(c) The fruit must either be produced and shipped under the systems approach described in paragraph (d) of this section or fumigated in accordance with paragraph (e) of this section.

(d) *Systems approach.* The fruit may be imported without fumigation for *Brevipalpus chilensis* if it meets the following conditions:

(1) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. To register, the production site must provide Chile's NPPO with the following information: Production site name, grower, municipality, province, region, area planted to each species, number of plants/hectares/species, and approximate date of harvest. Registration must be renewed annually.

(2) *Low prevalence production site certification.* Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of Chile's NPPO. These samples must undergo a pest detection and evaluation method as follows: The fruit and pedicels must be washed using a flushing method, placed in a 20 mesh sieve on top of a 200 mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be repeated. The contents of the sieves must then be placed on a petri dish and analyzed for the presence of live *B. chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low prevalence production site and will be eligible to export fruit to the United States only if the fruit is fumigated in accordance with paragraph

(e) of this section. Each production site may have only one opportunity per harvest season to qualify as a low prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(3) *Post-harvest processing.* After harvest and before packing, the fruit must be washed, rinsed in a chlorine bath, washed with detergent with brushing using bristle rollers, rinsed with a hot water shower with brushing using bristle rollers, predried at room temperature, waxed, and dried with hot air.

(4) *Phytosanitary inspection.* The fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile after the post-harvest processing. A biometric sample will be drawn and examined from each consignment of fruit, which may represent multiple grower lots from different packing sheds. Clementines, mandarins, or tangerines in any consignment may be shipped to the United States only if the consignment passes inspection as follows:

(i) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit that identify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identity must be maintained until the fruit is released for entry into the United States.

(ii) A biometric sample of boxes from each consignment will be selected and the fruit from these boxes will be visually inspected for quarantine pests, and a portion of the fruit will be washed and the collected filtrate will be microscopically examined for *B. chilensis.*

(A) If a single live *B. chilensis* mite is found, the fruit will be eligible for importation into the United States only if it is fumigated in Chile in accordance with paragraph (e) of this section. The production site will be suspended from the low prevalence certification program and all subsequent lots of fruit from the production site of origin will be required to be fumigated as a condition of entry to the United States for the remainder of the shipping season.

(B) If inspectors find evidence of any other quarantine pest, the fruit in the consignment will remain eligible for importation into the United States only if an authorized treatment for the pest is available in part 305 of this chapter and the entire consignment is treated for the pest in Chile under APHIS supervision.

(iii) Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment meets the conditions of § 319.56–38(d).

(e) *Approved fumigation.* Clementines, mandarins, or tangerines that do not meet the conditions of paragraph (d) of this section may be imported into the United States if the fruit is fumigated either in Chile or at the port of first arrival in the United States with methyl bromide for *B. chilensis* in accordance with part 305 of this chapter. An APHIS inspector will monitor the fumigation of the fruit and will prescribe such safeguards as may be necessary for unloading, handling, and transportation preparatory to fumigation. The final release of the fruit for entry into the United States will be conditioned upon compliance with prescribed safeguards and required treatment.

(f) *Trust fund agreement.* Clementines, mandarins, and tangerines may be imported into the United States under this section only if the NPPO of Chile or a private export group has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

(Approved by the Office of Management and Budget under control number 0579–0242)

§ 319.56–39 Fragrant pears from China.

Fragrant pears may be imported into the United States from China only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) *Origin, growing, and harvest conditions.* (1) The pears must have been grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization (NPPO) of China.

(2) All propagative material introduced into a registered production site must be certified free of the pests listed in this section by the NPPO of China.

(3) Within 30 days prior to harvest, the NPPO of China or officials authorized by the NPPO of China must inspect the registered production site for signs of pest infestation and allow APHIS to monitor the inspections. The NPPO of China must provide APHIS with information on pest detections and pest detection practices, and APHIS must approve the pest detection practices.

(4) If any of the quarantine pests listed in this section are found during the pre-harvest inspection or at any other time, the NPPO of China must notify APHIS immediately.

(i) Upon detection of Oriental fruit fly (*Bactrocera dorsalis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the NPPO of China agree that appropriate remedial action has been taken.

(ii) Upon detection of peach fruit borer (*Carposina sasaki*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Monilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), Asian pear black spot (Alternaria spp.), or phylloxeran (*Aphanostigma* sp. poss. *jackusiensis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from the production site for the season. The exportation to the United States of fragrant pears from the production site may resume in the next growing season if an investigation is conducted and APHIS and the NPPO of China agree that appropriate remedial action has been taken. If any of these pests is detected in more than one registered production site, APHIS may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the NPPO of China agree that appropriate remedial action has been taken.

(5) After harvest, the NPPO of China or officials authorized by the NPPO of China must inspect the pears for signs of pest infestation and allow APHIS to monitor the inspections.

(6) Upon detection of large pear borer (*Numonia pivivorella*), pear curculio (*Rhynchites fovepessin*), or Japanese apple curculio (*R. heros*), APHIS may reject the lot or consignment.

(b) *Packing requirements.* (1) The fragrant pears must be packed in cartons that are labeled in accordance with § 319.56–5(e).

(2) The fragrant pears must be held in a cold storage facility while awaiting export. If fruit from unregistered production sites are stored in the same facility, the fragrant pears must be isolated from that other fruit.

(c) *Shipping requirements.* (1) The fragrant pears must be shipped in insect-proof containers and all pears must be safeguarded during transport to the United States in a manner that will prevent pest infestation.

(2) The fragrant pears may be imported only under a permit issued by

APHIS in accordance with § 319.56–3(b).

(3) Each consignment of pears must be accompanied by a phytosanitary certificate issued by the NPPO of China stating that the conditions of this section have been met and that the consignment has been inspected and found free of the pests listed in this section.

(Approved by the Office of Management and Budget under control number 0579–0227)

§ 319.56–40 Peppers from certain Central American countries.

Fresh peppers (*Capsicum* spp.) may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) For peppers of the species *Capsicum annuum, Capsicum frutescens, Capsicum baccatum,* and *Capsicum chinense* from areas free of Mediterranean fruit fly (Medfly), terms of entry are as follows:

(1) The peppers must be grown and packed in an area that has been determined by APHIS to be free of Medfly in accordance with the procedures described in § 319.56–5 of this subpart.

(2) A pre-harvest inspection of the growing site must be conducted by the national plant protection organization (NPPO) of the exporting country for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus, and if these pests are found to be generally infesting the growing site, the NPPO may not allow export from that production site until the NPPO has determined that risk mitigation has been achieved.

(3) The peppers must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(4) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These peppers were grown in an area recognized to be free of Medfly and the consignment has been inspected and found free of the pests listed in the requirements.''

(b) For peppers of the species *Capsicum annuum, Capsicum frutescens, Capsicum baccatum, Capsicum chinense,* and *Capsicum pubescens* from areas in which Medfly is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO will visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest-exclusionary greenhouses, which must have double self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(3) Registered sites must contain traps for the detection of Medfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export peppers to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(iii) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Medfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS' review.

(5) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These peppers were grown in an approved production site and the consignment has been inspected and found free of the pests listed in the requirements.'' The shipping box must be labeled with the identity of the production site.

(c) For peppers of the species *Capsicum pubescens* from areas in which Mexican fruit fly (Mexfly) is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest-exclusionary greenhouses, which must have double

self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(3) Registered sites must contain traps for the detection of Mexfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Mexfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to ship under the systems approach until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(iii) Mexfly traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export, and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Mexflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Mexfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS' review.

(5) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These peppers were grown in an approved production site and the consignment has been inspected and found free of the pests listed in the requirements.'' The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control number 0579–0274)

§ 319.56–41 Citrus from Peru.

Grapefruit (*Citrus paradisi*), limes (*C. aurantiifolia*), mandarins or tangerines (*C. reticulata*), sweet oranges (*C. sinensis*), and tangelos (*Citrus tangelo*) may be imported into the United States from Peru under the following conditions:

(a) The fruit must be accompanied by a permit issued in accordance with § 319.56–3(b).

(b) The fruit may be imported in commercial consignments only.

(c) *Approved growing areas.* The fruit must be grown in one of the following approved citrus-producing zones: Zone I, Piura; Zone II, Lambayeque; Zone III, Lima; Zone IV, Ica; and Zone V, Junin.

(d) *Grower registration and agreement.* The production site where the fruit is grown must be registered for export with the national plant protection organization (NPPO) of Peru, and the producer must have signed an agreement with the NPPO of Peru whereby the producer agrees to participate in and follow the fruit fly management program established by the NPPO of Peru.

(e) *Management program for fruit flies; monitoring.* The NPPO of Peru(s fruit fly management program must be approved by APHIS, and must require that participating citrus producers allow APHIS inspectors access to production areas in order to monitor compliance with the fruit fly management program. The fruit fly management program must also provide for the following:

(1) *Trapping and control.* In areas where citrus is produced for export to the United States, traps must be placed in fruit fly host plants at least 6 weeks prior to harvest at a rate mutually agreed upon by APHIS and the NPPO of Peru. If fruit fly trapping levels at a production site exceed the thresholds established by APHIS and the NPPO of Peru, exports from that production site will be suspended until APHIS and the NPPO of Peru conclude that fruit fly population levels have been reduced to an acceptable limit. Fruit fly traps are monitored weekly; therefore, reinstatements of production sites will be evaluated on a weekly basis.

(2) *Records.* The NPPO of Peru or its designated representative must keep records that document the fruit fly trapping and control activities in areas that produce citrus for export to the United States. All trapping and control records kept by the NPPO of Peru or its designated representative must be made available to APHIS upon request.

(f) *Cold treatment.* The fruit, except for limes (*C. aurantiifolia*), must be cold treated for A*nastrepha fraterculus, A. obliqua, A. serpentina,* and *Ceratitis capitata* (Mediterranean fruit fly) in accordance with part 305 of this chapter.

(g) *Phytosanitary inspection.* Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Peru stating that the fruit has been inspected and found free of *Ecdytolopha aurantiana.*

(h) *Port of first arrival sampling.* Citrus fruits imported from Peru are subject to inspection by an inspector at the port of first arrival into the United States in accordance with § 319.56–3(d). At the port of first arrival, an inspector will sample and cut citrus fruits from each consignment to detect pest infestation. If a single live fruit fly in any stage of development or a single *E. aurantiana* is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented.

§ 319.56–42 Peppers from the Republic of Korea.

Peppers (*Capsicum annuum* L. var. *annuum*) from the Republic of Korea may be imported into the continental United States only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) The peppers must be grown in the Republic of Korea in insect-proof greenhouses approved by and registered with the National Plant Quarantine Service (NPQS).

(b) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double self-closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(c) The greenhouses must be inspected monthly throughout the growing season by NPQS to ensure phytosanitary procedures are employed to exclude plant pests and diseases, and that the screens are intact.

(d) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting peppers to the continental United States, the packinghouse can accept peppers only from registered approved production sites. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the continental United States. These safeguards must remain intact until the arrival of the peppers in the United States or the consignment will not be allowed to enter the United States.

(e) Each consignment of peppers must be accompanied by a phytosanitary certificate of inspection issued by NPQS bearing the following additional declaration: ''These peppers were grown in greenhouses in accordance with the conditions in 7 CFR 319.56–42 and were inspected and found free from *Agrotis segetum, Helicoverpa armigera, Helicoverpa assulta, Mamestra brassicae, Monilinia fructigena, Ostrinia furnacalis, Scirtothrips dorsalis, Spodoptera litura,* and *Thrips palmi.*''

(f) The peppers must be imported in commercial consignments only.

(Approved by the Office of Management and Budget under control number 0579–0282)

§ 319.56–43 Baby corn and baby carrots from Zambia.

(a) Immature, dehusked ''baby'' sweet corn (*Zea mays* L.) measuring 10 to 25 millimeters (0.39 to 0.98 inches) in diameter and 60 to 105 millimeters (2.36 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the following conditions and in accordance with all other applicable provisions of this subpart:

(1) The production site, which is a field, where the corn has been grown must have been inspected at least once during the growing season and before harvest for the following pest: *Phomopsis jaczewskii.*

(2) After harvest, the corn must be inspected by Zambia's national plant protection organization (NPPO) and found free of the pests listed in paragraph (a)(1) of this section before the corn may be shipped to the continental United States.

(3) The corn must be inspected at the port of first arrival as provided in § 319.56–3(d).

(4) Each consignment must be accompanied by a phytosanitary certificate issued by the NPPO of Zambia that includes an additional declaration stating that the corn has been inspected and found free of *Phomopsis jaczewskii* based on field and packinghouse inspections.

(5) The corn may be imported in commercial consignments only.

(b) Immature ''baby'' carrots (*Daucus carota* L. ssp. *sativus*) for consumption measuring 10 to 18 millimeters (0.39 to 0.71 inches) in diameter and 50 to 105 millimeters (1.97 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the following conditions:

(1) The production site, which is a field, where the carrots have been grown must have been inspected at least once during the growing season and before harvest for the following pest: *Meloidogyne ethiopica.*

(2) After harvest, the carrots must be inspected by the NPPO of Zambia and found free of the pests listed in paragraph (b)(1) of this section before the carrots may be shipped to the continental United States.

(3) The carrots must be inspected at the port of first arrival as provided in § 319.56–3(d).

(4) Each consignment must be accompanied by a phytosanitary certificate issued by the NPPO of Zambia that includes an additional declaration stating that the carrots have been inspected and found free of *Meloidogyne ethiopica* based on field and packinghouse inspections.

(5) The carrots must be free from leaves and soil.

(6) The carrots may be imported in commercial consignments only.

(Approved by the Office of Management and Budget under control number 0579–0284)

§ 319.56–44 Untreated grapefruit, sweet oranges, and tangerines from Mexico for processing.

Untreated grapefruit (*Citrus paradisi*), sweet oranges (*Citrus sinensis*), and tangerines (*Citrus reticulata*) may be imported into the United States from Mexico for extracting juice if they originate from production sites in Mexico that are approved by APHIS because they meet the following conditions and any other conditions determined by the Administrator to be necessary to mitigate the pest risk that such fruits pose and in accordance with all other applicable provisions of this subpart:

(a) *Application of sterile insect technique.* Production sites, and a surrounding 1.5 mile buffer area, must be administered under an APHIS-approved preventative release program using sterile insect technique for the Mexican fruit fly (*Anastrepha ludens*).

