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WHEN: Tuesday, December 11, 2007
9:00 a.m.–Noon

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS–2006–0050]

Cold Treatment Regulations; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; correction.

SUMMARY: We are correcting an error in the cold treatment regulations that resulted from the publication of an interim rule on July 2, 2007, that was effective on August 31, 2007, and the publication of a separate final rule on July 18, 2007, that was effective on August 17, 2007. Because the July 18 final rule reorganized the cold treatment regulations, changes we made in the July 2 interim rule inadvertently removed provisions relating to places for cold treatment and ports of entry from the regulations when the interim rule became effective on August 31, 2007. This correction amends the regulations by reinstating those provisions.

DATES: *Effective Date:* December 11, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P.S. Gadh, Senior Risk Manager—Treatments, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION: In an interim rule [1] titled ''Cold Treatment Regulations'' and published in the **Federal Register** on July 2, 2007, with an effective date of August 31, 2007 (72 FR 35909–35915, Docket No. APHIS–2006–0050), we amended 7 CFR 305.15 by making several changes to the requirements for cold treatment enclosures and the requirements for conducting cold treatment.

In a separate final rule [2] titled ''Revision of Fruits and Vegetables Import Regulations'' and published in the **Federal Register** on July 18, 2007 and effective August 17, 2007 (72 FR 39481–39528, Docket No. APHIS–2005–0106), we revised and reorganized 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to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and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.

As part of the July 18 final rule, we reorganized the cold treatment regulations in § 305.15 by moving requirements that had previously been found in the regulations governing the importation of fruits and vegetables, specifically in § 319.56–2d, to § 305.15. The final rule moved into § 305.15 all the provisions contained in § 319.56–2d that were not already present in § 305.15. The regulations were otherwise not amended. However, these changes necessitated a reorganization of the regulations in § 305.15.

In a technical amendment [3] that was effective and published in the **Federal Register** on August 31, 2007 (72 FR 50201–50204, Docket No. APHIS–2006–0050), we attempted to reconcile the July 2 interim rule and the July 18 final rule to ensure that the changes in the July 2 interim rule would appear correctly in the regulations as they had been reorganized by the July 18 final rule. However, we overlooked one aspect of their interaction. The July 2 interim rule amended paragraph (b) of § 305.15, which had included requirements for cold treatment enclosures. The July 18 final rule moved these requirements to paragraph (c) of the regulations, adding requirements for places of treatment and ports of entry that had previously been contained in the fruits and vegetables regulations to the cold treatment regulations as a new paragraph (b).

While the August 31 technical amendment correctly amended paragraph (c) to be consistent with the provisions of the interim rule, it did not specify that paragraph (b) should continue to read as it was established by the July 18 final rule. Thus, the July 2 interim rule amended paragraph (b) by removing the requirements for places of treatment and ports of entry, adding in their place the cold treatment enclosure provisions that the August 31 technical amendment had also added in paragraph (c). This document corrects that error by reinstating the requirements for places of treatment and ports of entry that had been established in paragraph (b) by the July 18 final rule.

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 305 is corrected by making the following correcting amendments:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for 7 CFR 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.

■ 2. In § 305.15, revise paragraph (b) to read as follows:

§ 305.15 Treatment requirements.

* * * * *

(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;

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main-DocketDetail&d=APHIS-2006-0050.*

[2] To view the final rule, go to *http://www.regulations.gov/fdmspublic/component/main?main-DocumentDetail&d=APHIS-2005-0106-0060.*

[3] To view the technical amendment, go to *http://www.regulations.gov/fdmspublic/component/main?main-DocketDetail&d=APHIS-2006-0050.*

Seattle, WA; Corpus Christi, TX; and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; and Hartsfield-Atlanta International Airport, Atlanta, GA.

* * * * *

Done in Washington, DC, this 5th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–23944 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1924 and 1944

Rural Housing Service

7 CFR Part 3550

RIN 0575–AC65

Thermal Standards

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (Agency) is amending its regulations to be consistent with other Federal agencies. The current thermal standards for existing single family housing can impose an unnecessary financial burden on the borrower and are not always cost-effective. Removing the thermal standards for existing single family housing will provide consistency with HUD. This change will not affect the thermal standards for new construction; such requirements are generally prescribed by adopted building and model energy codes. Construction materials and building techniques have improved tremendously during the last thirty years, creating many alternatives to achieve thermally efficient homes. Removing the Agency's imposed thermal standards for existing single family housing will give a borrower the opportunity to allocate money towards other improvements which may result in higher cost savings. The rule will not result in any increase in costs or prices to consumers; non-profit organizations; businesses; Federal, State, or local government agencies; or geographic regions.

DATES: *Effective Date:* January 10, 2008.

FOR FURTHER INFORMATION CONTACT: Michel Mitias, Technical Support Branch, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, STOP 0761, 1400 Independence Avenue, SW., Washington, DC 20250–0761; Telephone: 202–720–9653; FAX: 202–690–4335; E-mail: *michel.mitias@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

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

Civil Justice Reform

In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

Regulatory Flexibility Act

The Administrator of the Agency has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Unfunded Mandates Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Programs Affected

The programs affected are listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Direct and Guaranteed/Insured).

Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Intergovernmental Review

The Agency conducts intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' and in 7 CFR part 3015, subpart V. The Very Low to Moderate Income Housing Loans Program, Number 10.410, is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. An intergovernmental review for this revision is not required or applicable.

Paperwork Reduction Act

There are no new reporting and recordkeeping requirements associated with this rule.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E–GOV compliance related to this final rule, please contact Michel Mitias, 202–720–9653.

Background

The quality of construction, age, and condition of an existing dwelling financed through the Agency's single family housing programs may have a significant impact on the unit's thermal efficiency. The Agency should consider the thermal performance of a home as part of its overall condition, rather than a separate factor.

Newer residences, or older residences currently in average or good condition, generally can be accepted as being representative of their community, and

are likely to have average thermal efficiency for the market in which they are located. These homes represent a typical residence in terms of overall design, construction, and appeal in the marketplace, and can be presumed to have reasonable, overall thermal performance.

Aging residences, particularly those with significant deficiencies, or those designated as being in only fair condition or less could represent a higher risk to the borrower and the Agency. Homes with older effective ages or in fair condition may be financed in some circumstances with certain upgrades, but should be thoroughly and carefully inspected to insure the overall soundness of the collateral, including thermal components. These homes may require thermal and insulation upgrades in order to ensure reasonable (average) heating and cooling costs for borrowers.

The Agency's thermal standards for existing construction, or similar standard, may serve as a guide for an energy efficient home; however we recognize that incremental improvements to existing homes to reach this standard may not always be cost effective. The Agency should look at homes to be financed based on their overall condition. When a home needs improvement in order to be acceptable for our financing, the focus should be on reducing the effective age by improving the existing overall condition as well as increasing energy efficiency.

A combination of Uniform Residential Appraisal Report (URAR) designations for ''quality of construction'' and ''condition'', as well as ''age'' and ''effective age'' may be used to judge the overall condition of a home, and whether additional analysis needs to be undertaken to ensure the dwelling will be reasonably thermally efficient for the market in which it is located. In addition, an on-site inspection by an Agency representative or designee may provide further information on the thermal performance of a home. Hence, the Agency has determined that it is no longer necessary to impose thermal standards for existing single family housing.

This change will not be subject to Section 509(a) of the Housing Act of 1949 because it pertains only to existing single family housing. All new single family housing construction must comply with the Minimum Property Standards (MPS) adopted by the Department of Housing and Urban Development (HUD), as well as national model codes adopted by the applicable jurisdiction, locality, or state.

Comments on the Proposed Rule and Responses

The Proposed Rule was published on May 16, 2007 [72 FR 27470–27471]. The Agency received a total of 51 comments. Only one comment was negative. A majority of the comments addressed the additional burden of thermal requirements for existing construction as a hindrance in the loan making process. Commenters also noted that these requirements did not increase the efficiency of the home significantly with the standards that have been in place over the last 20 years. A majority of the comments addressed the fact that more loans will be able to be provided to rural America by not imposing thermal standards on homes with materials and systems that have improved since this requirement was imposed. The general consensus is that the importance of energy efficient housing should be of utmost importance, but should not be a contingency upon which a home loan approval is determined. This goal can be met without imposing the existing thermal standards and can be accomplished by homebuyer education, as well as other government sponsored programs supporting energy efficient methods and systems. The end result will allow the Agency to provide more loans to eligible borrowers, while streamlining this process to conform to other government agencies. In general, the comments were very supportive of the proposed rule.

The negative comment (Comment Reference RHS–07–SFH–0012–0004) mainly focused on the need for energy conservation and that this rule would not support this goal. There are other methods of energy conservation for existing construction that can be more beneficial to the borrowers than what the Agency has required. The Agency has added guidance to its Handbook that provides alternative methods and practices to achieve an energy efficient home. This was put into effect as an alternative to imposed thermal requirements on potential borrowers seeking Agency financing for existing housing.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

7 CFR Part 1944

Grant programs—Housing and community development, Home improvement, Rural housing, Nonprofit organizations, Loan programs—Housing and community development.

7 CFR Part 3550

Accounting, Grant programs—Housing and community development, Housing, Loan programs—Housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

■ Accordingly, chapters XVIII and XXXV, title 7, of the Code of Federal Regulations are amended to read as follows:

PART 1924—CONSTRUCTION AND REPAIR

■ 1. The authority citation for part 1924 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Planning and Performing Construction and Other Development

■ 2. Exhibit D of subpart A is amended by:
■ A. Removing the last sentence in paragraph II;
■ B. Removing and reserving paragraph IV B;
■ C. Revising the words ''paragraphs IV A and IV B'' in paragraph IV C 1 to read ''paragraph IV A'';
■ D. Revising the words ''paragraphs IV A and B'' in paragraph IV C 2 to read ''paragraph IV A'';
■ E. Revising the words ''paragraphs IV A or B'' in the first and last sentences of paragraph IV C 2b, and in paragraphs IV C 3 introductory text, IV C 3a and IV C 3b to read ''paragraph IV A''; and
■ F. Removing the words ''or B'' in paragraphs IV C introductory text and IV C 3c.

PART 1944—HOUSING

■ 3. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart N—Housing Preservation Grants

§ 1944.656 [Amended]

■ 4. Section 1944.656 is amended by:
■ A. Revising the second sentence in the definition for ''Housing preservation'' to read ''As a result of these activities, the overall condition of the unit or dwelling must be raised to meet Thermal Standards for existing structures adopted by the locality/jurisdiction and applicable development standards for existing housing recognized by RHS in subpart A of part 1924 or standards

contained in any of the voluntary national model codes acceptable upon review by RHS.''

■ B. Revising the third sentence in the definition for ''Replacement housing'' to read ''The overall condition of the unit or dwelling must meet Thermal Standards adopted by the locality/jurisdiction for new or existing structures and applicable development standards for new or existing housing recognized by RHS in subpart A of part 1924 or standards contained in any of the voluntary national model codes acceptable upon review by RHS.''

PART 3550—DIRECT SINGLE FAMLY HOUSING LOANS AND GRANTS

■ 5. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart B—Section 502 Origination

§ 3550.57 [Amended]

■ 6. Section 3550.57(c) is amended by adding the word ''and'' after the word ''systems;'' and by removing ''and meet the thermal performance requirements for existing dwellings of 7 CFR part 1924, subpart A''.

Subpart C—Section 504 Origination and Section 306C Water and Waste Disposal Grants

§ 3550.106 [Amended]

■ 7. Section 3550.106(b) is amended by removing the words ''or thermal performance standards''.

Dated: November 28, 2007.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 07–6009 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 68

Provision of Free Public Education for Eligible Children Pursuant to Section 6, Public Law 81–874

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is removing 32 CFR Part 68, ''Provision of Free Public Education for Eligible Children Pursuant to Section 6, Public Law 81–874.'' The part has served the purpose for which it was intended and is no longer valid.

DATES: *Effective Date:* December 11, 2007.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, 703–696–4970.

SUPPLEMENTARY INFORMATION: DoD Directive 1342.16 was originally codified as 32 CFR Part 68. This Directive was canceled by DoD Directive 1342.20. Copies of DoD Directive 1342.20 may be obtained at *http://www.dtic.mil/whs/directives/.*

List of Subject in 32 CFR Part 68

Elementary and secondary education, Government employees, Military personnel.

■ Accordingly, by the authority of 10 U.S.C. 301, title 32 of the Code of Federal Regulations is amended by removing part 68:

PART 68—[REMOVED]

Dated: December 5, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–6006 Filed 12–10–07; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2005–CA–0017; FRL–8504–2]

Finding of Failure To Attain; California—Imperial Valley Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finding that the Imperial Valley serious PM–10 nonattainment area did not attain the 24-hour particulate matter (PM–10) National Ambient Air Quality Standard (NAAQS) by the deadline mandated in the Clean Air Act (CAA), December 31, 2001. In response to this finding, the State of California must submit a revision to the California State Implementation Plan (SIP) that provides for attainment of the PM–10 standard in the Imperial Valley area and at least five percent annual reductions in PM–10 or PM–10 precursor emissions until attainment as required by CAA section 189(d). The State must submit the SIP revision by December 11, 2008.