(b) *Fruit fly trapping protocol.* (1) *Trapping densities.* In areas where grapefruit, sweet oranges, and tangerines are produced for export to the United States, APHIS approved traps and lures must be placed in production sites and a surrounding 1.5 mile buffer areas as follows:

(i) For Mexican fruit fly (*Anastrepha ludens*) and sapote fruit fly (*A. serpentina*): One trap per 50 hectares.

(ii) For Mediterranean fruit fly (*Ceratitis capitata*): One to four traps per 250 hectares.

(2) *Fruit fly catches.* Upon trapping of a Mexican fruit fly, sapote fruit fly, or Mediterranean fruit fly in a production site or buffer area, exports from that production site are prohibited until the Administrator determines that the phytosanitary measures taken have been effective to allow the resumption of export from that production site.

(3) *Monitoring.* The trapping program must be monitored under an APHIS-approved quality control program.

(c) *Safeguarding.* Fruit must be safeguarded against fruit fly infestation using methods approved by APHIS from the time of harvest until processing in the United States.

(d) *Phytosanitary certificate.* Each consignment must be accompanied by a phytosanitary certificate issued by Mexico's national plant protection organization that contains additional declarations stating that the requirements of paragraphs (a), (b), and (c) of this section have been met.

(e) *Ports.* The harvested fruit may enter the United States only through a port of entry located in one of the Texas counties listed in § 301.64–3(c) of this chapter.

(f) *Route of transit.* Harvested fruit must travel on the most direct route to the processing plant from its point of entry into the United States as specified in the import permit. Such fruit may not enter or transit areas other than the Texas counties listed in § 301.64–3(c) of this chapter.

(g) *Approved destinations.* Processing plants within the United States must be

located within an area in Texas that is under an APHIS-approved preventative release program using sterile insect technique for Mexican fruit fly.

(h) *Compliance agreements.* Processing plants within the United States must enter into a compliance agreement with APHIS in order to handle grapefruit, sweet oranges, and tangerines imported from Mexico in accordance with this section. APHIS will only enter into compliance agreements with facilities that handle and process grapefruit, sweet oranges, and tangerines from Mexico in such a way as to eliminate any risk that exotic fruit flies could be disseminated into the United States, as determined by APHIS.

(Approved by the Office of Management and Budget under control number 0579–0264)

§ 319.56–45 Shelled garden peas from Kenya.

Garden peas (*Pisum sativum*) may be imported into the continental United States from Kenya only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) The peas must be shelled from the pod.

(b) The peas must be washed in disinfectant water at 3 to 5 °C containing 50 ppm chlorine.

(c) Each shipment of peas must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Kenya bearing the following additional declaration: ''These peas have been shelled and washed in accordance with 7 CFR 319.56–45 and have been inspected and found free of pests.''

(Approved by the Office of Management and Budget under control number 0579–0302)

§ 319.56–46 Mangoes from India.

Mangoes (*Mangifera indica*) may be imported into the continental United States from India only under the following conditions:

(a) The mangoes must be treated in India with irradiation by receiving a minimum absorbed dose of 400 Gy in accordance with § 305.31 of this chapter.

(b) The risks presented by *Cytosphaera mangiferae* and *Macrophoma mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip; or

(2) The orchard of origin is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the national plant protection organization (NPPO) of India and the orchard is found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae;* or

(3) The orchard of origin is treated with a broad-spectrum fungicide during the growing season and is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae.*

(c) Each consignment of mangoes must be inspected jointly by APHIS and the NPPO of India as part of the required preclearance inspection activities at a time and in a manner determined by mutual agreement between APHIS and the NPPO of India.

(d) The risks presented by Cytosphaera mangiferae, Macrophoma mangiferae, and Xanthomonas campestris pv. mangiferaeindicae must be addressed by inspection during preclearance activities.

(e) Each consignment of fruit must be inspected jointly by APHIS and the NPPO of India and accompanied by a phytosanitary certificate issued by the NPPO of India certifying that the fruit received the required irradiation treatment. The phytosanitary certificate must also bear two additional declarations confirming that:

(1) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in § 319.56–46(b) and

(2) The mangoes were inspected during preclearance activities and found free of *Cytosphaera mangiferae, Macrophoma mangiferae,* and *Xanthomonas campestris* pv. *mangiferaeindicae.*

(f) The mangoes may be imported in commercial consignments only.

(Approved by the Office of Management and Budget under control number 0579–0312)

§ 319.75–2 [Amended]

■ 14. In § 319.75–2, footnote 1 is amended by removing the citation ''7 CFR 319.56 *et seq.*'' and adding the words ''Subpart—Fruits and Vegetables of this part.'' in its place.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

■ 15. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

■ 16. In § 352.30, paragraphs (e) and (f) are revised to read as follows:

§ 352.30 Untreated oranges, tangerines, and grapefruit from Mexico.

* * * * *

(e) *Untreated fruit from certain municipalities in Mexico.* Oranges, tangerines, and grapefruit in transit to foreign countries may be imported from certain municipalities in Mexico that meet the criteria of § 319.56–5 for freedom from fruit flies in accordance with the applicable conditions in part 319 of this chapter.

(f) *Treated fruit.* Oranges, tangerines, and grapefruit from Mexico that have been treated in Mexico in accordance with part 305 of this chapter may be moved through the United States ports for exportation in accordance with the regulations in part 319 of this chapter.

* * * * *

Done in Washington, DC, this 10th day of July 2007.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E7–13708 Filed 7–17–07; 8:45 am]

BILLING CODE 3410–34–P

Federal Register

Wednesday,
July 18, 2007

Part III

Department of the Interior

Bureau of Reclamation

43 CFR Part 429

Use of Bureau of Reclamation Land, Facilities, and Waterbodies; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 429

RIN 1006–AA51

Use of Bureau of Reclamation Land, Facilities, and Waterbodies

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) proposes a rule on the use of Reclamation land, facilities, and waterbodies. When finalized, the proposed rule will supersede the current rule which was originally published in 1983 and partially revised in April 2006.

DATES: Submit comments by October 16, 2007.

ADDRESSES: You may submit comments, identified by the number 1006–AA51, by any of the following methods:

—*Use the Federal rulemaking Web site: http://www.regulations.gov* and follow the instructions for submitting comments; or

—*By e-mail: LandUseRuleComments@do.usbr.gov*. Please include the number 1006–AA51 in the subject line of the e-mail. If you do not receive a confirmation that we have received your e-mail, contact Mr. Richard Rizzi directly at (303) 445–2900;

—*By mail to:* Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Denver, CO 80225–0007, Attention: Richard Rizzi, Mail Code: 84–53000.

FOR FURTHER INFORMATION CONTACT: Richard Rizzi, Mail Code: 84–53000; Bureau of Reclamation; P.O. Box 25007; Denver, CO 80225. Telephone: (303) 445–2900.

SUPPLEMENTARY INFORMATION:

I. Background

The rule, 43 CFR part 429, titled Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred In Permitting Such Use (current rule), established the procedures to recover administrative costs associated with processing ''rights-of-use'' applications and the value of rights-of-use granted by Reclamation to applicants for the use of Reclamation land. Sections of the current rule were modified, in part, in 2006 to correlate with 43 CFR part 423, titled Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

This proposed rule addresses activities involving the possession or occupancy of any portion of, and the extraction or disturbance of any natural resources from, Reclamation land, facilities, and waterbodies. Regulations addressing public access to Reclamation property and occasional public activities such as hiking, camping, boating, and hunting, and closures are contained in part 423.

The demand for use of Reclamation land, facilities, and waterbodies for many different kinds of activities has increased dramatically since Reclamation began building Federal water supply, flood control, and hydropower projects over 100 years ago. With increased and varied uses has come confusion among the potential users of our land, facilities, and waterbodies about the process of applying for the various types of uses, the charges and fees associated with such uses, and other concerns. The current rule does not adequately address this confusion nor does it address prohibited and unauthorized uses of Reclamation's land, facilities, and waterbodies and associated penalties.

The Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701), September 13, 1982, as amended, sets forth Congress' intent that any use, permit, or similar thing of value provided by an agency is to be self-sustaining and that agencies may prescribe rules establishing charges for such uses. The 1993 revision of the Office of Management and Budget (OMB) Circular A–25 established Federal policy requiring administrative costs be recovered for Government services and fees for the use or sale of Government goods or resources also be charged. OMB Circular A–25 provides information on the scope and types of activities subject to use fees and the basis on which these fees are established. It also provides guidance for agencies in implementing such fees and charges. The use of Reclamation land, facilities, or waterbodies is a use of Government resources, and as such, the IOAA and OMB Circular A–25 require Reclamation to recover the costs and fees associated with the use of these resources.

Section 10 (43 U.S.C. 373) of the Reclamation Act of June 17, 1902, provides the Secretary of the Interior (Secretary) with the authority to issue rules as necessary for the purposes of carrying out the provisions of the Act. Section 10 (43 U.S.C. 387) of the Reclamation Project Act of 1939 provides the Secretary the authority, in his discretion, to grant leases, licenses, easements, and rights-of-way. These two Acts provide Reclamation with the general statutory authority to issue rules on authorizing or prohibiting uses of Reclamation land, facilities, and waterbodies.

The rule addresses:

(a) The possession or occupancy of any portion of or the extraction or disturbance of any natural resource from Reclamation land, facilities, and waterbodies;

(b) The procedures to follow when the proposed use involves a Reclamation easement;

(c) The procedures to apply for use of Reclamation land, facilities, and waterbodies;

(d) The criteria Reclamation will use to evaluate applications;

(e) Our statutory requirements and basis for charging application fees, recovering administrative costs, and collecting use fees associated with authorized uses;

(f) Conditions under which application fees, administrative costs, or use fees may be waived or reduced if determined appropriate by Reclamation;

(g) Prohibited uses of Reclamation land, facilities, and waterbodies and how we will resolve unauthorized uses;

(h) The required contractual terms and conditions associated with use authorization contracts; and

(i) The decisions and appeals process applicable to actions taken under this part.

II. Revision of Existing Rules

On December 20, 1983, Reclamation published 43 CFR part 429 titled Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use in the **Federal Register** at 48 FR 56223. Sections of this rule were revised on April 17, 2006, in the **Federal Register** at 71 FR 19802 to better correlate with 43 CFR part 423. The sections that were revised or added were: § 429.1 Purpose, § 429.2 Definitions, § 429.3 Establishment of the value of rights-of-use; § 429.6 Applications for rights-of-use, § 429.12 Applicability, and § 429.13 General Restrictions.

When the public comment period closes on this rule and Reclamation considers comments and incorporates them, where appropriate, the final rule will be published in the **Federal Register**. That final rule, titled Use of Bureau of Reclamation Land, Facilities, and Waterbodies, will supersede the 1983 version and its 2006 modifications in their entirety.

III. Distribution Table

The following table indicates each section of the original 1983 rule, as

modified in 2006, and where each was incorporated into or was removed from the rule:

Old section	New section
429.1	429.1.
429.2(a)–(n)	429.2.
429.3(a)	429.23.
429.3(b)	429.33(a) and (c).
429.3(c)	429.33(a) and (b).
429.4	429.26.
429.5	Removed.
429.6	429.7(b); 429.12; and 429.14.
429.6(a)	429.10.
429.6(a)(1)–(3)	Removed. Now contained in Application Forms.
429.6(b)	429.16; 429.20–429.22; and 429.26.
429.6(c)(1)–(4)	429.26.
429.6(d)(1)–(4)	429.13(a) and (b).
429.6(e)	429.19; 429.22.
429.6(f)	429.23–429.25.
429.6(g)	Removed. See Preamble.
429.7(a)	429.27–429.30.
429.7(b)	429.6.
429.7(c)	Removed.
429.7(d)	429.28(a)(3).
429.7(e)	429.28(a)(1).
429.7(f)	Removed.
429.8	429.28(a)(2), (3), and (4).
429.9(a)	429.28(a)(1).
429.9(b)	429.28(b).
429.10(a)	429.34(a) and (b); 429.35(a), (b), and (c).
429.10(b)	429.36(a) and (b).
429.11	Removed.
429.12 (a)	429.1; 429.3–429.6.
429.12(b)	429.4(a).
429.12(c)	429.26.
429.12(d)	429.4(g).
429.12(e)	Removed.
429.13	429.1; 429.3.

IV. Procedural Requirements

1. Regulatory Planning and Review (Executive Order (E.O.) 12866)

OMB has determined that this rule is not a significant rule and has not reviewed this rule under the requirements of E.O. 12866. Reclamation has evaluated the impacts of this rule as required by E.O. 12866 and has determined that it is not a significant regulatory action. The results of our evaluation are below:

(a) This rule will not have an effect of $100 million or more on the economy. It would not adversely affect in any material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, and tribal governments or communities. Although the current rule covered only Reclamation lands, this rule is expanded to explicitly incorporate uses of Reclamation facilities and waterbodies. This expansion, however, does not adversely affect, in any material way, the aforementioned sectors or governments. Further, the current rule requires collecting an initial deposit fee of $200, the recovery of additional administrative costs in excess of the initial deposit fee, and a fee for the use of Reclamation land. This rule reduces the initial deposit fee from $200 (all but $50 refundable under specific circumstances in the current rule) to a nonrefundable $100 fee (referred to now as the ''application fee'' in the rule). The rule does not change the requirement for full cost recovery of additional administrative costs in excess of the $100 nonrefundable application fee or the requirement to collect the fee for use of Reclamation land, facilities, and waterbodies. Like the current rule, this rule provides for waivers or reductions of costs and fees under unique circumstances as determined to be appropriate by Reclamation or currently listed in OMB Circular A–25.

(b) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule requires the use of the Standard Form (SF) 299, Application for Transportation and Utility Systems and Facilities on Federal Lands, under E.O. 13327. The purpose of E.O. 13327 is to improve broadband deployment across Federal land. This rule also requires the use of Form 7–2540, Bureau of Reclamation Right-of-Use Application Form, for all other requested uses.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, concessions, loan programs, water contracts, management agreements, or the rights and obligations of their recipients.

(d) This rule does not raise any novel legal or policy issues. The recovery of administrative fees and charging of application and use fees are required by the IOAA, OMB Circular A–25, and the current rule.

2. Regulatory Flexibility Act

The Department of the Interior (Interior) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. A small business's wish to apply to use Reclamation land, facilities, or waterbodies is strictly voluntary. One of the purposes of this rule is to provide small business applicants and others with the requirements they must follow when applying for such a use. An Initial Regulatory Flexibility Analysis is not required and, accordingly, a Small Entity Compliance Guide is not required.