DATES: *Effective Date:* This finding is effective on January 10, 2008.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2006–0583 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrienne Priselac, EPA Region IX, (415) 972–3285, *priselac.adrienne@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

I. Background

On August 11, 2004, EPA reclassified under the Clean Air Act (CAA or the Act) the Imperial Valley PM–10 nonattainment area (Imperial area) from moderate to serious in response to the opinion of the U.S. Court of Appeals for the Ninth Circuit in *Sierra Club* v. *United States Environmental Protection Agency, et al.*, 346 F.3d 955 (9th Cir. 2003), amended 352 F.3d 1186, *cert. denied,* 542 U.S. 919 (2004). See 69 FR 48792 (August 11, 2004).

Also on August 11, 2004 (69 FR 48835), EPA proposed to find under the CAA that the Imperial area failed to attain the annual [1] and 24-hour PM–10 standards by the serious area deadline of December 31, 2001. Our proposed finding of failure to attain was based on monitored air quality data for the PM–10 NAAQS from January 1999 through December 2001. A summary of these data was provided in the proposed rule and is not reproduced here.

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the Imperial area attained the PM–10 NAAQS. Because the June 30, 2002 date has passed, EPA is required to make that determination as soon as practicable. *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990).

Section 179(c)(1) of the Act provides that attainment determinations are to be based upon an area's ''air quality as of

[1] Effective December 18, 2006, EPA revoked the annual PM–10 standard. 71 FR 61144 (October 17, 2006). References to the annual standard in this proposed rule are for historical purposes only. EPA is not taking any regulatory action with regard to this former standard.

the attainment date,'' and section 188(b)(2), which is specific to PM–10, is consistent with that requirement. EPA determines whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's Air Quality System (AQS) database. These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, appendix K.[2] For details about EPA's proposed failure to attain finding, please see the proposed rule.

II. EPA's Responses to Comments on the Proposed Rule

EPA received eight comment letters on the proposed finding. Summaries of the comments and EPA's responses are set forth below.

1. Retroactive Finding of Failure To Attain Is Unlawful

The Imperial County Air Pollution Control District (District or ICAPCD) claimed that EPA's proposed finding that the Imperial area failed to attain the serious area deadline of December 31, 2001, issued the same day as the reclassification of the area from moderate to serious, constitutes an unlawful and unjust retroactive rulemaking in that the area would be at once reclassified and punished for failing to meet the requirements of the new classification. The District strongly urged EPA to refrain from finalizing any rule that makes a nonattainment finding under these circumstances.

In support of its position that this type of rulemaking is illegal under the Administrative Procedure Act (APA), the District cited a number of federal court decisions and EPA rulemakings. The District believes that these decisions and rulemakings support its position that the nonattainment finding could create liabilities and penalties for missing long past deadlines associated with serious nonattainment areas and/or impose more rigorous requirements than would otherwise be justified, e.g., the requirement under CAA section 189(d) to submit a revised plan in 12 months rather than the 18 months allowed under section 189(b)(2) when a moderate area fails to meet its attainment deadline.

Response: At bottom, the argument that the District makes is that if the Imperial area had been reclassified as the CAA envisioned, the area would not now be subject to the requirements of section 189(d). In other words, EPA would have found that the area failed to attain the moderate area deadline of December 31, 1994 well before the serious area deadline of December 31, 2001. Consequently, the serious area plan for the Imperial area would have been due 18 months from the reclassification pursuant to section 189(b)(2) instead of being subject to the 12-month deadline in section 189(d). Furthermore, the argument goes, if the State had been able to demonstrate that attainment by 2001 was impracticable the area would have been able to avail itself of the attainment date extension provisions of section 188(e),[3] thereby potentially avoiding both the substantive and procedural requirements of section 189(d) entirely. Instead, the District argues, EPA's action has illegally circumvented the statutory scheme by precluding the area from taking advantage of allegedly more lenient submittal and substantive requirements.

The cases and EPA actions cited by the District, however, do not support its position. With respect to the Imperial PM–10 nonattainment area, EPA reclassified it from moderate to serious and immediately proposed to find that the area had failed to attain the serious area deadline. The result of these actions is that the State will be required to submit in the future a plan for the area under CAA section 189(d). In contrast, in *Sierra Club* v. *EPA*, 356 F.3d 296 (D.C. Cir. 2004), EPA set a prospective submittal date pursuant to CAA section 182(i) upon reclassification of the Washington, D.C. ozone nonattainment area from serious to severe because the severe area plan submittal deadline in the CAA had already passed. Similarly, in several other ozone reclassification actions, EPA also determined that where a submittal date had passed and was therefore impossible to meet, the Agency could administratively establish a later date. EPA's reasoning in these cases was that to do otherwise would have subjected these areas to an immediate finding of failure to submit and the immediate initiation of sanctions clocks.[4]

In the case of Washington, DC, EPA stated in its final rule that ''the Administrative Procedure Act * * * requires that before a rule takes effect, persons affected will have advance notification of its requirements. A failure to meet an obligation, especially one accompanied by sanctions, cannot occur in advance of the imposition of that obligation.'' 68 FR at 3414. The Court of Appeals agreed, quoting EPA, ''that adopting petitioner's suggestion [that EPA retain the original submittal deadlines] 'would give the reclassification retroactive effect by holding the States in default of their submission obligations before the events necessary to trigger that obligation (reclassification) * * * occurred.' '' 356 F.3d at 309.

In *Sierra Club* v. *Whitman*, 130 F.Supp. 2d. 78 (D.D.C. 2001), cited by the D.C. Circuit in *Sierra Club* v. *EPA* above and the District in its comment letter, and affirmed in *Sierra Club* v. *Whitman*, 285 F.3d 63, 68 (D.C. Cir 2002), the plaintiffs sought to compel EPA to backdate a nonattainment determination to the date on which the Agency was statutorily required to make such a determination. In affirming the District Court's denial of the relief sought, the D.C. Circuit opined that:

> Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the matter worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.

Id. at 68.[5]

In the instant case, however, by giving the State the benefit of a future plan submittal deadline for the Imperial area, EPA's action is consistent with the holdings of the cases and with the EPA regulatory actions cited by the District.

[2] Pursuant to appendix K, attainment of the 24-hour PM–10 NAAQS is achieved when the expected number of exceedances of the 24-hour NAAQS (150 mg/m^3) per year at each monitoring site is less than or equal to one. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the 24-hour standard for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

[3] Section 188(e) provides for a one-time extension of the attainment deadline for serious PM–10 nonattainment areas if certain conditions are met. However such an extension cannot extend beyond December 31, 2006. Because that date has now passed, a section 188(e) extension for the Imperial area is unavailable under any circumstances. Nevertheless we address in this final rule the comments we received relating to section 188(e) insofar as doing so enables us to fully respond to those comments. For example, here a discussion of section 188(e) is relevant to the District's claim, among others, that EPA's action subjects the area to more stringent requirements than otherwise would have been imposed.

[4] See Washington, DC, 68 FR 3410, 3413 (January 24, 2003). See also Santa Barbara, California, 62 FR 65025 (December 10, 1997); Phoenix, Arizona, 62 FR 60001 (November 6, 1997); and Dallas-Fort Worth, Texas, 63 FR 8128 (February 18, 1998).

[5] The District also cites *Georgetown University Hospital* v. *Bowen* in which a federal agency reissued a procedurally defective rule and gave it retroactive effect. Both the D.C. Circuit and the U.S. Supreme Court invalidated the action, finding, among other things, that under the APA legislative rules must be given future effect only. 821 F.2d 759 (D.C. Cir. 1987); 488 U.S. 204 (1988).

Under section 189(d), the State must submit a plan revision for the Imperial area ''within 12 months after the applicable attainment date. * * *'' That date was December 31, 2002. However, because, at the time of EPA's proposed finding of failure to attain, that date had already passed, EPA proposed that the section 189(d) plan revision be due ''within one year of publication of a final finding of nonattainment pursuant to CAA section 179(d).'' 69 FR at 48837. Thus, rather than invoking the long past submittal deadline in section 189(d), EPA looked to another provision of the Act to supply a prospective deadline. In doing so, EPA alleviated the problem of imposing a retroactive deadline without imposing immediate sanctions.

While it is true, as the District points out, that a serious PM–10 area proceeding initially under section 189(b) instead of section 189(d) would in theory have had more time to submit a plan (18 rather than 12 months), in both instances the submittal deadlines are prospective and not retroactive. Furthermore, as we point out in our response to comment #3 below, the section 189(d) plan that the State is now required to submit is actually due later than the serious area plan would have been due under the scenario preferred by the District. Therefore, the retroactive penalty the District complains of with respect to the plan submittal deadline simply does not exist.

Moreover, while it is also true that, as a result of EPA's nonattainment finding, the Imperial area must comply with the substantive requirements of CAA section 189(d) instead of those of section 188(e), this consequence cannot be construed as ''punishment.'' Under both sections 189(d) and 188(e), implementation of best available control measures (BACM) under section 189(b)(1) and attainment of the PM–10 standards as expeditiously as practicable are required. In addition, while the respective substantive requirements of sections 188(e) and 189(d) are different, neither are necessarily more onerous than the other. See Corrected Brief of Respondent EPA, pages 40–42, in *Association of Irritated Residents, et al.* v. *EPA*, 423 F.3d 989 (9th Cir. 2005). Only if the State fails to submit the new plan in the future could sanctions come into play. Thus the substantive consequences here of EPA's nonattainment finding are not in fact retroactive, nor do they impose a penalty.

For the reasons discussed in its proposed finding, EPA is legally compelled to finalize the nonattainment finding with the result that section 189(d) applies to the Imperial area. The section 189(d) plan is due within one year of publication of this final finding of nonattainment.[6]

2. Waive the Attainment Date and Related Requirements

Several commenters suggested that instead of finding that the Imperial area failed to attain the serious area attainment date, EPA should waive that date and the related submittal requirements and penalties to reduce the burden of the Agency's action on Imperial County. While two commenters who suggested this approach did not describe EPA's legal authority to grant a waiver, one commenter, the District, cited CAA section 188(f) as providing EPA with the authority to waive a specific attainment date where the Agency determines that nonanthropogenic sources contribute significantly to violations in the area and to waive any requirement applicable to any serious PM–10 area where anthropogenic sources do not contribute significantly to violations. The District stated that in the Imperial area, dry soil from vast barren lands are entrained by high winds producing an impact on the monitors. The District asserted that EPA has determined that this type of dust raised by high wind events constitutes a nonanthropogenic source of PM–10 pursuant to section 188(f) and, citing a May 30, 1996 EPA memorandum, that monitoring data impacted by such events may be excluded from consideration in attainment decisions.

Response: Congress recognized in the Clean Air Act that there may be areas where the NAAQS may never be attained because of PM–10 emissions from nonanthropogenic sources, and that the imposition in such areas of certain state planning requirements may not be justified. Therefore, under section 188(f), Congress provided a means for EPA to waive a specific date for attainment and certain control and planning requirements when specified conditions are met in a nonattainment area. Section 188(f) provides two types of waivers. First, EPA may, on a case-by-case basis, waive any PM–10 nonattainment planning requirement applicable to any serious nonattainment area where EPA determines that anthropogenic sources of PM–10 do not contribute significantly to violation of the standards in the area. Second, EPA may waive a specific date for attainment of the standards where EPA determines that nonanthropogenic sources of PM–10 contribute significantly to the violation of the standards in the area.[7] In the Addendum, EPA set forth threshold levels for determining whether areas qualify for waivers under section 188(f). Addendum at 42004–42005.

In its comment letter, the District included and discussed a report[8] that it characterized as showing that windblown dust from barren lands represents over 92% or 792 tons per day (tpd) of the total PM–10 inventory in Imperial County. The District maintained that ''high winds frequently entrain large amounts of this dry soil into the ambient air, producing a documented impact on County monitors.'' As a result of comments provided to the District by EPA and the California Air Resources Board (CARB), the Windblown Dust Study was revised in 2005.[9] The Revised Study concluded, among other things, that there are 157 tpd of fugitive dust emissions from barren lands. Revised Study at A–15. The Windblown Dust Study and the Revised Study are primarily inventories of windblown dust emissions in Imperial County. These documents do not address the requirements of section 188(f) and EPA's guidance on that provision. Therefore they do not provide sufficient analysis and documentation to support a waiver of either the December 31, 2001 attainment deadline or any of the serious area requirements. However, the section 188(f) waivers, if the conditions for them can be met, are available to the State in the context of the section 189(d) serious area plan.[10]

The May 30, 1996 memorandum cited by the District is entitled ''Areas Affected by PM–10 Natural Events'' and

[6] Our rationale for this plan submittal deadline is discussed in the proposed rule. See at 69 FR at 48837.

[7] 59 FR 41998 (August 16, 1994) (''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (Addendum)).

[8] *Development of a Wind Blown Fugitive Dust Model and Inventory for Imperial County, California, ENVIRON International Corporation and Eastern Research Group,* 2004 (Wind Blown Dust Study).

[9] *Technical Memorandum: Latest Revisions of the Windblown Dust Study,* ENVIRON International Corporation, September 20, 2005 (Revised Study), attached as Appendix A to *Draft Final Technical Memorandum, Regulation VIII BACM Analysis,* ENVIRON, October 2005 (Regulation VIII BACM Analysis).

[10] With respect to the section 188(f) waiver of serious area requirements, EPA cautions that while the District in its comment appears to characterize the predominant issue in the Imperial area to be nonanthropogenic sources, the District has identified anthropogenic PM–10 source categories that contribute significantly to peak 24-hour average PM–10 values in the area. See Regulation VIII BACM Analysis.

is from Mary Nichols, Assistant Administrator for Air and Radiation to EPA Regional Division Directors (Natural Events Policy or NEP). This policy provides, among other things, that EPA believes it is appropriate to exclude air quality data attributable to uncontrollable natural events from the Agency's decisions regarding an area's attainment status. NEP at p. 2.[11] In the case of high winds, under the NEP EPA considers ambient PM–10 concentrations due to dust raised by unusually high winds as due to uncontrollable natural events (and thus excludable from attainment determinations) if either (1) the dust originated from nonanthropogenic sources or (2) the dust originated from anthropogenic sources controlled with BACM. NEP at pp. 4–5.

The NEP sets forth a process for declaring an exceedance as due to natural events and for documenting a natural events claim. NEP at pp. 7–10. Where a state believes that natural events caused the NAAQS exceedances it must establish through supporting documentation a clear causal relationship between the exceedance and the natural event. The amount and type of documentation must be sufficient to demonstrate that the natural event occurred and that it impacted a particular monitoring site in such a way as to cause the PM–10 concentrations measured. The documentation also should provide evidence that, absent the natural event emissions, concentrations at the monitoring site would not cause an exceedance.

Under the NEP, when air quality data affected by a natural event are submitted to EPA for inclusion into the AIRS database,[12] the state is to request that a flag be placed on the data to indicate that a natural event was involved. NEP at 8–9. A number of exceedances in 1999–2001 in the Imperial area were flagged as high wind and other natural events. Under the NEP, the documentation supporting a natural events flag was required to be submitted no later than 180 days from the time the exceedance occurred. However no documentation with respect to the 1999–2001 exceedances was submitted to EPA.[13] Because the State did not comply with the provisions of the NEP, the flagged 1999–2001 data cannot be excluded as affected by natural events from EPA's determination of whether the Imperial area attained the PM–10 standard by December 31, 2001.

3. EPA Should Grant a 5-Year Extension To Allow More Time To Develop Plan

Several commenters opposing our proposed action stated that our proposed time frame for the development and submittal of a serious area PM–10 plan, including a CAA section 189(d) plan, was too short, and that EPA should grant a 5-year extension of the attainment date for the Imperial area to provide time for preparation, submittal and consideration of an attainment demonstration. Of the commenters making this request, only the District cited any legal authority for a 5-year extension: ''* * * The District requests that EPA withdraw its proposed 12-month deadline for the County's serious area SIP submittal * * * and instead grant a five-year extension under Section 188(e) to allow sufficient time for preparation, submittal and consideration of the County's final PM–10 attainment demonstration.'' The District characterized the 12-month plan submittal schedule as ''abbreviated'' and as a ''penalty.'' One of the commenters suggesting the 5-year extension approach urged EPA to utilize our discretion under the CAA to extend the time allowed to prepare a plan so that unwarranted imposition of additional measures could be avoided.

Another commenter stated that although a preferable outcome would have been an extension of the attainment date, it was clear that no attainment date extension was in place, and thus, the finding of failure to attain by EPA was mandatory under the Clean Air Act with the one-year deadline for an attainment demonstration.

Response: CAA section 188(e) provides that, upon application by a state, EPA may extend the attainment deadline for a serious PM–10 nonattainment area no more than 5 years beyond, in this case, December 31, 2001, if: (a) Attainment by that date would be impracticable; (b) the state has complied with all requirements and commitments in the implementation plan for the area; and (c) the state demonstrates that the plan contains the most stringent measures (MSM) in the plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area. The state must submit at the time of its extension application a demonstration of attainment by the most expeditious alternative date practicable.

As stated above, the Imperial area is no longer eligible for an attainment date extension under section 188(e) because that extension cannot extend beyond 2006. Regardless, the attainment date extension provided for in section 188(e) does not relate in any way to the submittal date for a serious area plan. Rather, under the Act, submittal dates for serious area PM–10 plans are initially governed by subpart 4 of part D of the CAA, i.e, either by section 189(b)(2) or 189(d). As explained in the proposed rule, EPA believes that section 189(d) applies to the Imperial area's situation. 69 FR at 48837. In the first instance, EPA looked to this provision, which applies exclusively to PM–10 nonattainment areas, for the applicable submittal date for the Imperial area's section 189(d) plan. Because the deadline for plan submittal under that section, December 31, 2002 has passed, EPA looked to subpart 1 of part D of the CAA in order to determine Congressional intent. Section 179(d) requires submittal of a plan revision within one year after EPA publishes a notice of a finding of failure to attain.

In case of the Imperial area, the application of the deadline provided for in section 179(d) has already resulted in a significantly longer time for submittal of the serious area plan than the deadline that would otherwise have applied. If the Imperial area had been reclassified to serious prior to the end of 2001, it would have been subject to section 189(b)(2). As such, the deadline for submittal of a serious area plan would be 18 months from the date of the reclassification. The effective date of the reclassification here was September 10, 2004; therefore, the alternative to the due date provided in section 179(d) would result in the plan having been due by March 10, 2006. Instead, the area's serious area plan is not due until one year from publication of the **Federal Register** notice of this action. EPA knows of no legal theory that would allow the Agency to provide the 5 years apparently sought by the commenters

[11] On March 22, 2007, EPA issued a final rule, intended to replace the NEP, governing the review and handling of air quality data influenced by exceptional events. 72 FR 13560. The rule became effective on May 21, 2007 and is codified at 40 CFR 50.1, 50.14 and 51.920. 72 FR 13560, 13580–13581. However, as discussed below, the 1999–2001 data relevant to this final action are not eligible for exclusion under the transition policy for the rule because the State did not meet the provisions of the NEP that were applicable at the time of the exceedances. See 72 FR 49046, 49048 (August 27, 2007).

[12] The AIRS database is the predecessor to the AQS database.

[13] Note that even if adequate documentation had been submitted for the flagged events, the Imperial area would not have attained the PM–10 standard because of the number of unflagged exceedances. See ''Imperial valley PM10 Exceedances 1999–2001,'' Excel Spreadsheet, Bob Pallarino, EPA.

for the development and submittal of a serious area PM–10 plan.[14]

4. Economic Hardship

A number of commenters claimed that an EPA finding of failure to attain would result in adverse economic consequences for Imperial County. One commenter stated that the County has one of the poorest economies in the State, that EPA's finding will place an undue hardship on an economy that is already on the brink of breaking, and that the Agency should take economic justice into account. Another commenter suggested that another set of government-imposed regulations would place an unnecessary financial hardship on area companies and could possibly disrupt farming operations. Another commenter cited the County's high unemployment rate that would increase under severe emission control requirements that undermine an agriculture-dependent economy. The commenters attributed these perceived hardships to various factors they believe to be related to a nonattainment finding: the five percent and BACM requirements applicable to serious PM–10 attainment areas; the inability of the County to control Mexican emissions; and the prevalence of high wind natural events. We address each of these factors below.

A. Five Percent and BACM Requirements

A number of commenters opposed to our proposed rule requested that EPA reduce or remove entirely the proposed requirement that Imperial County submit a plan that achieves at least 5 percent annual reductions in PM–10 or PM–10 precursor emissions as required by CAA section 189(d). Some commenters stated that this requirement was not feasible or was too burdensome for Imperial County. Another commenter attributed severe economic consequences to the serious area plan requirements for expeditious implementation of BACM.

Response: As stated above and in the proposed rule, EPA is legally compelled to finalize the nonattainment finding with the result that the 5 percent requirement of section 189(d) applies. Under section 189(b)(1)(B), the serious area PM–10 plan for the Imperial area is required to provide for the expeditious implementation of BACM. This requirement applies as a result of the Imperial area's reclassification to serious which was mandated by the U.S. Court of Appeals for the Ninth Circuit in *Sierra Club* v. *U.S. Environmental Protection Agency, et al.*, 346 F.3d 955 (9th Cir. 2003), amended 352 F.3d 1186, *cert. denied*, 542 U.S. 919 (2004). Therefore BACM would have to be implemented in the Imperial area even in the absence of EPA's finding that the area failed to attain the PM–10 standards by the end of 2001.

EPA has defined BACM as: ''* * * The maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant.'' Addendum at 42010. Therefore, while EPA cannot take into account the general economy of a nonattainment area in determining what statutory requirements apply in a serious nonattainment area, it can consider the cost of reducing emissions from a particular source category and costs incurred by similar sources that have implemented emission reductions. In addition, where the economic feasibility of a measure depends on public funding, an appropriate consideration is past funding of similar activities as well as availability of funding sources. *Id.* at 42013. Nevertheless, the CAA still requires that the State submit a plan for the Imperial area to, among other things, attain the PM–10 NAAQS as expeditiously as practicable. Moreover, there are economic benefits to attaining the NAAQS.

B. Mexican Emissions

Several commenters felt that the economic hardship was a result of the failure of EPA, in its proposed action, to consider the fact that significant amounts of particulate matter air pollution in Imperial County emanate from the large and growing city of Mexicali, Mexico. Many commenters opposing our proposed rule stated that EPA ignored the fact that emissions from Mexico are one of the reasons that poor air quality exists in Imperial County. Some commenters pointed out that in the past, EPA has agreed that Imperial County would have attained the PM–10 NAAQS but for emissions from Mexico (e.g., EPA's approval of CAA section 179B demonstration; 66 FR 53106, October 2001). Additionally, the commenters claimed that the PM–10 plan needs to include consideration of how emissions from Mexico impact the attainment of the PM–10 NAAQS in Imperial County.

Response: As explained in our proposed rule, EPA has the responsibility, pursuant to CAA sections 179(c) and 188(b)(2), to determine within 6 months of the applicable attainment date whether a PM–10 nonattainment area attained the 24-hour NAAQS. Section 179(c)(1) of the Act provides that determinations of failure to attain are to be based upon an area's ''air quality as of the attainment date,'' and section 188(b)(2) is consistent with this requirement. EPA determines whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's AQS database. These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, appendix K. 69 FR at 48836. Thus, neither the CAA nor EPA regulations authorize the Agency to consider the economic circumstances of an area in making a finding of attainment or nonattainment; the determination is to be made solely on the basis of the ambient air quality in the area. Similarly, neither the CAA nor EPA regulations allow EPA to ignore the actual attainment status of an area based on the influx of a pollutant from another country. The attainment status is intended to reflect the actual ambient pollutant levels.

Section 179B(d) of the Act does allow a moderate PM–10 nonattainment area to avoid a reclassification to serious if a state establishes to the satisfaction of EPA that such an area would have attained but for emissions emanating from outside the United States. EPA did approve such a demonstration for the Imperial area but that approval was overturned by the Ninth Circuit in *Sierra Club*. See the discussion of this case and its aftermath, 69 FR at 48835. The State can, however, take the effect of Mexican emissions into account in addressing the CAA section 189(d) attainment demonstration requirement. See CAA section 179B(a) and the Addendum at 42000–42002. In this regard, note that section 179B does not provide authority to exclude monitoring data influenced by international transport from regulatory determinations related to attainment and nonattainment. Thus, even if EPA approves a section 179B ''but for'' demonstration for an area, the area would continue to be designated as nonattainment and subject to the applicable requirements, including nonattainment new source review,

[14] We note that subpart 4 of part D of title I which contains the Act's provisions specific to PM–10 does not have a provision that is analogous to section 182(i) which grants EPA considerable latitude to adjust submittal and other schedules upon an ozone area's reclassification. See also section 187(f).

nonattainment conformity, and other measures prescribed for nonattainment areas by the CAA.

C. High Wind Events

Several commenters felt that the economic hardship was a result of the failure of EPA's proposal to consider the fact that significant amounts of particulate matter air pollution in Imperial County are the result of high wind natural events. To support their claims, commenters cited the Wind Blown Dust Study.

Response: As discussed in our response to comment #2, EPA will under certain circumstances exclude from attainment determinations ambient PM–10 concentrations due to dust raised by unusually high winds. However, the State did not provide documentation to support the flagged high wind events from 1999–2001 and the data are therefore not eligible for exclusion here.[15] Moreover, as noted previously, even if the State had met the provisions of EPA's NEP that were applicable at the time of the relevant exceedances, the Imperial area would not have attained the PM–10 standard by December 31, 2001. The State can, however, if it meets the requirements of EPA's exceptional events rule, take future unusually high winds into account in developing its CAA section 189(d) attainment demonstration. See 72 FR at 13565–13566 and 13576–13577.

5. Governmental Entities Should Work Together

One commenter urged EPA to immediately initiate a coordinated effort involving the federal government, Mexican government counterparts and County officials to develop a federally funded international plan to reduce emissions. Another commenter requested that, given the short time provided in the CAA to develop and submit a plan in this case, and the need for the plan to consider international transport, and perhaps, nonanthropogenic sources, EPA be involved early in the plan development to ensure a timely plan submittal. One commenter also stated that EPA needs to work with other governmental agencies to implement reasonable policies for controlling PM–10 pollution in the Imperial area.

Response: EPA agrees with the commenters who encourage governmental entities to work together to address air pollution from Mexicali to Imperial County. Reducing air pollution anywhere along the U.S./Mexico border requires binational cooperation and coordination. Since 1983, EPA has been working with the Mexican Government and other stakeholders to reduce air pollution along the border region. Pursuant to the 1983 La Paz Agreement, the U.S. and Mexico developed the Border XXI Program and more recently its successor, the Border 2012 U.S.-Mexico Environmental Program. Through these programs, EPA and Mexico have worked together with border tribal, state, and local governments, as well as academia and the general public, to improve our understanding of the relative impacts of contributing international sources of air pollution and have developed and implemented cost-effective control strategies to reduce those emissions.