3. Small Business Regulatory Enforcement Fairness Act

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

(a) Does not have an annual effect on the economy of $100 million or more. There are no major changes in the costs or fees charged to applicants.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local, or tribal government agencies, or geographic regions. It is anticipated that this rule will not result in significant increases in administrative costs or use fees for any one applicant, but it will clarify for the public the basis for determining such costs and fees.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The cost to the private sector requesting use of Reclamation land, facilities, or waterbodies is a small fraction of a percent of an individual entity's total cost of doing business. Under this rule, such requests are made on a voluntary basis.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate or a requirement to expend monies on the part of State, local, or tribal governments or communities, or the private sector of $100 million or more annually. This rule does not have a significant or unique effect on State, local, or tribal governments or communities, or the private sector. Requests from any of these entities to use Reclamation land, facilities, and waterbodies are strictly voluntary. If a requested use is authorized by Reclamation, the recovery of administrative costs and the payment of use fees associated with such use are required by law, OMB Circular, and regulation. There are provisions to allow a reduction or waiver of such costs and fees, at Reclamation's discretion, when specific criteria are met. Reclamation is not imposing a duty, requirement, or mandate on State, local, or tribal governments or communities, or the private sector to request such uses. Thus, a statement containing information required by the Unfunded Mandates Reform Act (2 U.S.C.1531 *et seq.*) is not required.

5. Takings (E.O. 12630 and E.O. 13406)

Under the criteria in E.O. 12630 and E.O 13406, this rule does not have any implications of takings of property rights. This rule sets forth the requirements for applying to use Reclamation land, facilities, and waterbodies. It also clarifies the basis for charging application and use fees, and for the recovery of administrative costs under the requirements of the IOAA and OMB Circular A–25. A Takings Implication Assessment is not required.

6. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, the rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it 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. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria of E.O. 13175, Reclamation has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes. This rule does not apply to land under the sovereign ownership of federally recognized Indian Tribes.

9. Paperwork Reduction Act

This rule does require information collection from 10 or more applicants and a submission under the Paperwork Reduction Act (PRA) is required. However, the information collection requirements associated with this rule have been previously submitted to OMB for review and have received approval under the requirements of the PRA. The SF 299, Application for Transportation and Utility Systems and Facilities on Federal Lands (used for access across our land, facilities, and waterbodies), was authorized by OMB No. 1004–0189, expiring on November 30, 2008. OMB also has approved the information collection in this rule (using the Bureau of Reclamation Right-of-Use Application Form 7–2540) and has assigned approval number 1006–0003, expiring on March 31, 2009. We estimate the burden associated with this latter information collection to be 2 hours per application. Reclamation uses the information provided by applicants to determine the nature of the requested use and whether the requested use of our land, facilities, or waterbodies interferes with project operations or project security, or may create other issues. The information provided on the applications is also used to ensure, where appropriate and applicable, the technical and financial resources of the applicant are sufficient to complete the construction of the infrastructure or project.

10. National Environmental Policy Act of 1969

This rule does not constitute a major Federal action and would not have a significant effect on the quality of the human environment. Therefore, this rule does not require the preparation of an environmental assessment or environmental impact statement under the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and its regulations.

11. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in the E.O. 13211. A Statement of Energy Effects is not required.

13. Clarity of This Regulation

We are required by E.O. 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

If you feel we have not met these requirements, please send comments to Reclamation as instructed in the **ADDRESSES** section above. Please make your comments as specific as possible, referencing specific sections and how they could be improved. For example, ''section XXX.XX could be more clearly written'', or ''the first sentence in section XXX.XX(a) is too long'', or ''the data in section XXX.XX should be placed in a table.''

14. Public Comments

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 429

Administrative practice and procedures, Public lands, Reclamation, Recreation and recreation areas, Land rights-of-way.

Dated: April 26, 2007.

Mark Limbaugh,

Assistant Secretary, Water and Science.

Editorial Note: This document was received at the Office of the Federal Register on July 12, 2007.

For the reasons stated in the preamble, the Bureau of Reclamation proposes to revise 43 CFR part 429 as follows:

PART 429—USE OF BUREAU OF RECLAMATION LAND, FACILITIES, AND WATERBODIES

Subpart A—Purpose, Definitions, and Applicability

Sec.
429.1 What is the purpose of this part?
429.2 What definitions are used in this part?
429.3 What types of uses require an authorization under this part?
429.4 What types of uses do not require authorization under this part?
429.5 Who is authorized to issue use authorizations under this part?
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Subpart B—Proposed Uses Involving Reclamation Easements

429.7 Can I use land not owned by Reclamation where Reclamation has an easement?
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Subpart C—Requesting Authorization to Use Reclamation Land, Facilities, and Waterbodies

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Subpart D—Application Fees and Administrative Costs

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29.23 How does Reclamation determine use fees?
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Subpart H—Prohibited and Unauthorized Uses of Reclamation Land, Facilities, and Waterbodies

429.31 What uses are prohibited on Reclamation land, facilities, and waterbodies?
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429.34 Who is the decisionmaker for Reclamation's final determinations?
429.35 May I appeal Reclamation's final determination?
429.36 May I appeal the Commissioner's decision?
429.37 Does interest accrue on monies owed to the United States during my appeal process?

Authority: 43 U.S.C. 373; 43 U.S.C. 373b, 43 U.S.C. 387; 43 CFR 21; Pub. Law 108–447, Title VIII; 31 U.S.C. 9701, as amended.

Subpart A—Purpose, Definitions, and Applicability

§ 429.1 What is the purpose of this part?

The purpose of this part is to notify the public that any possession or occupancy of any portion of, and the extraction or disturbance of, any natural resources from Reclamation land, facilities, or waterbodies are prohibited without written authorization from Reclamation, unless excepted as listed in § 429.4 of this part. This part describes:

(a) How to apply to Reclamation for a use authorization to allow your activity on Reclamation land, facilities, and waterbodies;

(b) How we review and process your application, including the criteria for approval or denial of your application;

(c) The requirement for collection of application and use fees and the recovery of administrative costs;

(d) How we determine and collect costs and fees;

(e) Prohibited uses on Reclamation land, facilities, and waterbodies;

(f) The process and penalties associated with resolution of unauthorized uses; and

(g) How to appeal an action or determination made under this part.

§ 429.2 What definitions are used in this part?

The following definitions are used in this rule:

Administrative costs means all costs incurred by Reclamation in processing your application and all costs associated with evaluating, issuing, monitoring, and terminating your use authorization on Reclamation land, facilities, and waterbodies. Administrative costs are distinct and separate from application and use fees and typically include, but are not limited to:

(1) Determining the use fee;

(2) Evaluating and documenting environmental and cultural resources compliance;

(3) Performing engineering review;

(4) Contract preparation; and

(5) Personnel and indirect costs directly associated with these actions.

Applicant means you as any person or entity (such as a private citizen, business, non-governmental organization, or public entity, Tribe, or foreign government) who submits an application requesting use of Reclamation land, facilities, and waterbodies.

Application means either Form 7–2540 or SF 299. The choice of application form is dependent on the type of use requested.

Application fee means a $100 nonrefundable charge, which you must submit with your application to cover the costs of our initial review of your request. Application fees are distinct and separate from administrative costs and use fees.

Commissioner means the senior executive of the Bureau of Reclamation, Department of the Interior.

Consent document means a use authorization listing conditions which will prevent unreasonable interference with our easement rights.

Cultural resource means any prehistoric, historic, architectural, sacred, or traditional cultural property and associated objects and documents that are of interest to archaeology, anthropology, history, or other associated disciplines. Cultural resources include archaeological resources, historic properties, traditional cultural properties, sacred sites, and cultural landscapes that are associated with human activity or occupation.

Environmental compliance means complying with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, its regulations, and other related laws.

Form 7–2540 means the Bureau of Reclamation Right-of-Use Application form required for all proposed uses of Reclamation land, facilities, and waterbodies, except those associated with construction and/or placement of transportation, communication, and utility systems and facilities.

Grantee means you as the recipient or holder of a use authorization regardless of the contractual format.

Interior means the United States Department of the Interior.

Part 423 of this chapter means Title 43 of the Code of Federal Regulations, part 423, which is titled Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

Possession or occupancy and possess or occupy mean to control, use, or reside on Reclamation land, facilities, or waterbodies.

Private exclusive recreational or residential use means any such use that excludes other appropriate public uses or users for extended periods of time or which creates the perception of such exclusion. This includes, but is not

limited to, boat docks, cabin sites, residences, trailers, manufactured or mobile homes, structures, roads, or other improvements as determined by Reclamation.

Public Entity means States, political subdivisions or agencies thereof; public and quasi-governmental authorities and agencies; and agencies of the Federal Government.

Reclamation means the Bureau of Reclamation, United States Department of the Interior.

Reclamation facility means any facility under our jurisdiction. The term includes, but is not limited to: buildings, canals, dams, ditches, drains, fish and wildlife facilities, laterals, powerplants, pumping plants, recreation facilities, roads, switchyards, transmission and telecommunication lines, and warehouses.

Reclamation land means any land under the jurisdiction of, or administered by, Reclamation and may include, but is not limited to:

(1) All land acquired by Reclamation through purchase, condemnation, exchange, or donation for Reclamation project and water related purposes;

(2) All land withdrawn by Reclamation from the public domain for Reclamation project or water related purposes; and

(3) All interests in land acquired by Reclamation, including easements and rights exercised by the United States under the 1890 Canal Act (43 U.S.C. 945).

Reclamation law means the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 371, *et seq.*), and all Acts which supplement or amend the 1902 Act.

Reclamation project means any land, facilities, or waterbodies used for water supply, water delivery, flood control, hydropower, or other authorized purposes including fish, wildlife, and recreation administered by Reclamation under Federal reclamation laws.

Reclamation waterbodies means any body of water situated on Reclamation land and under Reclamation jurisdiction. Examples of Reclamation waterbodies include, but are not limited to, reservoirs, lakes, and impoundments.

Regional Director means any one of the five representatives of the Commissioner, or their delegates, who are responsible for managing their respective region's land, facilities, and waterbodies and for the decisions made under this part.

Standard Form (SF) 299 means the form titled Application for Transportation and Utility Systems and Facilities on Federal Lands used when requesting permission for construction and/or placement of transportation, communication, and utility systems and facilities.

Unauthorized use means use of Reclamation land, facilities, and waterbodies without proper authorization.

Use authorization means a written contract that defines the terms and conditions under which we will allow you to use Reclamation land, facilities, and waterbodies. Use authorizations can take the form of easements, leases, licenses, permits, and consent documents. This contract is also referred to as a ''right-of-use'' in part 423 of this chapter.

Use fee means the amount due to Reclamation for the use of Federal land, facilities, or waterbodies under our jurisdiction or control. Use fees are distinct and separate from application fees and administrative costs.

Valuation means the method used to establish the fee for a use authorization by appraisal, waiver valuation, or other sound or generally accepted business practice.

We, us, or our mean the Bureau of Reclamation.

You or I mean an applicant, grantee, or unauthorized user.

§ 429.3 What types of uses require an authorization under this part?

Possession or occupancy, or extraction or removal of natural resources from Reclamation land, facilities, or waterbodies require a use authorization in accordance with this part 429. Typical uses of or activities on Reclamation land, facilities, or waterbodies regulated by this part include, but are not limited to:

(a) Commercial filming and photography;

(b) Commercial guiding and outfitting;

(c) Commercial or organized sporting events;

(d) Grazing, farming, and other agricultural uses;

(e) Infrastructure, such as transportation, telecommunications, utilities, and pipelines;

(f) Organized recreational activities, public gatherings, and other special events;

(g) Removal of, or exploration for, sand, gravel, and other mineral resources;

(h) Timber harvesting, or removal of commercial forest products or other vegetative resources; and

(i) Any other uses covered by Executive Orders, Departmental and Reclamation policies, or otherwise deemed appropriate by Reclamation, subject to the exclusions listed in § 429.4.

§ 429.4 What types of uses do not require authorization under this part?

(a) Individual, non-commercial use of our land, facilities, and waterbodies for occasional activities such as hiking, camping for periods of 14 days or less, sightseeing, picnicking, hunting, swimming, boating, and fishing, consistent with applicable laws, regulations and policies. Public conduct associated with these activities is governed by part 423 of this chapter;

(b) Activities at sites managed by non-Federal managing partners under Public Law 89–72, titled Federal Water Project Recreation Act, July 9, 1965; or activities managed by other Federal agencies or Interior bureaus by agreement or other authority;

(c) Activities at sites directly managed by Reclamation where fees or fee schedules are established for general public recreation use;

(d) Uses authorized under concession contracts on Reclamation land, facilities, and waterbodies;

(e) Reclamation contracts for water supply or water operations;

(f) Operation and maintenance activities on Reclamation land, facilities, and waterbodies authorized by contracts with water user organizations or Reclamation contractors;

(g) Agreements and real property interests granted for the replacement or relocation of facilities, such as highways, railroads, telecommunication, or transmission lines or infrastructure governed by Section 14 of the Reclamation Project Act of August 4, 1939 (43 U.S.C. 389). Payments to equalize land values may still be required and administrative costs may still be recovered;

(h) Activities authorized under other specific statutes or regulations.

§ 429.5 Who is authorized to issue use authorizations under this part?

Only Reclamation is authorized to issue use authorizations under this part. Reclamation water user organizations and other non-Federal entities operating Reclamation projects under project operation and maintenance contracts may not issue use authorizations under this part, unless specifically authorized by statute or regulation.

§ 429.6 When must water user organizations approve use authorizations?

Water user organizations under contract obligation for repayment of the project or division must approve use authorizations for easements and rights-of-way for periods in excess of 25 years. This requirement does not apply to any other type of use authorizations; however, such approval is frequently sought to avoid potential conflicts.

Subpart B—Proposed Uses Involving Reclamation Easements

§ 429.7 Can I use land not owned by Reclamation where Reclamation has an easement?

(a) Perhaps, provided your proposed use does not unreasonably interfere with Reclamation's easement.

(b) You must request and receive a consent document from the local Reclamation office using either SF 299 or Form 7–2540 in accordance with subpart C of this part. If we determine that your requested use will not unreasonably interfere with Reclamation's easement, a consent document may be issued to you. The consent document will contain the conditions with which you must comply to ensure your use will not unreasonably interfere with Reclamation's easement.

(c) If you are not the owner of the land, you must also secure the permission of the landowner for your requested use of the area covered by Reclamation's easement.