EPA continues to implement the Border 2012 regionally-based border program in the Mexicali-Imperial area. We are active participants in the Imperial/Mexicali Air Quality Task Force which provides a forum for the federal, state, and local governments to discuss and analyze with community stakeholders how to improve air quality in the binational region. EPA continues to fund numerous projects that study and manage air pollution in various crossborder airsheds like the Imperial/Mexicali area. In addition to supporting the District's work to develop its PM–10 plan, EPA also provides direct funding for the Mexicali-Imperial Air Quality Task Force for binational public forums to discuss the air quality of the Mexicali-Imperial region, and to carry out projects, including projects to monitor air quality (especially in Mexico), to demonstrate retrofit equipment technologies for diesel trucks, and to provide real time air quality information to residents of Imperial County.

Regarding the comment that EPA be involved early in the development of the air quality plan, we intend to provide guidance and assistance to the District and the State to support a technically sound and timely submittal.

Lastly, regarding the need to develop reasonable policies, EPA has worked closely with the State and District to improve the PM–10 emissions inventory for the Imperial area, to develop a natural events action plan (NEAP),[16] and to develop rules to control certain sources of fugitive dust in the nonattainment area.

6. Finding of Failure To Attain Is Mandatory Under the CAA and Fully Supported by Ambient Monitoring Data

One commenter stated that the proposal correctly reflects that the Imperial Valley is a serious PM–10 nonattainment area that has missed its attainment date and does not have an extension of the attainment date in place. The same commenter stated further that EPA correctly assessed that areas in situations like this have one-year to submit a plan including a 5 percent plan. Another commenter who agreed with EPA's proposed rule stated that EPA's proposal had omitted some statutory requirements (e.g., BACM implemented expeditiously, major source cutoffs), and reserved the right to comment further on EPA's proposed action on the PM–10 SIP.

Response: EPA agrees with comments supporting the proposal. We did not include a comprehensive list of the CAA requirements applicable to the Imperial area, but expect the plan to address all of them. See Section III below.

7. PM–10 Is Not a Regulated Pollutant

One commenter, California Cattlemen's Association (CCA), notes that the U.S. Court of Appeals for the District of Columbia Circuit in *American Trucking Ass'n* v. *Browner* vacated EPA's 1997 PM–10 standard because it included both coarse and fine PM and therefore was ''inherently confounded.'' CCA claims that the 1987 standard suffers from the same defect. Therefore, CCA argues, there is no 1987 standard and, as a result, the Imperial area cannot be out of compliance with it. CCA states that if EPA's response is that the 1987 standard was re-instituted in a final rule (65 FR 80776; December 22, 2000), there was not sufficient notice as that rule was noticed within a ruling for Ada County, Idaho (65 FR 39321; June 26, 2000). Also, CCA believes that because the same problem exists with the 1987 standard as the 1997 standard, simply reinstating the old standard was not the court's intention. Finally, CCA discusses EPA's then current process of revising the PM NAAQS and finds, among other things, similar confounding problems in measurements contained in studies that EPA is using to consider setting its new NAAQS.

Response: In a portion of *American Trucking Ass'ns* v. *EPA,* 175 F. 3d 1027, not later reversed by the Supreme Court, the D.C. Circuit held that, although there was ''ample support'' for EPA's decision to regulate coarse-fraction particles, EPA had not provided a

[15] See footnote 11.

[16] Under EPA's NEP, if natural events caused ambient concentrations of PM–10 that exceeded the NAAQS in an area, the State was responsible for developing a NEAP meeting certain specified requirements to address future events. NEP at 5–8. Under EPA's exceptional events rule NEAPs are not required, although similar requirements apply under 40 CFR 51.920. 72 FR at 13581.

reasonable justification for its choice of PM–10 as an indicator for coarse particles, especially given that PM–10 includes not only coarse particles but PM fine as well. 175 F. 3d at 1054–55.

Pursuant to the D.C. Circuit's decision, EPA deleted 40 CFR 50.6(d), the regulatory provision controlling the transition from the pre-existing 1987 PM–10 standards to the 1997 PM–10 standards. 65 FR 80776. EPA proposed this deletion in the context of a proposed rule to rescind a finding, made prior to the D.C. Circuit's vacatur of the 1997 standards, that the 1987 PM–10 standards no longer applied in Ada County, Idaho. As EPA explained in the proposed rule, the Ada County finding was based on the existence of the 1997 standards as well as the transition policy. Because the court vacated those standards, leaving in place the finding would have resulted in no federal protection from high levels of coarse particulate matter pollution. Finding that result untenable, EPA concluded that it was appropriate to restore the pre-existing PM–10 standards with respect to Ada County. 65 FR at 39323. As is clear from the final rule, however, the 1987 standards were never revoked with respect to the rest of the country. Therefore, although EPA deleted 40 CFR 50.6(d)(as required by the mandate of *ATA I*), the pre-existing NAAQS continue to apply. 65 FR at 80777. If CCA believes that insufficient notice was provided in connection with this final action, it was required under CAA section 307(b)(1) to file a petition for review of that action in the U.S. Court of Appeals within 60 days of December 22, 2000. CCA did not do so and is therefore foreclosed from raising this issue now.

Moreover, to the extent that CCA raises issues with respect to the pre-existing 1987 PM–10 standards, we note that those standards were upheld in *Natural Resources Defense Council, Inc., et al.* v. *EPA, et al.*, 902 F.2d 962 (D.C. Cir. 1990). In any case, the 1987 standards do not use PM–10 as an indicator exclusively for coarse particles, but rather are intended to address both PM–2.5 and PM–10–2.5, i.e. both fine and coarse particles. 52 FR 24634, 24639 (July 1, 1987). Thus, any concerns that PM–10 may be an inappropriate indicator for coarse particles exclusively are inapplicable to the 1987 standard.

When CCA submitted its comment letter in 2004, EPA was in the process of developing proposed regulations to again address thoracic coarse particles. The Agency subsequently finalized such regulations in 2006. 71 FR 61144 (October 17, 2006). CCA's concerns regarding new standards for PM–10, including putative confounding problems, were properly raised in the context of that rulemaking. In fact, challenges to the use of PM–10 as an indicator for coarse particles, as well as challenges to the scientific bases for the 2006 final rule have been raised by various petitioners in the pending D.C. Circuit cases (*American Farm Bureau Fed. et al.* v. *EPA* and consolidated cases) challenging the rule. CCA can, and is, pursuing its concerns in that forum.

III. Final Action

EPA is finding that the Imperial area failed to attain the 24-hour PM–10 NAAQS by the December 31, 2001 attainment deadline and is requiring the State to submit under section 189(d) of the Act ''plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.'' The plan must be submitted to EPA no later than one year from the publication of this final rule.

The pollutant-specific requirements for moderate and serious PM–10 nonattainment areas are found in section 189 of the CAA, and the general planning and control requirements for nonattainment plans are found in CAA sections 110 and 172. In addition to the attainment demonstration and 5 percent annual reductions requirements referenced above, the PM–10 plan for the Imperial area must include the following elements: [17]

- Transportation conformity and motor vehicle emissions budgets;
- Emissions inventories;
- Best available control measures for significant sources of PM–10;
- Reasonably available control measures for significant sources of PM–10;
- Control requirements applicable to major stationary sources of PM–10 precursors pursuant to section 189(e); and
- Reasonable further progress and quantitative milestones.

The District must also revise its new source review (NSR) rule to reflect the serious area definitions for major new sources in CAA section 189(b)(3) and must make any changes in its Title V operating permits program necessary to reflect the change in the major source threshold from 100 tpy for moderate areas to 70 tpy for serious areas. Revisions to the NSR and Title V rules must also be submitted no later than one year from the publication of this final rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely makes a determination based on air quality data and does not impose any additional requirements. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This action merely makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse

[17] For a brief discussion of these requirements, see our proposed approval of the San Joaquin Valley PM–10 plan at 69 FR 5413, 5414 (February 4, 2004). See also the final rule at 69 FR 30006 (May 26, 2004).

human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today's action involves determinations based on air quality considerations. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks''(62 FR 19885, April 23, 1997), because it is not economically significant. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: November 30, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–23943 Filed 12–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2007–0999; FRL–8504–4]

Rhode Island: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Rhode Island has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action.

DATES: This final authorization will become effective on February 11, 2008 unless EPA receives adverse written comment by January 10, 2008. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take immediate effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2007–0999, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: biscaia.robin@epa.gov.*
- *Fax:* (617) 918–0642, to the attention of Robin Biscaia.
- *Mail:* Robin Biscaia, Hazardous Waste Unit, EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023.
- *Hand Delivery or Courier:* Deliver your comments to Robin Biscaia, Hazardous Waste Unit, Office of Ecosystem Protection, EPA New England—Region 1, One Congress Street, 11th Floor, (CHW), Boston, MA 02114–2023. Such deliveries are only accepted during the Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Identify your comments as relating to Docket ID No. EPA–R01–RCRA–2007–0999. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://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 *http://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: EPA has established a docket for this action under Docket ID No. EPA–R01–RCRA–2007–0999. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although it may be listed in the index, some information might not be 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 electronically through *http://www.regulations.gov* or in hard copy at the following two locations: (i) EPA Region 1 Library, One Congress Street—11th Floor, Boston, MA 02114–2023; by appointment only; tel: (617) 918–1990; and (ii) Rhode Island Department of Environmental Management, 235 Promenade St., Providence, RI 02908–5767, by appointment only through the Office of Technical and Customer Assistance, tel: (401) 222–6822.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; *telephone number:* (617) 918–1642; *fax number:* (617) 918–0642, e-mail address: *biscaia.robin@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their

programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We have concluded that Rhode Island's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Rhode Island final authorization to operate its hazardous waste program with the changes described in the authorization application. Rhode Island's Department of Environmental Management (RIDEM) has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program covered by its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such requirements and prohibitions in Rhode Island, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of This Authorization Decision?

The effect of this decision is that a facility in Rhode Island subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Rhode Island has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions.

This action does not impose additional requirements on the regulated community because the regulations for which Rhode Island is being authorized by today's action are already effective under State law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before This Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect adverse comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule based upon this proposed rule that also appears in today's **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

If we receive adverse comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Rhode Island Previously Been Authorized for?

Rhode Island initially received final Authorization on January 30, 1986, effective January 31, 1986 (51 FR 3780) to implement its base hazardous waste management program. We granted authorization for changes to their program on March 12, 1990, effective March 26, 1990 (55 FR 9128), March 6, 1992, effective May 5, 1992 (57 FR 8089), October 2, 1992, effective December 1, 1992 (57 FR 45574) and August 9, 2002, effective October 8, 2002 (67 FR 51765).

G. What Changes Are We Authorizing With This Action?

On April 25, 2007 EPA received Rhode Island's complete program revision application seeking authorization for their changes in accordance with 40 CFR 271.21. The RCRA program revisions for which Rhode Island is seeking authorization address Corrective Action, Used Oil and Mixed Waste requirements. The State is also seeking authorization for various changes it recently has made to its base program requirements. The State's authorization application includes such documents as a Corrective Action Program Description, a Corrective Action Memorandum of Agreement (MOA) between EPA and the RIDEM, a Radioactive Mixed Waste Program Description which also includes a Memorandum of Understanding (MOU) between Rhode Island Department of Health and RIDEM concerning Mixed Waste, a copy of RIDEM's Rules and Regulations for Hazardous Waste Management dated February 14, 2007 and a Supplement to the Attorney General's Statement.

We are now making an immediate final decision, subject to reconsideration only if we receive written comments that oppose this action, that Rhode Island's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Rhode Island final authorization for the program changes identified below. Note, the Federal requirements are identified by their checklist (CL) number and/or letter and rule descriptions followed by the corresponding state regulatory analog (''Rule'') from Rhode Island's Rules and Regulations for Hazardous Waste Management as in effect on March 4, 2007 or state statutory analog (''R.I.G.L.'') from the Rhode Island General Laws (2001 Reenactment).

First, we are authorizing revised state rules that are analogous to the following Federal rules which relate to EPA's Corrective Action program. CL 17L—HSWA Codification Rule, Corrective Action, 50 FR 28702–28755, July 15, 1985: Rule 2.02(B), 7.01(F), 7.01(G), 8.04(G), 9.03, 16.01(A), 16.01(B); CL 17 O—HSWA Codification Rule, Omnibus Provision, 50 FR 28702–28755, July 15, 1985: Rule 2.02(B), 2.03; CL 44A—HSWA Codification Rule 2, Permit Application Requirements Regarding Corrective Action, 52 FR 45788–45799, December 1, 1987: Rule 2.02(B), 8.01(G), 8.01(K); CL 44B—HSWA Codification Rule 2, Corrective Action Beyond the Facility Boundary, 52 FR 45788–45799, December 1, 1987: Rule 2.02(B), 16.01(A), 16.01(B); CL 44C—HSWA Codification Rule 2, Corrective Action for Injection Wells, 52 FR 45788–45799, December 1, 1987: Rule 7.01(F); CL 121—Corrective Action Management Units and Temporary Units; Corrective

Action Provisions Under Subtitle C, 58 FR 8658–8685, February 16, 1993: Rule 2.02(B), 3.00 Definitions, ''Disposal,'' ''Hazardous waste disposal facility,'' ''Facility,'' ''Landfill,'' ''remediation waste'' incorporated by reference in introductory paragraph; 7.06(B), 12.00, 16.01(A), 16.03(B); CL 175—Hazardous Remediation Waste Management Requirements (HWIR Media), 63 FR 65874–65947, November 30, 1998: Rule 2.02(B), 3.00 Definitions, ''Facility,'' ''remediation waste'' incorporated by reference in introductory paragraph, ''Remediation waste management site,'' ''staging pile'' incorporated by reference in introductory paragraph; 8.01(C), 9.12, 12.00, 16.01(A), 16.02, 16.03(B); CL 196—Amendments to the Corrective Action Management Unit (CAMU) Rule, 67 FR 2962–3029, January 22, 2002: Rule 2.02(B), 3.00 Definitions, ''remediation waste'' incorporated by reference in introductory paragraph, 16.03(B), 16.03(C).

Second, we are authorizing revised state rules that are analogous to the following Federal rules which relate to EPA's Mixed Waste program. MW—Radioactive Mixed Waste, 51 FR 24504, July 3, 1986: Rule 1.01, 1.02, 3.00 Definitions, ''hazardous waste,'' ''mixed waste;'' CL 191—Storage, Treatment, Transportation, and Disposal of Mixed Waste, 66 FR 27218–27266, May 16, 2001: Rule 3.00 Definitions, ''hazardous waste,'' ''Low-Level Mixed Waste,'' Low-Level Radioactive Waste,'' ''Mixed Waste,'' ''Naturally Occurring and/or Accelerator-produced Radioactive Material (NARM),'' 14.00 introductory paragraph, 14.02;

Third, we are authorizing revised state rules that are analogous to Federal rules which relate to EPA's Recycled Used Oil program. This includes CL 203—Recycled Used Oil Standards; Clarification, 68 FR 44659–44665, July 30, 2003 and EPA's Special Consolidated Checklist for Recycled Used Oil as of June 30, 2001 which addresses requirements in the following rule checklists: CP—Hazardous and Used Oil Fuel Criminal Penalties, HSWA §§ 3006(h), 3008(d), and 3014, November 8, 1984; CL 112—Recycled Used Oil Management Standards, 57 FR 41566–41626, September 10, 1992; CL 122—Recycled Used Oil Management Standards; Technical Amendments and Corrections, 58 FR 26420–26426, May 3, 1993 as amended on June 17, 1993 at 58 FR 33341–33342; CL 130—Recycled Used Oil Management Standards; Technical Amendments and Corrections II, 59 FR 10550–10560, March 4, 1994; CL 166—Recycled Used Oil Management Standards; Technical Correction and Clarification, 63 FR 24963–24969, May 6, 1998, as amended July 14, 1998, at 63 FR 37780–37782. Note, the corresponding state regulatory or statutory analogs (''Rule'' or ''R.I.G.L.'') are as follows: R.I.G.L. 23–19.1–18(a) and (h); Rule 2.02(A) and (B), 3.00 Definitions, ''Above-ground tank,'' ''Container,'' ''Used Oil Collection Center,'' ''Tank,'' ''Household used oil,'' ''Household used oil generator,'' ''Processing Used Oil,'' ''Re-Refining Distillation Bottoms,'' ''Specification Used Oil,'' ''Tolling Agreement,'' ''Used Oil,'' ''Used Oil Aggregation Point,'' ''Used Oil Burner,'' ''Used Oil Burning Equipment,'' ''Used Oil Collection Center,'' ''Used Oil Fuel,'' ''Used Oil Generator,'' ''Used Oil Marketer,'' ''Used oil generator,'' ''Used oil Processor or Re-refiner,'' ''Used Oil Temporary Storage Facility,'' ''Used Oil Transporter;'' 5.00; 15.01(A), 15.01(B)(1)–(3), 15.01(C)–(H), 15.01(I) [partially broader in scope], 15.01(J)–(L); 15.02, 15.02(A)–(H); 15.03, 15.03(A)(1)–(2), 15.03(B)(1)–(3), 15.03(C)(1)–(4), 15.03(D)(1)–(4), 15.03(E), 15.03(F) [partially broader in scope relating to on-spec oil], 15.03(F)(1)–(8) [(F)(5) is partially broader in scope], 15.03(G) [partially broader in scope relating to on-spec oil], 15.04, 15.04(A)–(I); 15.05(A)–(C); 15.06(A)–(D); 15.07(A)–(C), 15.07(D)(1), 15.07(F)–(G), 15.07(H)(1), 15.07(H)(12)–(19) [(H)(16) is partially broader in scope], 15.07(I); 15.08(A), 15.08(K)–(U) [(T)(4) is partially broader in scope], 15.08(W)–(Z); 15.09(A)–(G).

In addition to the regulations listed above, EPA is also authorizing the State for miscellaneous changes it has made to its previously authorized base program rules as follows (note, the analogous state provisions follow the general area of 40 CFR to which the changes relate): 40 CFR 260.10 definitions and related cross references in 40 CFR parts 260 through 273—State has revised and removed numbering of terms in section 3.00 Definitions and has revised related cross references accordingly in Rules 1.00 through 17.00; 40 CFR 262.34 Accumulation time—State has revised provisions at Rule 5.02(A) to require documentation of inspections; No direct Federal analog—State has revised the edition references for 49 CFR and 40 CFR in section 3.00 Definitions; 40 CFR 263.10(b), Scope of Standards Applicable to Transporters of Hazardous Waste—State has added and clarified exemption at Rule 6.00(A) [partially broader in scope]; 40 CFR 263.12, transporter transfer facility requirements and used oil storage at transfer facilities at 40 CFR 279.45—State has revised, added and clarified provisions at Rule 6.14; 6.14(A), (B)(1)–(2), and 6.14(E) [partially broader in scope]; 40 CFR 270.10(b), general RCRA permit requirements—State has revised and clarified Rule 7.01(A); 40 CFR part 270, Standards for Universal Waste Management related to lamps—State has revised and clarified its incorporation by reference in the introductory paragraph of Rule 13.6 and has also revised and clarified Rule 13.04, 13.06(A)(3), 13.06(C)(1)–(2), 13.06(C)(3) removal of ''lamps,'' 13.06(C)(5) and 13.06(J)(2) changes related to lamps; 40 CFR 273.8 Applicability, household and CESQG waste—State has revised and clarified provisions at Rule 13.06(B)(1)(a)–(c) and (B)(2); 40 CFR 273.9 Definitions—State has revised and clarified provisions at Rule 13.06(C)(1)–(5); 40 CFR 273.32, Notification—State has revised and clarified provisions of Rule 13.06(J)(1)–(3).

The final authorization of new State regulations and regulation changes is in addition to the previous authorization of State regulations, which remain part of the authorized program.

H. Where Are the Revised State Rules Different From the Federal Rules?

The most significant differences between the State rules being authorized and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

1. More Stringent Provisions

There are aspects of the Rhode Island program which are more stringent than the Federal program. All of these more stringent requirements are, or will become, part of the Federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following:

(a) Relating to requirements concerning Corrective Action for injection wells at 40 CFR 144.1(h), 40 CFR 144.31(g) and 40 CFR 270.60(b)(3), Rhode Island's hazardous waste program is more stringent in that its rules prohibit hazardous waste disposal by underground injection at Rule 7.01(F);

(b) Rhode Island's administrative requirement relating to Remedial Action Plans (RAPs) at Rule 16.02(I) is more

stringent than the analogous Federal requirement at 40 CFR 270.190(c) as it provides a 30-day timeframe by which an informal appeal must be submitted; and

(c) Relating to the Recycled Used Oil Management Standards, a number of Rhode Island's regulatory provisions at Rule 15.00 are more stringent, some of which are as follows: (1) Certain definitions of the terms that apply to the State's used oil program are more stringent than the Federal definitions found at 40 CFR 279.1, e.g., ''Used Oil Aggregation Point'' does not apply to household used oil and ''Used Oil Collection Center'' only accepts used oil from households (not from other generators); (2) pertaining to mixtures of used oil and characteristic hazardous waste at 40 CFR 279.10(b)(2), Rhode Island's used oil program at 15.01(C) is more stringent than the Federal program as it only allows mixtures of used oil and hazardous waste that solely exhibit the characteristic of flammability. Mixtures of used oil and listed wastes that were listed solely for the characteristic of ignitability are not allowed under the State regulations. Also, the State criterion for flammability captures more wastes than the Federal characteristic of ignitability and, thus, also excludes more waste; (3) the Federal requirement at 40 CFR 279.10(b)(3) allows mixtures of used oil and conditionally exempt small quantity generator (CESQG) hazardous wastes regulated under 40 CFR 261.5 to be subject to regulation as used oil under 40 CFR part 279; however, as Rhode Island's program does not recognize this CESQG exemption, such mixtures may be regulated as hazardous waste; (4) Rule 15.00 does not provide exemptions of applicability to generators who mix used oil and diesel fuel for use in the generator's own vehicle, as provided in the Federal program at 40 CFR 279.20(a); (5) under the State's used oil program prohibitions, Rule 15.02(C) restricts the burning of off-spec used oil to the site of generation. There is no such restriction under the Federal used oil program. Thus, this requirement is considered more stringent in that it prohibits the offsite shipment of off-spec oil for the purpose of burning for energy recovery that otherwise would be allowed under the Federal program. (Note, shipments of off-spec used oil directed to processors and refiners is allowed at Rule 15.09(B)); (6) also, Rhode Island's provisions are more stringent than the Federal requirements at 40 CFR 279.23 in that they exclude used oil collected from households from being burned by generators in space heaters of less than 500,000 BTUs, and subject burners of household used oil to additional regulation under Rule 15.03(B); (7) Rule 15.08 requires processors and re-refiners to comply with additional requirements related to responding to facility emergencies than those contained in the analogous Federal regulations at 40 CFR 279.52(a); (8) Rule 15.02(B) does not provide the exception to the prohibition of using used oil as a dust suppressant which allows State petition for such use.

2. Partially Broader in Scope Provisions

There are also aspects of the Rhode Island program which are partially broader in scope than the Federal program. The portions of the State requirements which are broader in scope are not considered to be part of the federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources in Rhode Island. The various changes Rhode Island has made to its used oil regulations and previously authorized base program regulations that are broader-in-scope are discussed below.

(a) Rule 15.07, Used Oil Transporter and Temporary Storage Facility Standards includes broader-in-scope provisions at (1) Rule 15.07(D)(2) which requires transporters to obtain a permit which is not required under Federal requirements for used oil transporters under 40 CFR part 279, subpart E; (2) Rule 15.07(E) requires used oil transporters to maintain liability insurance as required by Department of Transportation regulations at 49 CFR 387.7(d); and (3) Rule 15.07(H)(2) requires a used oil transporter who acts as a used oil temporary storage facility to apply for a Letter of Authorization from the RIDEM, a permit-like document for which a facility must provide details relating to the applicable operation which also includes a fee (15.07(H)(6)).

(b) Rule 15.08, Used oil Processor and Re-Refiner Standards, requires used oil processors and re-refiners to obtain a permit from RIDEM, which is not required under analogous Federal requirements at 40 CFR part 279, subpart F and, therefore, broader in scope. Other requirements include liability insurance, financial requirements, and fees, all of which are broader in scope when compared to the applicable Federal requirements.

(c) The State includes both off-spec and on-spec used oil in its definition of ''used oil burner'' at section 3.00 whereas the analogous Federal definition at 40 CFR 279.1 references the burning of only off-spec used oil. This difference is significant as it subjects burners of on-spec used oil in Rhode Island to additional requirements as reflected in section 15.03 of the State's regulations, Burning Used Oil for Energy Recovery. Under the Federal program, on-spec used oil destined to be burned for energy recovery is not subject to the restrictions on burning in 40 CFR part 279, subpart G (40 CFR 279.60(c)), and once conditions for on-spec used oil at 40 CFR 279.11 and 40 CFR part 279, subpart H have been met, the on-spec used oil can be handled like any other virgin fuel oil, as long as it has not been contaminated with hazardous waste. Rhode Island, however, continues to regulate the burning and other aspects of on-spec oil under Rule 15.03 beyond that which is subject to regulation under the Federal program as follows. The State regulates burners of on-spec used oil according to category of BTU capacity as well as by unit type, i.e., onsite and offsite, in Rule 15.03(A)–(D). The State's requirements for used oil burners are partially broader in scope in that they set notification requirements upon burners of on-spec used oil in Rule 15.03(B)(4) and (C)(5) and notification and approval requirements under Rule 15.03(D)(5). Various requirements, such as storage, handling, tracking, etc., are also imposed upon these on-spec burners at Rule 15.03(F)–(G) which are generally required for off-spec used oil burners but are broader in scope when applied to on-spec burners (see 40 CFR part 279, subpart G). (Please note, additional requirements which relate to the burning of used oil are also discussed in the following section, Equivalent but Different Provisions.)

3. Equivalent But Different Provisions

While many State regulations track Federal requirements identically, some differ from the Federal regulation in particular details but have been determined by the EPA to be equivalent to the Federal regulations in providing the same (or greater) overall level of environmental protection with respect to each Federal requirement. There are various Rhode Island regulations which differ from but have been determined to be equivalent to the Federal regulations. These regulations are part of the Federally enforceable RCRA program. These different but equivalent requirements include the following:

(a) Rhode Island's used oil definition is broader than the Federal definition in that it includes used oils which have become unsuitable for their original purpose other than through use (e.g., the State includes used oils that have

become contaminated during storage). This generally results in more stringent regulation of oils that mostly would be considered only non-hazardous solid wastes in the Federal program. In a few cases the State regulations might allow such used oils which are characteristic to be handled in the used program rather than as fully regulated hazardous wastes (as they technically would be in the Federal program). The used oils would not be different in composition from those regulated under the Federal used oil program. The State's approach makes environmental sense and is part of a regulation which is overall at least as stringent as the corresponding Federal requirement.