§ 429.8 Is there a fee for uses involving a Reclamation easement?

We will not charge a use fee for a consent document. However, depending upon the complexity of your requested use and issues associated with it, we may charge an application fee and administrative costs, unless waived in accordance with subpart F of this part.

Subpart C—Requesting Authorization to Use Reclamation Land, Facilities, and Waterbodies

§ 429.9 What should I do before filing an application?

Before filing an application, it is important that you contact the local Reclamation office to discuss your proposed use. This discussion can help expedite your application process.

§ 429.10 What application form should I use?

You must use one of the following application forms depending on the nature of your requested use:

(a) Use SF 299 to request a use authorization for the placement, construction, and use of energy, transportation, water, and telecommunication systems and facilities on or across all Federal property including Reclamation land, facilities, or waterbodies.

Examples of such uses are:

(1) Canals;

(2) Communication towers;

(3) Fiber-optics cable;

(4) Pipelines;

(5) Roads;

(6) Telephone lines; and

(7) Utilities and utility corridors.

(b) Use Form 7–2540 to request any other type of use authorization. Examples of such uses are:

(1) Commercial filming and photography;

(2) Commercial guiding and outfitting;

(3) Commercial or organized sporting events;

(4) Grazing, farming, and other agricultural uses;

(5) Organized recreational activities, public gatherings, and other special events;

(6) Removal of, or exploration for, sand, gravel, and other mineral materials;

(7) Timber harvesting, or removal of commercial forest products or other vegetative resources; and

(8) Any other uses deemed appropriate by Reclamation.

(c) Application forms may not be required where Reclamation solicits competitive bids.

§ 429.11 Where can I get the application forms?

Both forms can be obtained from any Reclamation office or from our official internet Web site at *http://www.usbr.gov.* These forms contain specific instructions for application submission and describe information that you must furnish. However, when you submit either form to your local Reclamation office for review, the form must contain your original signature as the applicant.

§ 429.12 Where do I file my application?

File your completed and signed application, including the $100 nonrefundable application fee, with the Reclamation office having jurisdiction over the land, facility, or waterbody associated with your request. Reclamation office locations may be found on *http://www.usbr.gov*, the official Reclamation internet web site.

§ 429.13 How long will the application review process take?

(a) We will acknowledge in writing our receipt of your completed and signed application and application fee within 30 calendar days of receipt. Reclamation may request additional information needed to process your application, such as legal land descriptions and detailed construction specifications.

(b) The processing time depends upon the complexity of your requested use, issues associated with it, and the need for additional information from you.

(c) Should your requested use be denied at any time during the review process, we will notify you in writing of the basis for the denial.

§ 429.14 What criteria will Reclamation consider when reviewing applications?

Reclamation will consider the following criteria when reviewing applications:

(a) Compatibility with authorized project purposes, project operations, safety, and security;

(b) Environmental, natural and cultural resource impacts;

(c) Compatibility with Reclamation land use plans;

(d) Conflicts with Federal policies and initiatives;

(e) Public health and safety;

(f) Availability of other reasonable alternatives; and

(g) Best interests of the United States and impacts to other parties.

§ 429.15 Is Reclamation required to issue a use authorization?

No. The issuance of a use authorization is at Reclamation's discretion. Not all requests will be authorized. If issued, we will provide only the least estate, right, or possessory interest needed to accommodate the approved use.

Subpart D—Application Fees and Administrative Costs

§ 429.16 How much is the application fee and when should it be paid?

You must remit a nonrefundable payment of $100 to cover costs associated with our initial review of your application, unless it is waived pursuant to subpart F of this part. This review will determine if your requested use appears to be appropriate and not likely to interfere with Reclamation project purposes or operations.

§ 429.17 When will Reclamation collect administrative costs?

Reclamation will collect, in advance, its administrative costs for processing your application, except as provided under subpart F of this part.

§ 429.18 When do I have to pay the administrative costs?

(a) Following the initial review, we will notify you in writing whether your application appears to be appropriate for further processing. At this time, we will give you an initial estimate of administrative costs required to continue processing your application.

(b) You must pay these initial, estimated administrative costs in advance before we can continue to process your application, unless you are granted a waiver of administrative costs under subpart F of this part. If payment

is not received within 90 days after we provide the estimate to you, we may close your file. If this occurs and you later wish to proceed, you must submit both a new application and another $100 nonrefundable application fee.

§ 429.19 What happens if the initial estimate for administrative costs is insufficient?

If the initial estimate to cover Reclamation's administrative costs is found to be insufficient, Reclamation will notify you in writing of the additional amount needed. You must pay the amount requested before Reclamation will continue processing your application.

§ 429.20 Can I get a detailed explanation of the administrative costs?

Yes, you are entitled to receive an explanation of all administrative costs relevant to your specific application. You must request this information in writing from the Reclamation office where you submitted your application.

§ 429.21 If I overpay Reclamation's administrative costs, can I get a refund?

If, in reviewing your application, we use all the monies you have paid, you will not receive a refund regardless of whether you receive a use authorization. If the money we collect from you exceeds our administrative costs, we will refund the excess amount consistent with Reclamation's financial policies.

§ 429.22 Can Reclamation charge me additional administrative costs after I receive a use authorization?

(a) After you receive your use authorization, we may charge you for additional administrative costs we incur for activities such as:

(1) Monitoring your authorized use over time to ensure compliance with the terms and conditions of your use authorization; and

(2) Periodic analysis of your long-term use to adjust your use fee to reflect current conditions.

(b) If we do not receive your payment within 90 days after we provide you with the estimate, we may take action to terminate your use authorization.

Subpart E—Use Fees

§ 429.23 How does Reclamation determine use fees?

The use fee is based on a valuation or by competitive bidding. Use fees may be adjusted as deemed appropriate by Reclamation to reflect current conditions, as provided in the use authorization.

§ 429.24 When should I pay my use fee?

(a) If we offer you a use authorization, you must pay the use fee in advance, unless we grant you a waiver under subpart F of this part.

(b) Your use authorization will clearly state the use fee. Should periodic payments apply, your use authorization will also describe when you should pay those periodic use fees.

§ 429.25 How long do I have to submit my payment for the use fee and accept the offered use authorization?

You have 90 days to sign and return the use authorization and required fees, otherwise we may consider the offer to be rejected by you and your file may be closed. If this occurs and you later wish to proceed, you must submit a new application and another $100 nonrefundable application fee. You may not commence your use of Reclamation's land, facilities, or waterbodies until Reclamation has issued a use authorization to you. A use authorization will only be issued upon receipt by Reclamation of all required costs and fees, and the use authorization signed by you.

Subpart F—Reductions or Waivers of Application Fees, Administrative Costs, and Use Fees

§ 429.26 When may Reclamation reduce or waive costs or fees?

(a) At its sole discretion, Reclamation may waive the application fee, or waive or reduce administrative costs or the use fee as indicated by a ✓ in the following table:

Situations where costs and fees may be reduced or waived 3 if determined appropriate by reclamation	Application fee	Administrative costs	Use fee
(1) The use is a courtesy to a foreign government or if comparable fees are set on a reciprocal basis with a foreign government	✓	✓	✓
(2) The use is so minor or short term that the cost of collecting fees is equal to or greater than the value of the use	✓	✓	✓
(3) The use will benefit the general public with no specific entity or group of beneficiaries readily identifiable	✓	✓	✓
(4) Applicant is a public entity or Tribe	✓	✓	✓
(5) Applicant is a non-profit or educational entity and the use provides a general public benefit	✓	✓	✓
(6) Applicant is a rural electric association or municipal utility or cooperative	✓	✓	✓
(7) The use directly supports United States' programs or projects	✓	✓	✓
(8) The use secures a reciprocal land use of equal or greater value to the United States	✓	✓	✓
(9) Applicant for a consent document is the underlying owner of the property subject to Reclamation's easement	✓	✓	[1]
(10) The use is issued under competitive bidding	✓	✓	[2]

[1] Not applicable.
[2] Set by Bid.

(b) When a statute, executive order, or court order authorizes the use and requires specific treatment of administrative cost recovery and collection of use fees associated with that use, that requirement will be followed by Reclamation.

Subpart G—Terms and Conditions of Use Authorizations

§ 429.27 What general information appears in use authorizations?

Each use authorization will contain:

(a) An adequate description of the land, facilities, or waterbodies where the use will occur;

(b) A description of the specific use being authorized together with applicable restrictions or conditions that must be adhered to;

(c) The conditions under which the use authorization may be renewed, terminated, amended, assigned or transferred, and/or have the use fee adjusted; and

(d) Primary points of contact and other terms and conditions.

§ 429.28 What terms and conditions apply to all use authorizations?

(a) By accepting a use authorization under this part, you agree to comply with and be bound by the following terms and conditions during all construction, operation, maintenance, use, and termination activities:

(1) The grantee agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the grantee's activities under any use authorization.

(2) A reservation in favor of the United States, acting through Reclamation, Department of the Interior, of the prior rights to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantee's work.

(3) Reclamation may, at any time and at no cost or liability to the United States, unilaterally terminate the use authorization if Reclamation determines that:

(i) The use has become incompatible with authorized project purposes or a higher public use is identified;

(ii) Termination is necessary for operational needs of the project; or

(iii) There has been a natural disaster, a national emergency, a need arising from security requirements, or an immediate and overriding threat to the public health and safety.

(4) Reclamation may, at any time and at no cost or liability to the United States, unilaterally terminate any use authorization if Reclamation determines that the grantee has failed to use the use authorization for its intended purpose. Further, failure to construct or use for any continuous 2-year period may constitute a presumption of abandonment of the requested use and cause termination of the use authorization.

(5) Failure to comply with all applicable Federal, State, and local laws, regulations, ordinances, or terms and conditions of any use authorization, or to obtain any required permits or authorizations, may result in termination of the use authorization.

(b) To meet local and special conditions, the Regional Director, upon advice of the Solicitor, may modify these terms and conditions with respect to the contents of the use authorization.

§ 429.29 What other terms and conditions will be included in my use authorization?

Reclamation will include additional terms and conditions or requirements that are determined necessary to meet local, environmental, cultural resource, and other legal requirements and conditions to protect the interests of the United States.

§ 429.30 May use authorizations be transferred or assigned to others?

Your use authorization may not be transferred or assigned to others without prior written approval of Reclamation, unless specifically provided for in your use authorization. Should you wish to transfer or assign your use authorization to another individual or entity, please contact the Reclamation office that issued your use authorization.

Subpart H—Prohibited and Unauthorized Uses of Reclamation Land, Facilities, and Waterbodies

§ 429.31 What uses are prohibited on Reclamation land, facilities, and waterbodies?

Reclamation prohibits any use that would:

(a) Not comply with part 423 of this chapter; or

(b) Result in new private exclusive recreation or residential use of Reclamation land, facilities, or waterbodies, or the perception thereof. Such prohibited uses include, but are not limited to:

(1) Cabins, residences, outbuildings, and related structures, and associated landscaping, patios, decks, and porches;

(2) Boat houses, docks, moorings, and launch ramps;

(3) Floating structures or buildings, including moored vessels used as residences or business sites;

(4) Private sites for such activities as: hunting, fishing, camping, and picnicking (other than transitory uses allowed under part 423 of this chapter); and

(5) Access to private land, facilities, or structures when other reasonable alternative access is available or can be obtained.

§ 429.32 How will Reclamation address existing uses which are otherwise prohibited?

(a) Existing use authorizations for private cabin sites or substantial improvements, as defined by part 21 of this title, will be administered in accordance with that part. Any renewals will be reviewed by the Commissioner's Office and approved, where appropriate.

(b) Other private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies may exist. When authorizations for these uses expire, Reclamation generally will not renew them. Rare exceptions may be authorized and use authorizations issued with the approval of the Commissioner's Office.

(c) Prohibited existing uses which are not authorized under paragraphs (a) and (b) of this section will be administered under § 429.33.

§ 429.33 What are the consequences for using Reclamation land, facilities, and waterbodies without authorization?

(a) Unauthorized use of Reclamation land, facilities, or waterbodies is a trespass against the United States. You may be subject to legal action including criminal prosecution as described in part 423 of this chapter. A criminal conviction could result in a fine and/or imprisonment for up to 6 months in accordance with 43 U.S.C. 373b(b).

(b) Reclamation may seek to collect the following:

(1) All administrative costs incurred by Reclamation in resolving the unauthorized use;

(2) All costs of removing structures, materials, improvements, or any other real or personal property;

(3) All costs of rehabilitation of the land, facilities, or waterbodies as required by Reclamation.

(4) The use fee that would have applied had your use been authorized from the date your unauthorized use began, up to a total of 6 years; and

(5) Interest accrued on the use fee from the date your unauthorized use began, up to a total of 6 years.

(c) As an unauthorized user, you will receive a written notice in which Reclamation will outline the steps you need to perform to cease your unauthorized use.

(d) If appropriate, you will receive a final determination letter detailing the applicable costs and fees, as set forth under (b) above, which must be paid to Reclamation for your unauthorized use. Payment must be made within 30 days unless we extend this deadline in writing. Failure to make timely payment may result in administrative or legal action being taken against you.

(e) Reclamation will generally not issue a use authorization to you for an existing unauthorized use, and we may deny any other future use applications because of this behavior. As noted at § 429.15, use authorizations are always discretionary, and we are never required to issue one.

(f) If, however, your unauthorized use is deemed by Reclamation to be an unintentional mistake, we will consider issuing a use authorization provided that you qualify and, in addition to the normal costs, you agree to pay the following:

(1) The use fee that would have been owed from the date your unauthorized use began, up to a total of 6 years; and

(2) Interest accrued on the use fee from the date your unauthorized use began, up to a total of 6 years.

(g) Under no circumstances will your unauthorized use or payment of monies to the United States in association with an unauthorized use either:

(1) Create an interest or color of title against the United States; or

(2) Establish any right or preference to continue the unauthorized use.

Subpart I—Decisions and Appeals

§ 429.34 Who is the decisionmaker for Reclamation's final determinations?

(a) The appropriate Reclamation Regional Director makes any final determinations associated with actions taken under this rule and will send that final determination in writing to you by mail.

(b) The Regional Director's final determination will take effect immediately upon the date of the determination letter.

§ 429.35 May I appeal Reclamation's final determination?

(a) Yes, if you are directly affected by such a determination, you may appeal in writing to the Commissioner within 30 calendar days after the date of the Regional Director's determination letter.