(b) As stated previously, Rhode Island's requirements for burning used oil at Rule 15.03 are broader in scope as they regulate burners of on-spec oil in Rule 15.03(A)–(D), and Rhode Island's provisions are also more stringent in that they only allow on-spec oil to be shipped off-site to be burned for energy recovery. However, the State's used oil requirements are also equivalent but different in transferring the analytical and recordkeeping requirements imposed on used oil marketers of on-spec oil in 40 CFR 279.72 onto on-spec used oil burners at 15.03(B)(1) and (2), (C)(2) and (3) and (D)(2) and (3). Rhode Island regulations are also different but equivalent in allowing on-spec burners to aggregate off-spec used oil with virgin oil or on-spec used oil for burning blended mixtures at Rule 15.03(B)(3), (C)(4) and (D)(4) provided analysis shows it meets specification requirements (aggregation by off-spec used oil burners is allowed at 40 CFR 279.61(b)(2)).

(c) Rhode Island's program is also different in that it has adopted a regulatory approach to address small amounts of used oil that are generated by companies that service oil-fired furnaces that heat buildings. While there is no direct counterpart in the Federal used oil program for this specific scenario, the State's provisions closely track the agency's requirements for off-site shipments of used oil to aggregation points owned by the generator at 40 CFR 279.24(b), a provision for which Rhode Island is also being authorized. Under the Federal provision, EPA allows generators to self-transport up to 55 gallons at a time of used oil (without an EPA I.D. Number) to aggregation points owned by the generator. Rhode Island's used oil program at Rule 15.04(H) allows service companies, upon generation of used oil during service of oil-fired furnaces used to heat buildings, to assume the role of generator and to self-transport up to 5 gallons of used oil to the company's place of business, as long as basic requirements, such as handling, labeling and spill control measures are met. Upon arrival, the used oil must be transferred to appropriate storage containers or tanks on the premises of the service company who is considered the generator of the used oil and subject to all applicable requirements of section 15.00 of Rhode Island's Used Oil Management Standards. Rhode Island has adopted state requirements which tailor a Federal requirement to address a specific activity in which small amounts of used oil are generated at many sites, including households, which can immediately be removed from the site of generation and consolidated at the generator's site of business. By applying this provision in this way, it is likely to be more protective of human health and the environment in assuring small quantities of used oil are managed properly. Thus, we believe the State regulation is legally consistent and equivalent to and perhaps even more stringent than the Federal used oil program.

(d) Rhode Island has adopted a conditional exemption for oil filters in its Rule 15.01(E) which differs from the Federal exemption of 40 CFR 261.4(b)(13) by allowing cold draining and crushing of the filters whereas the Federal regulation allows only hot draining. The State regulation specifies that any cold draining must include crushing using a mechanical, pneumatic or hydraulic device designed for the purpose of crushing oil filters and effectively removing the oil. This State provision will encourage recycling of used oil by enabling filters from junked vehicles to be managed in accordance with the exemption. Junked vehicles often cannot be started and consequently filters removed from those vehicles cannot meet the hot draining criteria of the Federal regulation. This approach of combining cold draining and crushing used oil filters was adopted by the State of Vermont and authorized by EPA [70 FR 36350, June 23, 2005]. Vermont provided documentation showing that as much or more used oil is removed from used oil filters through cold draining plus crushing than is removed by some of the hot draining methods allowed in the Federal regulation. Thus, while the Rhode Island exemption, like the Vermont exemption, differs from the Federal exemption, the State regulation is at least as stringent as the Federal regulation in requiring the removal of the oil. Note, copies of Vermont's documentation relative to the cold crushing/draining of oil filters has been included in the Administrative Docket to this notice.

Relative to terne-plated filters, the State has also combined the Federal scrap metal exemption at 40 CFR 261.6(a)(3)(ii) as referenced in its definition of hazardous waste at 3.00, with its oil filter exemption at 15.01(E). Rhode Island allows terne-plated filters to be exempt from hazardous waste requirements once they have both been processed to remove excess oil and when the metals are sent offsite for reclamation which is documented. This is equivalent to the combination of the two Federal exemptions.

I. How Does This Action Affect Indian Country (18 U.S.C. 115) in Rhode Island?

Rhode Island is not authorized to carryout its hazardous waste program in Indian country within the State which includes the land of the Narragansett Indian Tribe. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

J. Who Handles Permits After the Authorization Takes Effect?

Rhode Island will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits which it has issued in Rhode Island prior to the effective date of this authorization until the State incorporates the terms and conditions of the Federal permits into the State RCRA permits. EPA will not issue any more new permits, or new portions of permits, for the provisions listed in this notice above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which Rhode Island is not yet authorized.

K. What Is Codification and Is EPA Codifying Rhode Island's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart UU for this authorization of Rhode Island's program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action (RCRA State Authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action nevertheless will be effective February 11, 2008, because it is an immediate final rule.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 2, 2007.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E7–23946 Filed 12–10–07; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–4

[FTR Amendment 2007–06; FTR Case 2007–306; Docket 2007–0002, Sequence 5]

RIN 3090–AI40

Federal Travel Regulation; Relocation Allowances; OCONUS Travel

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: Federal Travel Regulation (FTR) Amendment 2007–03, FTR Case 2007–301 was published in the **Federal Register** on June 27, 2007 (72 FR 35187). That final rule changed the mileage reimbursement rate for using a personally owned vehicle (POV) for relocation to equal the Internal Revenue Service (IRS) Standard Mileage Rate for moving purposes in the continental United States (CONUS). Subsequent information revealed that in changing to this rate, GSA inadvertently removed any ability to apply this rate to both foreign and non-foreign overseas (OCONUS) relocations. This final rule will allow for the new mileage reimbursement rate to be applied worldwide. It will also allow for the use of actual expense for OCONUS relocations if the agency chooses to do so. The FTR and any corresponding documents may be accessed at GSA's website at *http://www.gsa.gov/ftr*.

DATES: *Effective Date*: This final rule is effective December 11, 2007. *Applicability Date*: This final rule is applicable to September 25, 2007.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VIR), Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ed Davis, Office of Governmentwide Policy (M), Office of Travel, Transportation and Asset Management (MT), General Services Administration at (202) 208–7638 or e-mail at *ed.davis@gsa.gov*. Please cite FTR Amendment 2007–06; FTR case 2007–306.

SUPPLEMENTARY INFORMATION:

A. Background

On June 27, 2007, GSA published a final rule specifying that the IRS Standard Mileage Rate for moving purposes would be the rate at which agencies will reimburse an employee for using a POV for CONUS relocation.

The final rule, published in the **Federal Register** on June 27, 2007 (72 FR 35187) clearly limited the scope of the rule to CONUS relocations. Research since that date, in response to an inquiry from the Department of Defense (DoD), has shown that this was a mistake. Therefore, this new final rule removes any reference to CONUS from section 302–4.300 of the FTR and allows for this rate to be applied worldwide. The FTR also will authorize actual expense for these expenses.

B. Summary of the Issues Involved

This final rule corrects an inadvertent error, and allows for the reimbursement of OCONUS relocation mileage at either the mileage rate specified in FTR section 302–4.300 or actual expense under new section 302–4.304. In addition, FTR section 302–4.302 currently allows an agency to authorize a higher mileage reimbursement rate for OCONUS relocations utilizing a POV under certain circumstances. Thus, agencies will have three choices for reimbursing an OCONUS relocation mileage reimbursement rate for POV usage. Each agency through its internal policy, must decide what form its relocation mileage reimbursement rate will take. But, before any agencies can have a legitimately based OCONUS rate, GSA must change the wording of the June 27, 2007 final rule to allow agencies to use the IRS rate worldwide.

C. Changes to Current FTR

This final rule revises section 302–4.300 of the FTR to reflect the Internal Revenue Service Standard Mileage Rate for relocation by POV and adds section 302–4.304 allowing for actual expense.

D. Executive Order 12866

This regulation is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that executive order.

E. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

F. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 302–4

Government employees, Relocation, Travel and transportation expenses.

Dated: September 27, 2007.

Lurita Doan,

Administrator of General Services.

■ For the reasons set out in this preamble, 41 CFR part 302–4 is amended as set forth below:

PART 302–4—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

■ 1. The authority citation for 41 CFR part 302–4 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

■ 2. Revise § 302–4.300 to read as follows:

§ 302–4.300 What is the POV mileage rate for PCS travel?

For approved/authorized PCS travel by POV, the mileage reimbursement rate is the same as the moving expense mileage rate established by the Internal Revenue Service (IRS) for moving expense deductions. See IRS guidance available on the Internet at *www.irs.gov*. GSA publishes the rate for mileage reimbursement in an FTR Bulletin on an intermittent basis. You may find the FTR Bulletins at *www.gsa.gov/relo*.

■ 3. Add § 302–4.304 to read as follows:

§ 302–4.304 For relocation outside the continental United States (OCONUS), may my agency allow actual expense reimbursement instead of the POV mileage rate for PCS travel?

Yes, for an OCONUS relocation involving POV usage, your agency may allow reimbursement of certain actual expenses of using the POV (*i.e.*, fuel plus the additional expenses listed in § 301–10.304).

[FR Doc. E7–23861 Filed 12–10–07; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061109296–7009–02]

RIN 0648–XE18

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of Maine and the State of Maryland are transferring commercial bluefish quota to the State of Rhode Island from their 2007 quotas. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 6, 2007, through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, (978) 281–9244, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Maine and Maryland have agreed to transfer 25,000 lb (11,340 kg) and 50,000 lb (22,680 kg), respectively, of their 2007 commercial quotas to Rhode Island. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised bluefish quotas for calendar year 2007 are: Rhode Island, 738,790 lb (335,110 kg); Maine, 32,323 lb (14,661 kg); and Maryland, 207,403 lb (94,076 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 5, 2007.

Emily H. Menashes,

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

[FR Doc. 07–6010 Filed 12–6–07; 1:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 237
Tuesday, December 11, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0116]

RIN 0579–AC64

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to the importation of fruits and vegetables to eliminate a treatment requirement for Ya pears imported from Shandong Province, China; to clarify the conditions that apply to the importation of sand pears from the Republic of Korea and Japan; and to clarify the distinction between plant parts that would be considered to be plant litter or debris and those that would not. These proposed changes would eliminate a treatment requirement that no longer appears to be necessary and would clarify some existing provisions in order to make the regulations easier to understand and implement.

DATES: We will consider all comments that we receive on or before January 10, 2008.

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–2007–0116 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–2007–0116, 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–2007–0116.

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: Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operation, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5333.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 to 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) 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 this document, we are proposing to make several amendments to the regulations. The proposed amendments are discussed below by topic.

Definition of Plant Debris

In § 319.56–3, ''General requirements for all imported fruits and vegetables,'' paragraph (a) requires that ''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.'' In § 319.56–2, *plant debris* is defined as ''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.'' While that definition does make reference to ''approved parts of clean fruits and vegetables,'' the definition and the regulations in § 319.56–3(a) may not adequately communicate the fact that there are also parts of clean fruits and vegetables that are not approved for entry.

In order to make that distinction clear, we are proposing to remove the current definition of *plant debris* and replace it with separate definitions of *plant litter and debris* and *portions of plants*. *Plant litter and debris* would be defined as: ''Discarded or decaying organic matter; detached leaves, twigs, or stems that do not add commercial value to the product.'' *Portions of plants* would be defined as: ''Stalks or stems, including the pedicel, peduncle, raceme, or panicle, that are normally attached to fruits or vegetables.'' At the same time, we would amend § 319.56–3(a) so that it requires all imported fruits and vegetable to be free of plant litter or debris and free of any portions of plants that are specifically prohibited in the regulations. We believe these amendments would make our requirements clearer and more enforceable.

Importation of Ya Pears From China

The regulations in § 319.56–29 govern the importation of Ya variety pears from China. Under the regulations in that section, Ya pears may be imported from the Hebei and Shandong Provinces of China if they have been grown, harvested, and packed for export under certain conditions, and if the national plant protection organization (NPPO) of China certifies that those conditions have been met. Ya pears from Shandong Province are also required to undergo cold treatment for the Oriental fruit fly (*Bactrocera dorsalis*).

The regulations had previously required that Ya pears from Hebei Province also undergo cold treatment, but we removed that requirement in a final rule published in the **Federal Register** on June 10, 2003 (68 FR 34517–34519, Docket No. 02–084–2). Our removal of the cold treatment

requirement for Ya pears from Hebei Province was based on trapping results and on climatological and biological considerations. In that June 2003 final rule, in response to a comment, we stated that we would consider removing the cold treatment requirement for Ya pears from Shandong Province if China provided APHIS with data similar to the data submitted for Hebei Province indicating that Oriental fruit fly is not present in Shandong Province.

China has now requested that we amend the regulations to remove the cold treatment requirement for Ya pears from Shandong requirement. China has conducted fruit fly trapping in Shandong Province to monitor for the presence of fruit flies. A total of 943 traps were used to survey a variety of areas including orchards, fruit markets, seaports, airports, etc. Trapping data for 3 years, from 2000 to 2002, show that no fruit flies were trapped. In addition to the trapping data, China's NPPO provided us with published research [1] showing that, based on developmental biology of *Bactrocera dorsalis* and because of low winter temperatures, large areas of China, including Shandong Province, are unsuitable habitat for the Oriental fruit fly.

The evidence supporting the removal of the cold treatment requirement is discussed in more detail in a risk management document that has been prepared in response to China's request. The document may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above), and copies may be obtained by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Based on our consideration of the information provided by China and the analysis provided in our risk management document, we are proposing to amend § 319.56–29 to remove the cold treatment requirement for Ya pears from Shandong Province.