(b) You have an additional 30 calendar days after the postmark of your written appeal to the Commissioner within which to submit any additional supporting information.

(c) The Regional Director's determination will remain in effect until the Commissioner has reviewed your appeal and provided you with that decision, unless you specifically request a stay and a stay is granted by the Commissioner.

§ 429.36 May I appeal the Commissioner's decision?

(a) Yes, you may appeal the Commissioner's decision to the Secretary of the Interior by writing to the Director, Office of Hearing and Appeals (OHA), U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(b) For an appeal to be timely, OHA must receive your appeal within 30 calendar days from the date of the Commissioner's decision. Rules that govern appeals to the OHA are found at part 4, subpart G, of this title, except for the accrual of nonpayment or underpayment of monies due to the United States under § 429.33(e).

§ 429.37 Does interest accrue on monies owed to the United States during my appeal process?

Interest on any nonpayment or underpayment, as provided in § 429.33(e), continues to accrue during an appeal of a Regional Director's final determination, an appeal of the Commissioner's decision to OHA, or during judicial review of final agency action.

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Part IV

Department of Housing and Urban Development

24 CFR Part 100

Design and Construction Requirements; Compliance With ANSI A117.1 Standards; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–5006–P–01]

RIN 2529–AA92

Design and Construction Requirements; Compliance With ANSI A117.1 Standards

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations with respect to the design and construction requirements of the Fair Housing Act and its amendments by updating and clarifying the references to the American National Standards Institute (ANSI) building standard for accessibility and by codifying the current HUD recognized safe harbors under the Act. The ANSI A117.1 standard is the technical standard for the design of facilities that are accessible to persons with disabilities, including housing facilities, and is commonly referred to as ''ANSI A117.1.'' The ANSI A117.1 standard is referenced in the 1988 amendments to the Fair Housing Act. Compliance with ANSI A117.1 satisfies the accessibility requirements of the Fair Housing Act and its amendments. This proposed rule would update the references to the ANSI A117.1 to adopt the 2003 edition of the standard. This proposed rule would also clarify that compliance with the appropriate requirements of the 1986, 1992, and 1998 editions also remains sufficient to meet the design and construction requirements of the Fair Housing Act and its amendments.

DATES: *Comment Due Date:* September 17, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Special Advisor for Disability Policy, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2000; telephone number (202) 708–2333 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) (the Fair Housing Act) prohibits discrimination in housing and housing-related transactions based on race, color, religion, national origin, and sex. The Fair Housing Amendments Act of 1988 expanded the coverage of the Fair Housing Act to include families with children and persons with disabilities.[1] The Fair Housing Act now provides that unlawful discrimination against persons with disabilities includes the failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in a manner that ''(1) the public and common use portions of such dwellings are readily accessible to and usable by handicapped persons; (2) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and (3) all premises within such dwellings contain the following features of adaptive design: (a) An accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.'' Additionally, the Fair Housing Act states that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as ''ANSI A117.1'') suffices to satisfy the above-listed requirements.

On January 23, 1989 (54 FR 3232), HUD published its final regulation implementing the Fair Housing Amendments Act of 1988. In the final regulation, HUD adopted the 1986 edition of ANSI A117.1, which was the most recent edition in effect at that time, as the appropriate edition for acceptable compliance with the Fair Housing Act. HUD's regulation adopting ANSI A117.1 is located at 24 CFR 100.201. HUD's regulations implementing the design and construction requirements are located at 24 CFR 100.205.

II. This Proposed Rule

A. Updated ANSI A117.1 References Adopting 2003, 1998, and 1992 Editions

This proposed rule would update the references to ANSI A117.1 to adopt the appropriate requirements in the 2003, 1998, and 1992 editions as satisfying the design and construction requirements of the Fair Housing Act. Since HUD published its 1989 final rule implementing the Act and referencing the 1986 edition of ANSI A117.1–1986, three subsequent editions of ANSI A117.1 have been published—in 1992, 1998, and 2003. The Council of American Building Officials (CABO) published the 1992 edition, and the International Code Council (ICC)

[1] The Fair Housing Act refers to people with ''handicaps.'' Subsequently, in the Americans with Disabilities Act of 1990 and other legislation, Congress adopted the term ''persons with disabilities'' or ''disability,'' which is the preferred usage. Accordingly, this document hereinafter uses the terms ''persons with disabilities,'' ''disability,'' or ''disabled,'' unless directly quoting the Fair Housing Act.

published the 1998 and 2003 editions. These three latest editions are referred to as ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, and CABO/ANSI A117.1–1992. Both the 1998 and 2003 editions of ANSI contain requirements for various types of units containing accessible features: Accessible Units (which are not limited to dwelling units), Type A Dwelling Units, Type B Dwelling Units, and Dwelling Units with Accessible Communication Features. The Type B dwelling unit is intended to comply with those features of accessible and adaptable design required by the Fair Housing Act. Accessible units and Type A dwelling units provide for a stricter degree of accessibility than is required by the Fair Housing Act and, as such, would meet the requirements of the Fair Housing Act as long as the scoping requirements in the Fair Housing Act, HUD's regulations, and HUD's Fair Housing Accessibility Guidelines (''Guidelines'') also are met. However, the Fair Housing Act does not require compliance with Accessible units or with Type A dwelling units.

In 1999 and 2004, and, more recently, in 2006, HUD reviewed certain model building codes to determine if those codes meet the design and construction requirements set forth in the Fair Housing Act, HUD's Fair Housing Act regulations (''regulations''), and the Guidelines. In conjunction with these reviews, HUD reviewed the 1992, 1998, and 2003 editions of ANSI A117.1. On March 23, 2000 (65 FR 15740), HUD published its Final Report of HUD Review of Model Building Codes. In this report, HUD stated that it reviewed the 1992 CABO/ANSI A117.1 and the 1998 ICC/ANSI A117.1 and determined that these editions provide at least the same level of accessibility as the 1986 edition of ANSI A117.1. HUD reiterated this view in its ''Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code'' (70 FR 9738, published February 28, 2005), which uses the 1998 edition of ICC/ANSI A117.1. Both of these reports are available at *http://www.hud.gov/offices/fheo/disabilities/modelcodes/*. More recently, in connection with its review of the 2006 International Building Code (IBC), HUD reviewed the 2003 ICC/ANSI A117.1. A notice about this latter review is published elsewhere in today's edition of the **Federal Register**. As a result of this latter review, the Department believes that compliance with the appropriate technical requirements of ICC/ANSI A117.1–2003 satisfies the design and construction requirements of the Fair Housing Act when used together with the Act, the Department's regulations, and the Fair Housing Accessibility Guidelines for the scoping requirements. As noted in the Department's earlier reports referenced above, the Department has determined that compliance with ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, or ANSI A117.1–1986 satisfies the design and construction requirements of the Fair Housing Act. These reports also indicate that because the ANSI A117.1 standard contains only technical criteria, designers and builders that are relying on the standard also need to consult the Fair Housing Act, the Department's implementing regulations, and the Fair Housing Accessibility Guidelines for the scoping criteria. Scoping criteria define when a building, element, or space must be accessible. Designers and builders also have the option of following one of the other HUD-recognized safe harbors. This option is discussed in more detail below.

B. HUD-Recognized Safe Harbors for Compliance With the Fair Housing Act's Design and Construction Requirements

Pursuant to publication of HUD's March 23, 2000, and February 28, 2005, reports, representatives from the building industry, code organizations, and advocacy groups requested technical assistance from the Department in developing code text changes for certain editions of the IBC, as well as in the development of a document that would compile housing-related code provisions in one document. Based on these requests, the Department has taken several steps, in addition to those discussed above, to effect code text changes to the IBC that will ensure that future editions of the IBC meet the accessibility requirements of the Fair Housing Act with respect to facilities subject to the Fair Housing Act. With the recognition of ICC/ANSI A117.1–2003 and the 2006 IBC as safe harbors, the Department currently recognizes ten safe harbors for compliance with the design and construction requirements of the Fair Housing Act. These documents are:

1. Fair Housing Accessibility Guidelines, March 6, 1991 (*http://www.hud.gov/offices/fheo/disabilities/fhefhag.cfm*), in conjunction with the June 28, 1994, Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines (*http://www.hud.gov/offices/fheo/disabilities/fhefhasp.cfm*);

2. Fair Housing Act Design Manual (*http://www.huduser.org/publications/destech/fairhousing.html*), published by HUD in 1996 and updated in 1998;

3. ANSI A117.1–1986, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act (available from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 90112), HUD's regulations, and the Guidelines for the scoping requirements;

4. CABO/ANSI A117.1–1992, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act (*http://www.iccsafe.org*), HUD's regulations, and the Guidelines for the scoping requirements;

5. ICC/ANSI A117.1–1998, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act (*http://www.iccsafe.org*), HUD's regulations, and the Guidelines for the scoping requirements;

6. ICC/ANSI A117.1–2003, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act (*http://www.iccsafe.org*), HUD's regulations, and the Guidelines for the scoping requirements;

7. 2000 ICC Code Requirements for Housing Accessibility (CRHA), published by the International Code Council (ICC), October 2000 (*http://www.iccsafe.org*) (ICC has issued an errata sheet to the CRHA);

8. 2000 International Building Code, as amended by the 2001 Supplement to the International Building Code (2001 IBC Supplement);

9. 2003 International Building Code published by ICC (*http://www.iccsafe.org*), December 2002, with one condition: Effective February 28, 2005, HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, ''ICC interprets Section 1104.1, and specifically the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7''; and

10. 2006 International Building Code, published by ICC (*http://www.iccsafe.org*) [2] in January 2006, with

[2] ICC's Web site includes information about the condition on the 2003 IBC at the following links: *http://www.iccsafe.org/news/nr/2005/index.html; http://www.iccsafe.org/government/news/;* and *http://www.iccsafe.org/news/ePeriodicals/eNews/archive/ICCeNews_0305.html.*

a January 31, 2007, erratum to correct the text missing from Section 1107.7.5 (see the Department's report on its review of this document elsewhere in today's **Federal Register**) and interpreted in accordance with the relevant 2006 IBC Commentary.

HUD's March 23, 2000, Final Report addresses HUD's policy with respect to the above safe harbors. If a state or locality has adopted one of the above documents without modification to the provisions that address the Fair Housing Act requirements, a building covered by the Act's design and construction requirements will be deemed compliant, provided: (1) The building is designed and constructed in accordance with plans and specifications approved during the building permitting process and (2) the building code official does not waive, incorrectly interpret, or misapply one or more of those requirements. However, neither the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Fair Housing Act, nor that construction of a building subject to the Fair Housing Act was approved under such a code, changes HUD's statutory responsibility to conduct an investigation, following receipt of a complaint from an aggrieved person, to determine whether the requirements of the Fair Housing Act have been met. Nor does either fact prohibit the Department of Justice from investigating whether violations of the Fair Housing Act's design and construction provisions may have occurred. The Fair Housing Act provides that: ''determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title.''

HUD's investigation of an accessibility discrimination complaint under the Fair Housing Act typically involves a review of building permits, certificates of occupancy, and construction documents showing the design of the buildings and the site, and conduct of an on-site survey of the buildings and property. During the investigation, HUD investigators take measurements of relevant interior and exterior elements on the property. All parties to the complaint have an opportunity to present evidence concerning whether HUD has jurisdiction over the complaint, and whether the Act has been violated as alleged. In enforcing the design and construction requirements of the Fair Housing Act, a prima facie case may be established by proving a violation of HUD's Fair Housing Accessibility Guidelines. This prima facie case may be rebutted by demonstrating compliance with a recognized, comparable, objective measure of accessibility. See Order on Secretarial Review, *U.S. Department of Housing and Urban Development and Montana Fair Housing, Inc.* v. *Brent Nelson,* HUD ALJ 05–068FH (September 21, 2006) (2006 WL 4540542). In making a determination as to whether the design and construction requirements of the Fair Housing Act have been violated, HUD uses the Fair Housing Act, the regulations, and the Guidelines, all of which reference the technical standards found in ANSI A117.1–1986.

It is the Department's position that the above-named documents represent safe harbors only when used in their entirety; that is, once a specific safe harbor document has been selected, the building in question should comply with all of the provisions in that document that address the Fair Housing Act design and construction requirements to ensure the full benefit of the safe harbor. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more than one of the above safe harbor documents or from a variety of sources, and will be lost if waivers of provisions are requested and obtained. A designer or builder taking this approach runs the risk of building an inaccessible property. While this does not necessarily mean that failure to meet all of the respective provisions of a specific safe harbor document will result in unlawful discrimination under the Fair Housing Act, designers and builders that choose to depart from the provisions of a specific safe harbor bear the burden of demonstrating that their actions result in compliance with the Act's design and construction requirements. HUD's purpose in recognizing a number of safe harbors for compliance with the Fair Housing Act's design and construction requirements is to provide a range of options that, if followed in their entirety during the design and construction phase without modification or waiver, will result in residential buildings that comply with the design and construction requirements of the Act.

This proposed rule therefore proposes to update the references to the ANSI A117.1 standard to adopt the 2003 edition, and to stipulate that compliance with the appropriate requirements of the 1998, 1992, and 1986 editions continues to satisfy the requirements of the Fair Housing Act. The proposed rule also updates the regulation to acknowledge all ten safe harbors currently recognized by HUD. This rule would not change either the scoping requirements or the substance of the existing accessible design and construction requirements contained in the regulations, nor would the rule state that compliance with the 1986 ANSI standard is no longer appropriate. The appropriate requirements of the 1986, 1992, 1998, and 2003 editions of ANSI A117.1 would all constitute safe harbors for compliance with the accessibility requirements of the Fair Housing Act, when used together with the Act, HUD's regulations, and the Guidelines for the scoping requirements.

C. Request for Public Comment

While the Department's current position is outlined above, the Department is also interested in receiving public comments on the efficacy of continuing to recognize older editions of the ANSI A117.1 standard. The Department anticipates updating its Fair Housing Accessibility Guidelines to reference a newer edition of ANSI A117.1 for the technical requirements on how to make dwelling units and public and common use areas accessible. Once this happens, one option would be that buildings designed and constructed after the Guidelines are updated would need to meet the more recent edition of ANSI A117.1 specified in the Guidelines, with respect to technical criteria. Another option would be to stipulate that the two most recent editions would suffice to meet the Act's technical criteria, when used with the scoping requirements in the Act, HUD's regulations, and the Guidelines. Similarly, the Department seeks public comment on how long the Department should continue to recognize earlier editions of the IBC. The Department recognizes that a model building code is not enforceable until a state or local jurisdiction adopts the model building code. The Department also recognizes that the code adoption process takes time and is not carried out by state or local jurisdictions on the same timetable under which the model building code is updated. The Department neither wishes nor intends to create burdens for state and local governments, and welcomes and encourages comments from state and local building code jurisdictions on this matter.

D. Other Accessibility Standards

Nothing in the Fair Housing Act precludes a jurisdiction from adopting accessibility standards that provide a greater degree of accessibility than is required under the Fair Housing Act. In addition, residential properties may be subject to more than one accessibility standard. For example, when a residential property receives federal

financial assistance, it must also comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and 24 CFR part 8. A complex that is covered by the Fair Housing Act may also be covered, in part, by the Americans with Disabilities Act (ADA), e.g., the rental office and any other place of public accommodation that is leased or used by persons other than the residents and their guests. This proposed rule would apply only to the accessibility requirements of the Fair Housing Act. Therefore, this proposed rule would not constitute a change in the requirements for compliance for federally funded facilities and dwelling units covered by Section 504 or the Architectural Barriers Act (ABA), which must comply with their respective regulatory requirements at 24 CFR part 8 and 24 CFR part 40, including the Uniform Federal Accessibility Standard (UFAS), the ADA, and the Department of Justice's regulations for the ADA. However, to the extent that the requirements of the Fair Housing Act apply to the same dwelling units that are subject to the requirements of Section 504, the ABA, or the ADA, the safe harbors for compliance outlined in this proposed rule shall be applied to those dwelling units that are subject to the Fair Housing Act, but shall not be applied to dwelling units covered by the stricter requirements of Section 504 and the ABA, or the ADA, where applicable.

III. Additional Information

A link to the Department's report of its review of the 2006 International Building Code, as well as the February 28, 2005 and March 23, 2000, reports, is located at *http://www.hud.gov/offices/fheo/disabilities/modelcodes/.* The Fair Housing Act, as amended in 1988, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this Web site. The Fair Housing Act regulations are located at *http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr100_00.html.* CABO/ANSI A117.1–1992, ICC/ANSI A117.1–1998, and ICC/ANSI A117.1–2003 are available for purchase at *http://www.iccsafe.org/e/category.html.* ANSI A117.1–1986 is available for purchase from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112.

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis on any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would adopt the 2003 edition of ANSI A117.1 for purposes of defining technical standards for accessibility for covered multifamily dwellings. The proposed rule would also provide that compliance with the 1986 edition of ANSI A117.1 HUD previously adopted, as well as with the 1992 and 1998 editions of ANSI A117.1, would meet with the requirements of the Fair Housing Act and of HUD-recognized safe harbors. Small entities need not incur a significant economic impact, as small entities can still be in compliance with the requirements of the Fair Housing Act if they continue to use the 1986 ANSI A117.1 technical standard. Adopting the 2003 edition, as well as the 1992 and 1998 editions of the standard, may even alleviate a significant economic impact for small entities, as those entities may find compliance with more recent editions of the ANSI A117.1 standard to be less burdensome than compliance with the 1986 edition. The proposed rule would not impose an undue burden on small entities, as the rule would merely codify the use of more recent ANSI A117.1 standards as satisfying the design and construction requirements of the Fair Housing Act. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

This proposed rule is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any federal mandates on any state, local, or tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.400.

List of Subjects in 24 CFR Part 100

Fair housing, Individuals with disabilities.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 100 as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

2. In § 100.201, revise the definitions of *Accessible, Accessible route, ANSI A117.1, and Building entrance on an accessible route* to read as follows:

§ 100.201 Definitions.

* * * * *

Accessible when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase *readily accessible to and usable by* is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ICC/ANSI A117.1–2003 or a comparable standard is deemed *accessible* within the meaning of this paragraph. A public or common use area that complies with the appropriate requirements of ANSI A117.1–1986, CABO/ANSI A117.1–1992, or ICC/ANSI

A117.1–1998 or a comparable standard is also deemed accessible within the meaning of this paragraph.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ICC/ANSI A117.1–2003 or a comparable standard is an *accessible route.* A route that complies with the appropriate requirements of ANSI A117.1–1986, CABO/ANSI A117.1–1992, or ICC/ANSI A117.1–1998 or a comparable standard also is an *accessible route.*

ANSI A117.1 means the American National Standard for Accessible and Usable Buildings and Facilities. *ICC/ANSI A117.1–2003* means the 2003 edition of the American National Standard for Accessible Buildings and Facilities. *ICC/ANSI A117.1–1998* means the 1998 edition of the American National Standard for Accessible and Usable Buildings and Facilities. *CABO/ANSI A117.1–1992* means the 1992 edition of the American National Standard for Accessible and Usable Buildings and Facilities. ''*ANSI A117.1–1986''* means the 1986 edition of the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, and CABO/ANSI A117.l–1992 may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041–3405. Copies of ANSI A117.1–1986 may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112. Copies of the 1986, 1992, 1998, and 2003 editions of ANSI A117.1 may be inspected at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001.

* * * * *

Building entrance on an accessible route means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ICC/ANSI A117.1–2003 or a comparable standard complies with the requirements, of this paragraph. A building entrance that complies with ANSI A117.1–1986, CABO/ANSI A117.1–1992, or ICC/ANSI A117.1–1998 also complies with the requirements of this paragraph.

* * * * *

3. Revise § 100.205(e) to read as follows:

§ 100.205 Design and construction requirements.

* * * * *

(e)(1) Compliance with the appropriate requirements of ICC/ANSI A117.1–2003 suffices to satisfy the requirements of paragraph (c)(3) of this section. Compliance with ANSI A117.1–1986, CABO/ANSI A117.1–1992, or ICC/ANSI A117.1–1998 also suffices to satisfy the requirements of paragraph (c)(3) of this section.

(2) The following also qualify as HUD-recognized safe harbors for compliance with the Fair Housing Act design and construction requirements:

(i) Fair Housing Accessibility Guidelines, March 6, 1991, in conjunction with the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, June 28, 1994;

(ii) Fair Housing Act Design Manual, published by HUD in 1996, updated in 1998;

(iii) 2000 ICC Code Requirements for Housing Accessibility (CRHA), published by the International Code Council (ICC), October 2000 (with corrections contained in ICC-issued errata sheet), if adopted without modification and without waiver of any of the provisions;

(iv) 2000 International Building Code (IBC), as amended by the 2001 Supplement to the International Building Code (2001 IBC Supplement), if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements;

(v) 2003 International Building Code (IBC), if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements, and conditioned upon the ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, ''ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.''

(vi) 2006 International Building Code; published by ICC, January 2006, with the January 31, 2007, erratum to correct the text missing from Section 1107.7.5, if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements, and interpreted in accordance with the relevant 2006 IBC Commentary;

(3) Compliance with any other safe harbor recognized by HUD in the future and announced in the **Federal Register** will also suffice to satisfy the requirements of paragraphs (a) and (c) of this section.

* * * * *

Dated: June 18, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. E7–13886 Filed 7–17–07; 8:45 am]

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July 18, 2007

Part V

Department of Housing and Urban Development

24 CFR Parts 905 and 990

Use of Public Housing Capital and Operating Funds for Financing Activities; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 905 and 990

[Docket No. FR–4843–P–01]

RIN 2577–AC49

Use of Public Housing Capital and Operating Funds for Financing Activities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would allow public housing agencies (PHAs) to use proceeds under either the Capital Fund or Operating Fund programs for financing activities, including payments of debt service and customary financing costs for the modernization and development of public housing, including public housing in mixed-finance developments. The pledge of public housing projects and other property generally involves the long-term commitment of public housing funds. This proposed rule would support HUD's objective to enhance PHA capital improvement planning and the public housing program transition to asset management decision-making by establishing program requirements, submission requirements, and the approval process for PHAs to request authorization from HUD to pledge either capital or operating funds for debt service payments.

DATES: *Comment Due Date:* September 17, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone number (202) 708–1640, extension 4999 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Legislative Background

Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) amended the U.S. Housing Act of 1937 (1937 Act), to merge former sections 9 and 14 of the 1937 Act into a single section 9 providing for the capital fund (the Capital Fund) and the operating fund (the Operating Fund) (codified at 42 U.S.C. 1437g). The Capital Fund is established at section 9(d) of the 1937 Act and provides funding for, among other activities, the development, financing, and modernization of public housing projects. The Operating Fund is established at section 9(e) and provides funding for the operation and management of public housing. Section 9(e)(1)(I) provides that operating funds may be used for, among other purposes, ''the costs of repaying * * * debt incurred to finance the rehabilitation and development of public housing units, which shall be subject to such reasonable requirements as the Secretary may establish.'' Additionally, section 519 of the Quality Housing and Work Responsibility Act of 1998 added section 30 to the 1937 Act, and provides HUD the discretion, upon such terms and conditions as it may prescribe, to authorize a PHA to mortgage or otherwise grant a security interest in any public housing project or other property of the PHA.

A study for HUD entitled ''Capital Needs of the Public Housing Stock in 1998'' (Abt Associates, March 2000) estimated a $22 billion capital needs backlog for public housing properties. The study also noted a $2 billion annual accrual in capital costs for ongoing repairs and replacements beyond ordinary maintenance for all public housing units. Annual appropriations for public housing capital expenses, which range from $2 billion to $3 billion, cannot by themselves address the backlog and accruing replacement and repair capital needs. Given the large amount of capital needs that PHAs have, the use of capital or operating funds for financing activities provides a mechanism for PHAs to leverage private sector financing for improvements with existing public housing assets. Therefore, this proposed rule proposes to expand the financial leveraging options available to PHAs. The rule would enable PHAs to use either the Capital Fund or the Operating Fund programs to service debt payments and, thereby, leverage additional funds to more fully address capital needs. This proposed rule would support HUD's objective to enhance PHA capital improvement planning and the public housing program transition to asset management decision-making.

The use of capital funds or operating funds to construct new public housing units is limited by section 9(g)(3) of the 1937 Act. PIH's Information Center (PIC) shall be used to determine compliance with section 9(g)(3) of the 1937 Act. The statute states that, with two specific exceptions, a PHA may not use capital or operating funds to construct new units if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the PHA on October 1, 1999, including any units demolished as part of a revitalization effort. The exceptions to this limitation are: (1) The PHA may use the Capital Fund or Operating Fund programs to construct units beyond this limitation; however, the Capital Fund and the Operating Fund formulas, except as stated in (2), shall not include these units for purposes of calculating the formulas; or (2) the formulas may provide, subject to limitations imposed by the Secretary,

for additional funding of units in excess of the limit if the units are part of a mixed-finance project or otherwise leverage private funds, and the estimated cost of the useful life of the project is less than the estimated cost of Section 8 assistance for the same period of time.

In addition, where a PHA seeks to pledge future appropriations of capital or operating funds for debt repayment, such an arrangement is subject to the Antideficiency Act (31 U.S.C. 1341), which states that the federal government may not obligate amounts in excess of appropriated funds. Therefore, any pledge of future capital or operating funds is subject to future appropriations, and a lack of future appropriations could result in a lack of capital or operating funds to cover the obligation. PHA obligations issued pursuant to this proposed rule, and that are secured by a pledge of capital or operating funds, are not obligations of, nor guaranteed by, the U.S. Government. In the event of default, whether due to the lack of appropriations or other reasons, the PHA will be solely responsible for the debt. The proposed rule establishes a debt coverage ratio that is higher than the debt coverage ratio used for traditional multifamily financing. This higher debt coverage ratio is related to the appropriations risk associated with capital and operating funds.

II. This Proposed Rule

This proposed rule would revise HUD's regulations for the Capital Fund at 24 CFR part 905, and add a new subpart K to HUD's regulations for the Operating Fund at 24 CFR part 990. The new subparts would allow PHAs to use the Capital Fund and Operating Fund programs for financing activities, including payments of debt service and of customary financing costs for the modernization and development of public housing, including public housing in mixed-finance developments.

Further, the proposed rule would establish specific program requirements, submission requirements, and approval processes for PHAs to request authorization from HUD to pledge a portion of their annual capital fund grant or operating fund subsidies for debt service payments. To a great extent, the proposed rule would establish similar regulatory requirements for the Capital Fund and the Operating Fund. However, there would be several differences between the two programs, and interested persons should carefully review the proposed regulatory changes for both the Capital Fund and the Operating Fund. For example, pledges of operating funds shall be project specific. This section of the preamble presents a brief overview of the regulatory amendments that would be made by the proposed rule.

The proposed rule would describe requirements incumbent upon a PHA that wants to use capital or operating funds for debt service or financing payments. Among other requirements, the PHA should have a non-troubled Public Housing Assessment System (PHAS) score overall and must be a standard performer or higher on the financial condition indicator. The proposed rule would also require that the PHA make certain showings in order to be eligible. For example, the PHA would be required to list the planned capital improvements and associated costs in an approved PHA plan. PHAs would also need to complete Physical Needs Assessments that cover their entire public housing portfolio for the term of the financing. The PHA must also provide independent reviews satisfactory to HUD demonstrating the PHA's management capacity, the reasonableness of the terms and conditions of the financing, and overall feasibility of the venture.

While, at the option of the PHA, the Capital Fund Financing Plan (CFFP) allows for the possibility of direct payment to creditors so that debt service payments do not have to flow through the PHA, HUD does not consider it feasible to disburse pledged operating subsidy directly to creditors.

As PHAs are transitioning into asset management and project-based accounting, it may be difficult to enter into Operating Fund Financing Program (OFFP) transactions based on operating cash flow (a project's annual revenue less expenses) as opposed to financing transactions secured and paid by excess cash flow (a project's unrestricted net assets or ''reserves''). By way of example, in regard to OFFP transactions based on cash flow, for PHAs with a fiscal year ending on June 30th: audits for the period ending June 30, 2008, will be the first audits completed for most PHAs pursuant to the new project-based accounting requirements. This proposed rule would require PHAs to be under project-based accounting, and would require PHAs to submit audits on a project level in order to obtain OFFP financing. Since OFFP financing is to be project-based, HUD invites comments on how it might otherwise determine the approvability of an OFFP proposal, given that historic financial data (non-project based) will be of limited applicability.