Importation of Sand Pears From the Republic of Korea and Japan

The regulations in paragraph (a) of § 319.56–13 list a number of fruits and vegetables that may be imported from various countries subject to the specific requirements listed in paragraph (b) of that section as well as the general requirements in § 319.56–3 that apply to all imported fruits and vegetables. Among the articles listed in the table is sand pear (*Pyrus pyrifolia* var. *culta*) from Japan and the Republic of Korea. The entries for sand pears from each country were added when we reorganized the regulations in a final rule published in the **Federal Register** on July 18, 2007 (72 FR 39482–39528, Docket No. APHIS–2005–0106).

Prior to that final rule, the importation of sand pears from Japan and the Republic of Korea had been authorized under permit and the conditions of their entry were listed in the fruits and vegetables manual.[2] Under the approach we used in revising the fruits and vegetables regulations, however, we listed the sand pears in the regulations because consignments of sand pears, except sand pears imported into Hawaii, were required to be precleared in Japan and the Republic of Korea prior to their exportation to the United States.

When we added the listings for sand pears from Japan and the Republic of Korea to the table in § 319.56–13(a), we neglected to include a note that the preclearance requirement does not apply to sand pears imported into Hawaii from Japan or the Republic of Korea. While the fruits and vegetables manual continues to list the non-precleared sand pears as eligible for importation into Hawaii, the lack of a reference to that exception in the regulations has caused some confusion. Therefore, we are proposing to amend § 319.56–13(b)(5)(ix) so that it clearly states that the preclearance requirement does not apply to sand pears imported into Hawaii from Japan or the Republic of Korea.

We are also proposing to amend the entry for the Republic of Korea in the table in § 319.56–13(a) so that it appears as ''Korea, Republic of.'' This change would make the manner in which we list that country consistent with the manner in which the other countries are listed in the table.

Executive Order 12866 and Regulatory Flexibility Act

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

In this document, we are proposing to amend the regulations pertaining to the importation of fruits and vegetables to eliminate a treatment requirement for Ya pears imported from Shandong Province, China; to clarify the conditions that apply to the importation of sand pears from the Republic of Korea and Japan; and to clarify the distinction between plant parts that would be considered to be plant litter or debris and those that would not. Of these proposed changes, only the elimination of the treatment requirement would be expected to result in any economic effects.

Removing the cold treatment requirement for Ya pears imported from Shandong Province would reduce importers' shipping expenses and may also affect domestic pear growers, especially those who produce Ya and other Asian pears, and the wholesalers and distributors of these commodities. However, for both foreign and domestic pear producers, the proposed change in requirements is expected to have a very limited effect on the supply and demand for pears overall.

China is the world's largest producer of pears and accounts for 65 percent of world pear production. According to statistics for marketing year 2005 for three varieties of Chinese pears, including the Ya variety, Hebei Province produced the largest volume of pears, accounting for about 29 percent of pear production in China. Shandong Province produced about 9 percent of China's pears during this time. Although China's Ya pear exports are not classified by the originating province, the removal of the cold treatment requirement of Ya pears produced in Shandong Province may be expected to affect about 25 percent of total U.S. imports of Ya pears from China, assuming that the quantities exported to the United States from the two provinces reflect their relative levels of production.

The shipping expenses of importers seeking to import Ya pears from Shandong Province would, under this proposed rule, be reduced by the amount of the expense of the cold treatment. This amount is estimated to be approximately $0.06 per kilogram of pears. Since the number of Ya pears imported from Shandong Province is estimated to be approximately one-fourth of total Ya pear imports from China, the net impact on the average price of Ya pears would be considerably smaller than $0.06 per kilogram. If the cost reduction associated with the removal of the cold treatment requirement affects the retail price of Ya pears in the United States, it would be minimal.

Under the criteria established by the Small Business Administration, fruit merchant wholesalers (North American Industry Classification System code 424480) must have 100 or fewer employees to be considered small entities. In 2002, there were 5,376 fresh

[1] Zhan, K., S. Zhao, S. Zhu, W. Zhou, and N. Wang (2006). ''Study on the viability of *Bactrocera dorsalis* in China.'' J. of S. China Agricultural University 27(4): 21–25.

[2] See *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf.*

fruit and vegetable merchant wholesalers in the United States with a total of 110,578 paid employees, or, on the average, 21 paid employees per establishment. Therefore, domestic fruit merchant wholesalers that may be affected by the proposed rule are predominantly small entities.

The 2002 Census of Agriculture estimates that there are approximately 11,000 pear growers distributed throughout the United States, and that the vast majority of pear growers operate in orchards smaller than 250 acres, and with less than $750,000 in annual receipts. The average annual sales value of pear growers is estimated to be approximately $24,416 per grower. Based on this data, it is most likely that pear growers in the United States are predominantly small entities.

In the United States, Asian pears represent a small share of the pear industry. In California, which contains the largest number of Asian pear growers in the country, Asian pears constituted about 7 percent of the total harvested acreage in 2006. Of the Asian pear varieties produced in the United States, Ya pears are estimated to make up a very small percentage of the total number. The value of domestic Ya pears is estimated at less than $1 million.

The expected economic effect of removing the cold treatment requirement for Ya pears from Shandong Province is minor. Therefore, this proposed rule is expected to have little effect on importers or producers of Ya pears in the United States.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant Diseases and Pests, Quarantine, Reporting and Recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. 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.

2. Section 319.56–2 is amended as follows:

a. By removing the definition of *plant debris.*

b. By adding, in alphabetical order, definitions of *plant litter and debris* and *portions of plants* to read as set forth below.

§ 319.56–2 Definitions.

* * * * *

Plant litter and debris. Discarded or decaying organic matter; detached leaves, twigs, or stems that do not add commercial value to the product.

* * * * *

Portions of plants. Stalks or stems, including the pedicel, peduncle, raceme, or panicle, that are normally attached to fruits or vegetables.

* * * * *

3. In § 319.56–3, paragraph (a) is revised to read as follows:

§ 319.56–3 General requirements for all imported fruits and vegetables.

* * * * *

(a) *Freedom from unauthorized plant parts.* All fruits and vegetables imported under this subpart, whether in commercial or noncommercial consignments, must be free from plant litter or debris and free of any portions of plants that are specifically prohibited in the regulations in this subpart.

* * * * *

4. Section 319.56–13 is amended as follows:

a. In the table in paragraph (a), by removing the entry for ''Republic of Korea'' and by adding, in alphabetical order, an entry for ''Korea, Republic of'' to read as set forth below:

b. In paragraph (b), by revising paragraph (b)(5)(ix) to read as set forth below.

§ 319.56–13 Fruits and vegetables allowed importation subject to specified conditions.

(a) * * *

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
*	*	*	*	*
Korea, Republic of	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).
*	*	*	*	*

* * * * *

(b) * * *

(5) * * *

(ix) Except for sand pears entering Hawaii, 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.

* * * * *

§ 319.56–29 [Amended]

4. Section 319.56–29 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

Done in Washington, DC, this 6th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–23957 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS–FV–07–0119; FV07–930–3 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2007–2008 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the establishment of final free and restricted percentages for 2007–08 crop year tart cherries covered under the Federal marketing order regulating tart cherries grown in seven states (order). The percentages are 57 percent free and 43 percent restricted and will establish the proportion of cherries from the 2007 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the order. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by January 10, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; e-mail *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov*. or Internet at *http://www.regulations.gov*.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This proposed rule establishes final free and restricted percentages for tart cherries for the 2007–2008 crop year, beginning July 1, 2007, through June 30, 2008. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule.

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

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated Districts within the production area. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for the 2007–08 season are: District one—Northern Michigan; District two—Central Michigan; District four—New York; District seven—Utah; and District eight—Washington. Districts three, five, and six (Southwest Michigan, Oregon, and Pennsylvania, respectively) will not be regulated for the 2007–2008 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Southwest Michigan, Oregon, and Pennsylvania, handlers in those districts would not be subject to volume regulation during the 2007–2008 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The

primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume is calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this represents the estimated over-production, which would be the restricted tonnage. The restricted tonnage is then divided by the sum of the crop forecast(s) for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of Sec. 930.50.

The Board met on June 21, 2007, and computed, for the 2007–2008 crop year, an optimum supply of 175 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 294 million pounds; a 42 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 175 million pounds which resulted in the 2007–2008 poundage requirements (adjusted optimum supply) of 133 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory at the beginning of the 2006–2007 crop year. Subtracting the adjusted optimum supply of 133 million pounds from the USDA crop estimate (294 million pounds) leaves a surplus of 161 million pounds of tart cherries. Subtracting an additional 12 million pounds for USDA purchases of tart cherry products from the 2006–07 crop but not delivered until 2007 results in a final surplus of 149 million pounds of tart cherries. The surplus (149 million pounds) was divided by the production in the regulated districts (289 million pounds) and resulted in a restricted percentage of 52 percent for the 2007–2008 crop year. The free percentage was 48 percent (100 percent minus 52 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2007–2008 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	175
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	175
Preliminary Percentages:	
(4) USDA crop estimate	294
(5) Carryin held by handlers as of July 1, 2007	42
(6) Adjusted optimum supply for current crop year (Item 3 minus Item 5)	133
(7) Surplus (Item 4 minus Item 6)	161
(8) Subtract pounds for USDA purchases	12
(9) Surplus (Item 7 minus Item 8)	149
(10) USDA crop estimate for regulated districts	289

	Percentages	
	Free	Restricted
(11) Preliminary percentages (Item 9 divided by Item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	48	52

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage. The Board met on September 6, 2007, to recommend final free and restricted percentages.

The actual production reported by the Board was 248 million pounds, which is a 46 million pound decrease from the USDA crop estimate of 294 million pounds.

A 39 million pound carryin (based on handler reports estimates) was subtracted from the optimum supply of 174 million pounds, yielding an adjusted optimum supply for the 2007–

2008 crop year of 135 million pounds. Subtracting the adjusted optimum supply of 135 million pounds from the USDA crop estimate (248 million pounds) and subtracting 12 million pounds for USDA purchases of tart cherry products from the 2006–07 crop but not delivered until 2007 results in a surplus of 101 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (236 million pounds) and resulted in a restricted percentage of 43 percent for the 2007–2008 crop year. The free percentage was 57 percent (100 percent minus 43 percent).

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2007–2008 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	174
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board	174
Final Percentages:	
(4) Board reported production	248
(5) Plus carryin held by handlers as of July 1, 2007	39
(6) Subtract USDA committed sales	12
(7) Tonnage available for current crop year	275
(8) Surplus (item 7 minus item 3)	101
(9) Production in regulated districts	236

	Percentages	
	Free	Restricted
(10) Final Percentages (item 8 divided by item 9 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	57	43

USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 17 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2002/03 through 2006/07, approximately 97.9 percent of the U.S. tart cherry crop, or 202.9 million pounds, was processed annually. Of the 202.9 million pounds of tart cherries processed, 63.5 percent was frozen, 23.8 percent was canned, and 12.7 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 35,800 acres in 2006/07. This represents a 29 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2007/08 crop is moderate in size at 248 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 5.6 cents in 1995 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income.

The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices and supplies, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The two districts in Michigan, along with the districts in Utah, New York, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 236 million pounds. A 43 percent restriction means 186 million pounds is available to be shipped to primary markets.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 17 million pounds being available for the primary market. The 135 million pounds from the two regulated districts in Michigan, Utah, Washington, New York, and Wisconsin, the 12.3 million pounds from the other producing states, the 17 million pound release, and the 39 million pound carry-in inventory gives a total of 203 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, grower prices are estimated to be approximately $0.12 higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $10.1 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 43 percent volume control would not unduly burden producers, particularly smaller growers. The 43 percent restriction would be applied to the growers in the two districts in Michigan, New York, Utah, Washington, and Wisconsin. The growers in the other two states and the one district in Michigan covered under the marketing order will benefit from this restriction.

The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002–2003 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2007–2008 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled;

(3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2007 of the free and restricted percentages proposed to be established by this rule (57 percent free and 43 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2007–2008 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

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

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 6, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

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

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2007–2008 crop. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.255 is added to read as follows:

§ 930.256 Final free and restricted percentages for the 2007–2008 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2007, which shall be free and restricted, respectively, are designated as follows: Free percentage, 57 percent and restricted percentage, 43 percent.

Dated: December 5, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–23907 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. AMS–FV–07–0115; FV08–948–1 PR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a modification of the minimum size requirements under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). The minimum size requirements for Area No. 2 potatoes currently allow the handling of potatoes that are at least 2 inches in diameter or 4 ounces minimum weight, except that round potatoes may be of any weight, and Russet Burbank, Russet Norkotah,

and Silverton Russet varieties may be a minimum of 1⅞ inches in diameter or 4 ounces in weight. This rule would remove the exception that Russet Burbank, Russet Norkotah, and Silverton Russet varieties may be 1⅞ inches in diameter, thus requiring these varieties to also meet the minimum requirements of 2 inches in diameter or 4 ounces in weight. This change is intended to facilitate the handling and marketing of Colorado Area No. 2 potatoes.