Pursuant to 24 CFR part 968, PHAs may use up to 10 percent of their capital fund grants for administrative costs (or management fees under the asset management rules). This proposed rule would not permit PHAs to use the financing proceeds for additional administrative or central office cost center fees or costs. However, HUD encourages PHAs to leverage their CFFP or OFFP proceeds. PHAs that pursue mixed-finance development or modernization with CFFP or OFFP proceeds may use CFFP or OFFP proceeds, tax credit equity, or other sources for administrative costs. Furthermore, PHAs may use CFFP or OFFP proceeds to pay for staff salaries associated with construction management and allocable to fees and costs.

The proposed rule would also describe HUD's review and approval process. HUD will review all complete Capital and Operating Fund Financing Program proposals for compliance with the regulatory requirements. HUD may require the PHA to make modifications to the proposal, and may require the PHA to re-submit all or any portion of the proposal. HUD will notify the PHA of its approval and any conditions of the approval. Within 60 days of closing, unless the time has otherwise been extended by HUD in writing, the PHA must submit to HUD a complete set of fully executed documents pertaining to the financing. Failure to provide the required documents to HUD within the required time period may result in HUD rescinding its approval.

HUD is prohibited from using operating subsidies appropriated for a current fiscal year for prior year obligations. The proposed rule would clarify that operating subsidy made available in a fiscal year may be used for the costs of repaying debt that was incurred to finance the rehabilitation and development of public housing units. The payment of the debt service that becomes due in the current calendar year is not a ''prior year obligation'' under the meaning of the above appropriations language.

The requirements of this proposed rule would become effective for requests submitted to HUD for approval on or after the effective date of the final rule. Requests submitted prior to the effective date of the final rule would continue to be reviewed on a case-by-case basis as they have been in the past. Program requirements under this rule do not preclude PHAs from pledging other non-public housing properties owned by a PHA to secure private loan or bond financing.

III. Development and Implementation of Financing Plans

PHAs may consider a range of options when borrowing private capital, including bank loans, bond issuances, and other similar vehicles. For borrowing large sums, bond issuances can offer access to a wide market, but can be complex to assemble and issue. Bank loans are less complex and may be quicker to secure, particularly for limited borrowing for small PHAs. PHAs, particularly small PHAs, may form pools to take advantage of access to larger markets that might not otherwise be available. Pools also have some economies of scale. In addition, capital borrowing may be accomplished through a state housing and finance agency or local associations.

Capital or operating fund financing requires a significant amount of advance planning and preparation by the PHA. A number of factors must be considered prior to submission of a request to HUD. These factors include, but are not limited to, the amount of its current capital or operating fund, current interest rates, the term of the borrowing, the condition of the PHA's inventory, criticality of individual work items, and the experience and expertise of the PHA in transactions of the size and nature contemplated. Any one or a combination of these factors can significantly affect the amount to be borrowed and work to be performed. PHAs are encouraged to obtain technical assistance (*e.g.*, PHA counsel, financial advisors, architectural and engineering) early in the process. PHAs are also encouraged to consider resources available through state and local governments, such as state housing and finance agencies. HUD Headquarters will review all capital and operating fund financing proposals and is the principal point of contact for PHAs. Headquarters will coordinate its review with the local HUD Field Offices on issues involving such matters as PHA capacity and capital fund annual plans, Declarations of Trust, etc. PHAs must consult with the local HUD Field Office early in the development of the financing proposal as it relates to those matters. Particular attention should be given to the relationship of the items currently in the PHA Plan and the need to amend the Plan to incorporate the work and costs associated in their capital or operating fund financing proposal. Public housing requirements triggered by the use of financing proceeds (such as approval of acquisition or development proposals) would remain unchanged by this proposed rule.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
Sections 9 and 30 of the U.S. Housing Act of 1937	50	1 Each (50)	15.45	773

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4843) and must be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6974; and Aneita Waites, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410–5000.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does

not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed regulatory changes will allow PHAs additional flexibility in using their capital and operating funds. However, the decision whether to use this capability is up to each PHA. Although some small entities may participate in the program, the rule does not impose any legal requirement or mandate upon them and, accordingly, will not have a significant impact on them. Therefore, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR parts 905 and 990 is 14.850.

List of Subjects

24 CFR Part 905

Grant programs—housing and community development, modernization, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, modernization, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in this preamble, HUD proposes to amend 24 CFR parts 905 and 990, as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

1. The authority citation for 24 CFR part 905 is revised to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, and 3535(d).

2. Redesignate § 905.10 and § 905.120 as subpart A and add a heading for subpart A to read as follows:.

Subpart A—General

3. Add and reserve subparts B through F, and add subpart G, consisting of §§ 905.700 through 905.715, to read as follows:

Subpart G—Use of Capital Funds For Financing

Sec.
905.700 Purpose and description.
905.705 Program requirements.
905.710 Submission requirements.
905.715 HUD review and approval.

§ 905.700 Purpose and description.

(a) This subpart sets forth the requirements necessary for a PHA to obtain HUD approval to borrow private capital and pledge a portion of its annual capital fund grant or public housing assets and other public housing property of the PHA as security.

(b) Under the Capital Fund, PHAs are permitted to borrow private capital to finance public housing development or modernization activities. A PHA may use a portion of its capital fund for debt service payments and usual and customary financing costs associated with public housing development or modernization (including public housing in mixed-finance developments). Additionally, a PHA undertaking such financing activities may, subject to HUD's written approval, grant a security interest in its future annual capital fund grants, which shall be subject to the appropriation of those funds by Congress. The PHA's financing activities are not obligations or liabilities of the federal government. The federal government does not assume any liability with respect to any such pledge of future appropriations, and the federal government neither guarantees nor provides any full faith and credit for these financing transactions.

§ 905.705 Program requirements.

(a) A PHA shall obtain written HUD approval for all capital fund financing transactions that pledge, encumber, or otherwise provide a security interest in public housing assets or other property, including capital funds, and use capital funds for the payment of debt service or other financing costs. HUD approval shall be based on:

(1) The ability of the PHA to complete the financing transaction along with the associated improvements and to repay the debt;

(2) The reasonableness of the provisions in the capital fund financing proposal considering the other pledges or commitments of public housing assets, as well as the pledge being proposed; and

(3) Whether the PHA meets the requirements of this subpart.

(b) Any pledge of future year capital funds under this section is subject to the availability of appropriations by Congress for that year.

(c) *Conditions on Use*—(1) *Development*. Any new public housing developed using amounts under this Part (including proceeds from financing authorized under this Part) shall be operated under the terms and conditions applicable to public housing during the 40-year period that begins on the date on which the project becomes available for occupancy, except as otherwise provided in the 1937 Act.

(2) *Modernization*. Any public housing or portion thereof that is modernized using amounts under this Part (including proceeds from financing authorized under this Part) shall be maintained and operated during the 20-year period that begins on the latest date on which the modernization is

completed, except as otherwise provided in the 1937 Act.

(3) *Operation.* Any public housing project operated using operating fund amounts may not be disposed of before the expiration of the 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except as otherwise provided in the 1937 Act.

(4) *Applicability of latest expiration date.* Public housing subject to these use conditions, or to any other provision of law mandating the operation of housing as public housing for a specific length of time, shall be maintained and operated as required until the latest such expiration date.

(5) Any public housing rental projects upon which the financing proceeds will be used must show evidence of an effective declaration of trust being recorded in first position.

(d) *Public Housing Assessment System (PHAS) designation.* Generally, a PHA shall be designated a Standard Performer or High Performer under PHAS, and must be a standard performer or higher on the management and financial condition indicators. HUD will consider requests from PHAs designated as Troubled under PHAS when the PHA is able to show that it has developed appropriate management and financial capability and controls that demonstrate its ability to successfully undertake the capital fund financing proposal.

(e) *Management capacity.* A PHA shall have the capacity to undertake and administer private financing and construction or modernization of the size and type contemplated. In order to determine capacity, HUD may require the PHA to submit a Management Assessment conducted by an independent third party, in a form and manner prescribed by HUD.

(f) *Existing financing.* A PHA shall identify the nature and extent of any existing encumbrances, pledges, or other financing commitments of public housing funds undertaken by the PHA.

(g) *Need for financing.* A PHA must complete a physical needs assessment at the project level, in the form and manner prescribed by HUD, that covers the PHA's entire public housing portfolio for the term of the financing and takes into consideration existing needs and the life cycle repair and replacement of major building components. For modernization, the activity to be financed must be identified as a need in the physical needs assessment. Based on the physical needs assessment, the PHA must demonstrate its ability to maintain its entire public housing portfolio in accordance with the physical conditions standards prescribed by HUD. In making this demonstration, PHAs must reduce any projected future capital fund program grants to account for planned or anticipated activities that would have the effect of reducing or otherwise limiting the availability of future capital fund program grants. Notwithstanding the above, PHAs that pledge and use only Replacement Housing Factor Funds (RHF) in their capital fund financing transactions are not required to complete physical needs assessments.

(h) *Capital plans.* (1) The PHA's annual and 5-year capital plans shall identify:

(i) How the proceeds of the financing will be used; and

(ii) The amount of capital fund assistance that will be used annually for debt service and any other costs related to the financing.

(2) The work described in the plan will be based on the physical needs assessment. The plans shall detail work items (*e.g.*, roof replacement, window replacement) by development. These work items will constitute performance measures upon which the PHA's performance will be evaluated. A general representation of the work (*e.g.*, rehabilitation of Sunshine Homes development) is not sufficient.

(3) The capital plan submission to the Field Office shall include a copy of the physical needs assessment described in § 905.705(g).

(4) Financing proceeds under this part may not be used for administration or central office cost center costs (except for mixed-finance projects), management improvements, or upon non-viable projects, such as those subject to required conversion. Other than predevelopment costs, proceeds may not be used to reimburse costs already incurred.

(i) *Amount of capital fund for debt service.* (1) In general, a PHA shall not pledge more than 33 percent of its annual capital fund grant for debt service payments, assuming level capital fund Congressional appropriations over the term of the debt obligation and any reduction attributable to activities projected by the PHA to occur during the term of the financing, such as demolition, disposition, or conversion of public housing units or other occurrences that could limit the availability of capital fund program funds, including a voluntary compliance agreement.

(2) A PHA may be able to pledge more than 33 percent of its annual capital fund grant for debt service payments when the PHA is able to demonstrate, to HUD's satisfaction, that the remainder of its annual capital fund grant is sufficient to meet other capital improvement needs during the term of the financing. This demonstration shall be at a project level and include cost estimates to maintain each project on an annual basis.

(3) In general, a PHA may pledge up to 50 percent, but use up to 100 percent of any RHF grants for debt service payments. A RHF grant shall be used only to develop replacement public housing rental units in accordance with § 905.10 and 24 CFR part 941.

(j) *Terms and conditions of financing.* The terms and conditions of all financing shall be reasonable based on current market conditions. The financing documents shall include the following, as applicable:

(1) *Term.* The term of the capital fund financing transaction shall not be more than 20 years. A longer term may be approved based on compelling circumstances identified by the PHA. All capital fund financing transactions shall be fully amortizing.

(2) *Acceleration.* The financing documents shall provide that no acceleration is permitted.

(3) *Public housing assets.* A PHA may not pledge any public housing assets unless specifically approved by HUD. PHAs seeking approval of a pledge of public housing assets must submit documentation to HUD that details the nature and priority of the pledge.

(4) *Variable interest rate.* Variable interest rates may be approved subject to any conditions HUD may determine appropriate.

(5) *Other Pledges or Commitments.* PHAs seeking approval of a pledge of public housing assets must describe the nature and extent of existing commitments or pledges of public housing assets, providing documentation of such other commitments or pledges to the extent required by HUD.

(6) Financing documents must include any other terms and conditions as required by HUD.

(k) *Fairness opinion.* The PHA shall provide an opinion, in a form and manner prescribed by HUD, from a qualified, independent, third-party financial advisor attesting that the terms and conditions of the proposed financing transaction are reasonable given current market conditions with respect to such matters as interest rate, fees, costs of issuance, call provisions, and reserve fund requirements.

(l) Construction management and financial controls. (1) The PHA shall have a plan describing how the PHA will ensure that:

(i) Adequate controls are in place regarding the use of capital fund financing proceeds; and

(ii) The improvements will be developed and completed in a timely manner consistent with the contract documents.

(2) This plan shall contain protocols and financial control mechanisms that address the design of the improvements, construction inspections, construction draws, and requisition approval checks and balances. A PHA that is designated Troubled under PHAS, or other PHAs as determined by HUD, may be required to institute risk mitigation measures to ensure that the funds are used properly and for the purposes intended.

(m) *Work items.* To the extent any changes in work items financed by capital fund financing proceeds meet or exceed the following threshold requirements determined by HUD, PHAs must obtain written approval of amendments to their capital fund financing proposal from HUD:

(1) A change in the type of activity being financed (e.g., if the approved proposal contemplated the proceeds being used for modernization, but after the proposal is approved, the PHA decides instead to pursue development);

(2) A change in the project being modernized or developed with the proceeds;

(3) A reduction of 20 percent or more in the number of public housing units being modernized; or

(4) An increase of 20 percent or more of the cost of nondwelling space.

(n) *Applicability of other federal requirements.* The proceeds of capital fund financing are subject to all laws, regulations, and other requirements applicable to the use of capital fund grants made under 24 CFR part 905, unless otherwise approved by HUD in writing.

(o) *Performance measures.* In its annual capital plans, the PHA is required to identify specific items of work that will be accomplished using the proceeds of the proposed financing. The items, which shall be quantifiable, shall be the basis on which HUD evaluates a PHA's performance. Failure to meet the performance measures may result in:

(1) Failure to receive HUD approval for future financing transactions;

(2) Failure to be considered for future competitive grant programs; and

(3) Other sanctions HUD deems appropriate and authorized by law or regulation.

(p) *Reporting requirements.* (1) The PHA shall submit a performance and evaluation report on a quarterly basis within 30 days of the end of each quarter, as well as annually in the PHA plan, until a Cost Certification has been accepted by HUD.

(2) A Cost Certification for a capital fund financing transaction must be included in a PHA's annual audit.

§ 905.710 Submission requirements.

(a) All requests for HUD approval of capital fund financing transactions shall be submitted to the Assistant Secretary for Public and Indian Housing or the Assistant Secretary's designee. The PHA shall provide an original and two copies of each submission. The PHA also shall submit a copy to its local HUD Field Office.

(b) Each financing proposal shall be tabbed and presented with the following information in the order listed:

(1) *PHA transmittal letter.* A letter signed by the PHA Executive Director (or Chief Executive Officer, if applicable) transmitting the request for HUD approval of the Capital Fund financing transaction.

(2) *Term sheet.* The HUD-prescribed Term Sheet describing the basic terms of the transaction and financing structure, including the amount of the financing, the term, interest rates, security, and reserve requirements.

(3) *Financing documents.* A complete set of the financing documents that the PHA will execute in connection with the financing transaction. The financing documents must identify the nature and extent of any security being provided, as well as the position of any security interest. The financing documents are to be submitted to HUD only after they have been negotiated and agreed upon by the other parties to the transaction. HUD will not review preliminary documents that are still under negotiation.

(4) *Specific requests.* A description of any specific HUD approvals, representations, or assurances required for closing.

(5) Other documents as required by HUD.

§ 905.715 HUD review and approval.

(a) After receipt of a capital fund financing proposal, HUD shall review it for completeness. HUD will return all incomplete or unapprovable proposals, identifying the deficiencies, and will not take any further action. HUD will also return proposals submitted by entities other than the PHA (e.g., the PHA's consultants). HUD shall review all complete proposals for compliance with the requirements set forth above. HUD may require the PHA to make modifications to any of the items submitted and may require the PHA to resubmit all or any portion of the proposal. After HUD determines that a proposal complies with all requirements, HUD shall notify the PHA in writing of its approval and any condition(s) of the approval.

(b)(1) As applicable, with the approval letter HUD shall include two copies of a capital fund financing Amendment to Consolidated ACC (''Financing Amendment'').

(2) Within 60 days of the closing, unless the time has otherwise been extended by HUD in writing, the PHA must submit:

(i) Closing documents as directed by HUD; and

(ii) All documents that require HUD to take certain actions, such as initiate debt service payments through HUD's automated systems.

(3) Failure to provide the required documents to HUD within 60 days of HUD approval of the financing transaction may result in HUD rescinding its approval.

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

4. The authority citation for 24 CFR part 990 is revised to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, and 3535(d).

5. Add subpart K, consisting of §§ 990.400 through 990.415, to read as follows:

Subpart K—Use of Operating Funds for Financing

Sec.
990.400 Purpose and description.
990.405 Program requirements.
990.410 Submission requirements.
990.415 HUD review and approval.

§ 990.400 Purpose and description.

(a) This subpart sets forth the requirements necessary for a PHA to obtain HUD approval to borrow private capital and pledge a portion of its annual operating subsidy or other public housing assets as security.

(b) Subject to HUD approval, PHAs may pledge operating cash flow from a project or excess cash from a project that exceeds 3 months of operating expenses. Operating cash flow from a project may be used to pay debt service associated with a mixed-finance project. Where such debt service is received by a PHA, those funds must be treated as operating subsidy. Under the Operating Fund, PHAs are permitted to borrow private capital to finance public housing development or modernization activities. Additionally, a PHA undertaking such financing activities may, subject to HUD's written approval, pledge and grant a security interest in

its property, including future annual operating subsidy, which shall be subject to the appropriation of those funds by Congress. In all circumstances, the PHA's financing activities are not obligations or liabilities of the federal government. The federal government does not assume any liability with respect to any such pledge of future appropriations, and the federal government neither guarantees nor provides any full faith and credit for these financing transactions.

§ 990.405 Program requirements.

(a) A PHA must obtain written HUD approval for all operating fund financing transactions. HUD approval shall be based on:

(1) The ability of the PHA to complete the financing transaction along with the associated improvements;

(2) The reasonableness of the provisions in the operating fund financing proposal considering the other pledges or commitments of public housing assets, as well as the pledge being proposed;

(3) The Capital Fund must be used first before any financing from the Operating Fund;

(4) The ability of the PHA to maintain and operate the financed project(s), as well as repay debt service; and

(5) Whether the PHA meets the requirements of this subpart.

(b) All public housing projects for the PHA must be in compliance with this part, must be under project-based accounting, and must have submitted an audited financial statement for each project being financed.

(c) Any pledge of future year operating subsidy under this section is subject to the availability of appropriations by Congress for that year.

(d) *Conditions on Use*—(1) *Development.* Any new public housing developed using amounts under this program (including proceeds from financing authorized under this Part) shall be operated under the terms and conditions applicable to public housing during the 40-year period that begins on the date on which the project (or stage of the project) becomes available for occupancy, except as otherwise provided in the 1937 Act.

(2) *Modernization.* Any public housing or portion thereof that is modernized using amounts under this Part (including proceeds from financing authorized under this Part) shall be maintained and operated during the 20-year period that begins on the latest date on which the modernization is completed, except as otherwise provided in the 1937 Act.

(3) *Operation.* Any public housing project operated using amounts provided under this part may not be disposed of before the expiration of the 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except as otherwise provided in the 1937 Act.

(4) *Applicability of latest expiration date.* Public housing subject to these use conditions, or to any other provision of law mandating the operation of housing as public housing for a specific length of time, shall be maintained and operated as required until the latest such expiration date.

(5) Any public housing rental projects upon which the financing proceeds will be used must show evidence of an effective declaration of trust being recorded in first position.

(e) *Public Housing Assessment System (PHAS) designation.* Generally, a PHA shall be designated a Standard Performer or High Performer under PHAS and must be a standard performer or higher on the management and financial condition indicators. HUD will consider requests from PHAs designated as Troubled under PHAS when the PHA is able to show that it has developed appropriate management and financial capability and controls that demonstrate its ability to successfully undertake the Operating Fund financing proposal.

(f) *Management capacity.* A PHA shall have the capacity to undertake and administer private borrowing and construction or modernization of the size and type contemplated. In order to determine capacity, HUD may require the PHA to submit a Management Assessment conducted by an independent third party, in a form and manner prescribed by HUD.

(g) *Existing financing.* A PHA shall identify the nature and extent of any existing encumbrances, pledges, or other financing commitments of public housing funds undertaken by the PHA.

(h) *Need for financing.* A PHA must complete a physical needs assessment at the project level, in the form and manner prescribed by HUD, that covers the PHA's entire public housing portfolio for the term of the financing and takes into consideration the life cycle repair and replacement of major building components. For modernization, the activity to be financed must be identified as a need in the physical needs assessment. Based on the physical needs assessment, the PHA must demonstrate that the capital improvements to be financed cannot be addressed through the Capital Fund program due to the needs and priorities at other projects.

(i) *Capital plans.* The PHA must submit an annual capital plan for the use of proceeds from operating fund financing in the same manner as if it were a grant under the Capital Fund Program (see 24 CFR part 905).

(1) The PHA's annual plans shall identify how the proceeds of the financing will be used.

(2) The work described in the capital plan will be based on the physical needs assessment described in § 990.405(h). The annual capital plan shall detail work items (*e.g.*, roof replacement, window replacement) by development. These work items will represent Performance Measures upon which the PHA's performance will be evaluated. A general representation of the work (*e.g.*, rehabilitation of Sunshine Homes development) is not sufficient.

(3) The capital plan submission to the Field Office shall include a copy of the physical needs assessment described in § 905.405(h) of this chapter.

(4) Financing proceeds under this part may not be used for administration or central office cost center costs (except for mixed-finance projects), management improvements, or non-viable projects, such as those subject to required conversion. Other than predevelopment costs, proceeds may not be used to reimburse costs already incurred.

(j) *Amount of Operating Fund for debt service.* To be approved for financing activities under the Operating Fund program, the PHA must demonstrate that the project has sufficient resources to meet the financing obligations. Generally, the project being financed must demonstrate debt service coverage of 3.0. Additionally, each project must set aside, in a restricted account, 12 months of debt service payments.

(k) *Independent Feasibility Analysis.* As part of its submission package requesting HUD approval for its financing, the PHA must submit a financial feasibility analysis of each affected project, prepared by an independent party, in a manner to be prescribed by HUD. This feasibility analysis must demonstrate the ability of the subject project to support the debt service payments, other financing costs, and operating costs.

(l) *Terms and conditions of financing.* The terms and conditions of all financings shall be reasonable based on current market conditions. The financing documents shall include the following, as applicable:

(1) *Term.* The term of the operating fund financing transaction shall not be more than 10 years. A longer term may be approved based on compelling circumstances identified by the PHA.

All Operating Fund financing transactions shall be fully amortizing.

(2) *Acceleration*. The financing documents shall provide that acceleration is not permitted.

(3) *Pledge of public housing assets*. A PHA may not pledge any public housing assets, unless specifically approved by HUD. PHAs seeking HUD approval of a pledge of public housing assets must submit documentation to HUD that details the nature and priority of the pledge.

(4) *Variable interest rate*. Variable interest rates may be approved subject to any conditions HUD may determine appropriate.

(5) *Other Pledges or Commitments*. PHAs seeking approval of a pledge of public housing assets must describe the nature and extent of existing commitments or pledges of public housing assets, providing documentation of such other commitments or pledges to the extent required by HUD.

(6) Financing documents must include any other terms and conditions as required by HUD.

(m) *Fairness opinion*. The PHA shall provide an opinion, in a form and manner prescribed by HUD, from a qualified, independent, third-party financial advisor attesting that the terms and conditions of the proposed financing transaction are reasonable given current market conditions with respect to such matters as interest rate, fees, costs of issuance, call provisions, and reserve fund requirements.

(n) *Construction management and financial controls.* (1) The PHA shall have a plan describing how the PHA will ensure that:

(i) Adequate controls are in place regarding the use of the operating fund financing proceeds; and

(ii) The improvements will be developed and completed in a timely manner consistent with the contract documents.

(2) This plan shall contain protocols and financial control mechanisms that address the design of the improvements, construction inspections, construction draws, and requisition approval checks and balances. A PHA that is designated Troubled under PHAS, or other PHAs as determined by HUD, may be required to institute risk mitigation measures, as approved by HUD, to ensure that the funds are used properly and for the purposes intended.

(o) *Work items*. To the extent any changes in work items financed by operating fund financing proceeds meet the following threshold requirements determined by HUD, PHAs must obtain written approval of amendments to their operating fund financing proposal from HUD:

(1) A change in the type of activity being financed (*e.g.*, if the approved proposal contemplated the proceeds being used for modernization, but after the proposal is approved, the PHA decides instead to pursue development);

(2) A change in the project being modernized or developed with the proceeds;

(3) A reduction of 20 percent or more in the number of public housing units being modernized; or

(4) An increase of 20 percent or more of the cost of nondwelling space.

(p) *Applicability of other federal requirements*. The proceeds of the operating fund financing shall be treated as capital funds under 24 CFR part 905, and are subject to all laws, regulations, and other requirements applicable to the use of capital fund grants made under 24 CFR part 905, unless otherwise approved by HUD in writing.

(q) *Performance measures*. The PHA is required to identify in its annual capital plans specific items of work that will be accomplished using the proceeds in the proposed financing proposal. The items, which shall be quantifiable, shall be the basis on which HUD evaluates a PHA's performance. Failure to meet the performance measures may result in:

(1) Failure to receive HUD approval for future financing transactions;

(2) Failure to be considered for future competitive grant programs; and

(3) Other sanctions HUD deems appropriate and as authorized by law or regulation.

(r) *Reporting requirements*. (1) The PHA shall submit a performance and evaluation report that includes, in addition to information on capital expenses and expenditures, a narrative describing the progress that has been made to date with the improvements associated with the operating fund financing transaction. At a minimum, the narrative shall discuss the progress of the construction against the schedules, any problems encountered, cost overruns, and any associated claims or litigation. The performance and evaluation report should be submitted to the HUD Field Office on a quarterly basis within 30 days of the end of each quarter, as well as annually in the PHA plan, until a Cost Certification has been accepted by HUD.

(2) A Cost Certification for an operating fund financing transaction must be included in a PHA's annual audit.

(s) *Type of Security Interest Pledged*. As part of its submission package, the PHA must state the type/nature of the security interest that will be pledged.

(t) *Eligibility of Operating Subsidy for Costs of Repaying Debt*. Operating subsidy made available in a fiscal year may be used for the costs of repaying debt incurred to finance the rehabilitation and development of public housing units. Current operating subsidy may be used for the costs of repaying debt for prior rehabilitation and development of public housing units that become due in the current calendar year.

§ 990.410 Submission requirements.

(a) All requests for HUD approval of operating fund financing transactions shall be submitted to the Assistant Secretary for Public and Indian Housing or the Assistant Secretary's designee. The PHA shall provide an original and two copies of each submission. The PHA also shall submit a copy to its local HUD Field Office.

(b) Each financing proposal shall be tabbed and presented with the following information in the order listed:

(1) *PHA transmittal letter*. A letter signed by the PHA Executive Director (or Chief Executive Officer, if applicable) transmitting the request for HUD approval of the operating fund financing transaction.

(2) *Term sheet*. The HUD-prescribed Term Sheet describing the basic terms of the transaction and financing structure, including the amount of the financing, the term, interest rates, security, and reserve requirements.

(3) *Financing documents*. A complete set of the financing documents that the PHA will execute in connection with the financing transaction. The financing documents must identify the nature and extent of any security being provided, as well as the position of any security interest. The financing documents are to be submitted to HUD only after they have been negotiated and agreed upon by the other parties to the transaction. HUD will not review preliminary documents that are still under negotiation.

(4) *Specific requests*. A description of any specific HUD approvals, representations, or assurances required for closing.

(5) Other documents as required by HUD.

§ 990.415 HUD review and approval.

(a) After receipt of an operating fund financing proposal, HUD shall review the proposal for completeness. HUD will return all incomplete proposals, identifying the deficiencies, and will not take any further action. HUD will also return proposals submitted by

entities other than the PHA (*e.g.*, the PHA's consultants). HUD shall review all complete proposals for compliance with the requirements set forth above. HUD may require the PHA to make modifications to any of the items submitted and may require the PHA to resubmit all or any portion of the proposal. After HUD determines that a proposal complies with all requirements, HUD shall notify the PHA in writing of its approval and any condition(s) of the approval.

(b)(1) As applicable, with the approval letter HUD shall include two copies of an operating fund financing Amendment to Consolidated ACC (''Financing Amendment'').

(2) Within 60 days of the closing, unless the time otherwise has been extended by HUD in writing, the PHA must submit:

(i) Closing documents as directed by HUD; and

(ii) All documents that HUD requires as a condition for it to take certain actions, such as initiate debt service payments through HUD's automated systems.

(3) Failure to provide the required documents to HUD within 60 days of HUD approval of the financing transaction may result in HUD rescinding its approval.

Dated: June 8, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–13846 Filed 7–17–07; 8:45 am]

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S. 277/P.L. 110–47

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