DATES: Comments must be received by December 26, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@usda.gov* or *GaryD.Olson@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This proposal invites comments on a modification of the minimum size requirements under the order. The minimum size requirements for Area No. 2 potatoes currently allow the handling of potatoes that are at least 2 inches in diameter or 4 ounces minimum weight, except that round potatoes may be of any weight, and Russet Burbank, Russet Norkotah, and Silverton Russet varieties may be a minimum of 1⅞ inches in diameter or 4 ounces in weight. This rule would remove the exception that Russet Burbank, Russet Norkotah, and Silverton Russet varieties may be 1⅞ inches in diameter. This rule was recommended by the Committee at a meeting on August 16, 2007.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area No. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, and all counties west thereof; Area No. 2, commonly known as the San Luis Valley, includes and consists of the counties of Sanguache, Huerfano, Las Animas, Mineral, Archuleta, and all counties south thereof; and, Area No. 3 includes and consists of all the remaining counties in the State of Colorado which are not included in Area No. 1 or Area No. 2. The order currently regulates the handling of potatoes grown in Areas No. 2 and No. 3 only; regulation for Area No. 1 is currently not active.

Grade, size, and maturity regulations specific to the handling of potatoes grown in Area No. 2 are contained in § 948.386 of the order.

On August 16, 2001, the Committee recommended increasing the minimum size requirements from 1⅞ inches to 2 inches in diameter or 4 ounces minimum weight for all varieties of potatoes, except for round varieties and the Russet Burbank, Russet Norkotah, and Silverton Russet varieties. This recommendation was made effective July 15, 2002 (67 FR 40844). The Russet Burbank, Russet Norkotah, and Silverton Russet varieties were left at 1⅞ inches minimum diameter.

The Committee believes that the demand for fresh potatoes has decreased for the last several years and there are abundant supplies in the marketplace. Consumers prefer larger, higher quality potatoes. After reviewing market data over the past six years, the Committee decided to recommend removing the minimum size exception for Russet Burbank, Russet Norkotah, and Silverton Russet varieties. The Committee reports that potato size is important to consumers and that providing the sizes desired is necessary to maintain consumer confidence in the marketplace. The Committee believes that quality assurance is very important to the Colorado potato industry. The Committee also believes that most Colorado potato handlers are shipping Russet varieties at a minimum size of 2 inches in diameter or 4 ounces minimum weight. Providing customers with acceptable quality produce on a consistent basis is necessary to maintain buyer confidence in the marketplace and improve producer returns.

Under this proposal, Russet potatoes subject to minimum size requirements would meet the size requirements if they are at least 2 inches in diameter or 4 ounces in weight. Some long, thin potatoes might be smaller than 2 inches in diameter, but weigh at least 4 ounces. These potatoes would meet the proposed size requirements. Some potatoes might weigh less than 4 ounces, but be at least 2 inches in

diameter. These potatoes would also meet the proposed minimum size requirements.

Twelve members voted in favor of the proposed change and one member voted in opposition. The dissenting member was concerned that some industry members who produce smaller Russet potatoes might not support the change. The Committee made the recommendation to provide buyers with the sizes they prefer and to maintain buyer confidence. The Committee believes that this change would facilitate the handling and marketing of Colorado Area No. 2 potatoes and help improve producer returns.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 77 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts are less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2006–2007 marketing year, approximately 16,061,432 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $11.00 per hundredweight, the Committee estimates that 66 Area No. 2 handlers, or about 86 percent, had annual receipts of less than $6,500,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for Colorado potatoes for 2006 was $8.80 per hundredweight. The average annual fresh potato revenue for the Colorado Area No. 2 potato producers is therefore calculated to be approximately $785,226. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

This rule would remove the exception that Russet Burbank, Russet Norkotah, and Silverton Russet varieties of Area No. 2 Colorado potatoes may be 1⅞ inches in diameter. This rule would thus have the effect of increasing the minimum size requirements for Russet potatoes from 1⅞ inches in diameter to 2 inches in diameter or 4 ounces in weight. Authority for this action is contained in §§ 948.21, 948.22, 948.40, and 948.386.

NASS estimated planted acreage for the 2006 crop in Area No. 2 at 59,900 acres, an increase of 1,700 acres when compared with 58,200 acres planted in 2005. In 2006, NASS data shows that Russet Norkotah, the most popular variety, was planted on 60.3 percent of the total potato acreage. Other Russet varieties accounted for 20.6 percent of the total acres planted, with various other varieties making up the remaining 19.1 percent.

Based on Committee records, 89.6 percent of Area No. 2 potatoes entered the fresh market during the 2006–2007 marketing year (including potatoes produced for seed). Of those potatoes, Russet potato varieties accounted for 89.2 percent.

Only a small portion of the crop is expected to be affected by the proposed size increase (i.e., that portion of Russet Burbank, Russet Norkotah, or Silverton Russet varieties smaller than 2 inches in diameter or 4 ounces in weight, but larger than 1⅞ inches in diameter). Based on current customer demand, many handlers are already shipping 2-inch minimum diameter Russet potatoes. The Committee believes that the expected benefits of improved quality, increased purchases and sales volume, and increased returns received by producers would greatly outweigh the costs related to the regulation.

After discussing possible alternatives to this rule, the Committee determined that an increase in the minimum size for Russet varieties would increase returns to growers while supplying the market with a higher percentage of larger high quality potatoes. The Committee believes that the expected benefits are improved quality, increased purchases and sales volume, and increased returns received by producers. During its deliberations, the Committee also considered increasing the minimum size to 2⅛ inches or 5 ounces in weight for Russet varieties. However, the Committee decided that increasing the minimum size from 1⅞ inches diameter to 2⅛ inches in diameter would be too restrictive at this time.

This proposed rule would increase the size requirements for Russet varieties of potatoes under the order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large Russet potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 16, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping potatoes from the 2007–2008 crop. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.386 is amended by revising paragraph (a)(2) to read as follows:

§ 948.386 Handling Regulation.

* * * * *

(a) * * *

(2) *All other varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter or 4 ounces minimum weight.

* * * * *

Dated: December 4, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–23839 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0308; Directorate Identifier 2007–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747 airplanes identified above. This proposed AD would require modifying the outboard flap track and transmission attachments. This proposed AD results from a joint Boeing and FAA multi-model study (following in-service trailing edge flap structure and drive system events) on the hazards posed by skewing and failed flaps. This study identified the safety concerns regarding the transmission attachment design and the potential loss of an outboard trailing edge flap. We are proposing this AD to prevent certain discrepancies associated with this design (for example, a flap skew or lateral control asymmetry that can cause collateral damage to adjacent hydraulic tubing and subsequent loss of a hydraulic system), which could result in the asymmetric flight control limits being exceeded, and could adversely affect the airplane's continued safe flight and landing.

DATES: We must receive comments on this proposed AD by January 25, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0308; Directorate Identifier 2007–NM–160–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

A report has been completed about a joint Boeing and FAA multi-model study (following in-service trailing edge flap structure and drive system events) on the hazards posed by skewing and failed flaps. The study identified safety concerns with the transmission attachment design, which does not meet the single failure condition analysis criteria. Three bolts attach the transmission to the flap track. The fracture of one of the transmission attachment bolts in flight could lead to an overload failure of the two remaining bolts and subsequent loss of the transmission. In addition, a support housing with an undetected fracture could lead to the loss of the transmission. Loss of the flap transmission could lead to a flap skew or lateral control asymmetry. Loss of a transmission could lead to possible collateral damage to adjacent hydraulic tubing and the loss of a hydraulic system. A flap skew or asymmetry combined with collateral hydraulic system damage could result in the asymmetric flight control limits being exceeded, and could adversely affect the airplane's continued safe flight and landing.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 747–27A2398 and 747–27A2421, both dated April 19, 2007. The service bulletins describe the following procedures for modifying the outboard trailing edge flaps, including the following ''airplane work'':

- Replacing the flap tracks and flap transmissions with a new configuration (flap tracks and flap transmissions 1, 2, 7, and 8);
- Reversing the bolt direction on the flap track side load fitting; and
- Installing new flap track fairing hinge braces. The service bulletins describe the following component work:
- Replacing the upper forward and the upper aft flap transmission attachment bolt hole bushings;
- Replacing the support housing;
- Machining the track and installing the larger diameter bolt hole bushings, at the upper forward and upper aft flap transmission attachment locations (flap track assemblies 1 and 8) and at the

upper aft flap transmission attachment location (flap track assemblies 2 and 7); and

• Replacing the existing support housing with the new support housing (flap transmission assemblies 1, 2, 7, and 8).

The compliance time is 6 years for airplanes known to have fewer than 20,000 total flight cycles, and 3 years for all other airplanes.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require the actions specified in the service information described previously.

Costs of Compliance

There are about 990 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
150	$80	$80,023	$92,023	141	$12,975,243

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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. 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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–0308; Directorate Identifier 2007–NM–160–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 25, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–27A2398 or 747–27A2421, both dated April 19, 2007.

Unsafe Condition

(d) This AD results from a joint Boeing and FAA multi-model study (following in-service trailing edge flap structure and drive system events) on the hazards posed by skewing and failed flaps. This study identified the safety concerns regarding the transmission attachment design and the potential loss of an outboard trailing edge flap. We are issuing this AD to prevent certain discrepancies associated with this design (for example, a flap skew or lateral control asymmetry that can cause collateral damage to adjacent hydraulic tubing and subsequent loss of a hydraulic system), which could result in the asymmetric flight control limits being exceeded, and could adversely affect the airplane's continued safe flight and landing.

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.

Modification

(f) Do the following, as applicable: At the time specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–27A2421 or 747–27A2398, both dated April 19, 2007, except as provided by paragraph (g) of this AD, modify the outboard flap track and transmission attachments by doing all actions specified in the Accomplishment Instructions of the service bulletin.

(g) Where Boeing Alert Service Bulletins 747–27A2421 and 747–27A2398, both dated April 19, 2007, specify compliance times relative to the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install a part identified in Table 1 of this AD on any airplane.

TABLE 1.—PARTS PROHIBITED FROM INSTALLATION

Part	Part No.
Hinge brace for Tracks 1 and 8	65B15515–1 65B15515–2 65B15515–9 65B15515–10
Hinge brace for Tracks 2 and 7	65B15525–1 65B15525–2 65B15525–7 65B15525–8 65B17092–1 65B17092–2
Support assembly for Tracks 1 and 8	65B81982–( )
Support assembly for Tracks 2 and 7	65B81950–( )

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), 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.

Issued in Renton, Washington, on November 13, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–23955 Filed 12–10–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0300; Directorate Identifier 2007–NM–191–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Reports have been received from Fokker 100 (F28 Mark 0100) operators where the crew experienced difficulties with roll control. Analysis suggests that these phenomena are due to frozen water on the aileron pulleys that are installed on the Center Wing Spar and located in the Main Landing Gear (MLG) wheel bays. Investigation has confirmed that improper closure of the aerodynamic seals of the wing-to-fuselage fairings above the MLG wheel bays can cause rainwater, wash-water or de-icing fluid to leak onto the affected aileron pulleys. This condition, if not corrected, can lead to further incidents of frozen water on aileron pulleys during operation of the aircraft, resulting in restricted roll control and/or higher control forces. * * *

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

DATES: We must receive comments on this proposed AD by January 10, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0300; Directorate Identifier 2007–NM–191–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the aviation authority for the Netherlands, has issued Dutch Airworthiness Directive NL–2005–013, dated October 17, 2005 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Reports have been received from Fokker 100 (F28 Mark 0100) operators where the crew experienced difficulties with roll control. Analysis suggests that these phenomena are due to frozen water on the aileron pulleys that are installed on the Center Wing Spar and located in the Main Landing Gear (MLG) wheel bays. Investigation has confirmed that improper closure of the aerodynamic seals of the wing-to-fuselage fairings above the MLG wheel bays can cause rainwater, wash-water or de-icing fluid to leak onto the affected aileron pulleys. [The aileron pulleys on Model F.28 Mark 0070 airplanes are identical to those installed on the Model F.28 Mark 0100 airplanes. Therefore, those Model F.28 Mark 0070 airplanes may be subject to the unsafe condition revealed on the Model F.28 Mark 0100 airplanes.] This condition, if not corrected, can lead to further incidents of frozen water on aileron pulleys during operation of the aircraft, resulting in restricted roll control and/or higher control forces. Since an unsafe condition has been identified that is likely to exist or develop on other aircraft of the same type design, this Airworthiness Directive requires the inspection of the wing-to-fuselage fairings and, if necessary, the accomplishment of appropriate corrective action(s).

The inspection is intended to find indications of incorrect fit, damage, or wear. Corrective actions include a related investigative action (inspecting for incorrect fit, damage, or wear of the aerodynamic seal of the fairings, and inspecting for damage or wear of the

abrasion resistant coating on the mating surface of the fuselage skin), restoring damaged abrasion-resistant coatings, correcting fairing positions, and replacing damaged fairing seals. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–53–101, dated September 30, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 12 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $960, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2007–0300; Directorate Identifier 2007–NM–191–AD.

Comments Due Date

(a) We must receive comments by January 10, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

Reports have been received from Fokker 100 (F28 Mark 0100) operators where the crew experienced difficulties with roll control. Analysis suggests that these phenomena are due to frozen water on the aileron pulleys that are installed on the Center Wing Spar and located in the Main Landing Gear (MLG) wheel bays. Investigation has confirmed that improper closure of the aerodynamic seals of the wing-to-fuselage fairings above the MLG wheel bays can cause rainwater, wash-water or de-icing fluid to leak onto the affected aileron pulleys. [The aileron pulleys on Model F.28 Mark 0070 airplanes are identical to those installed on the Model F.28 Mark 0100 airplanes. Therefore, those Model F.28 Mark 0070 airplanes may be subject to the unsafe condition revealed on the Model F.28 Mark 0100 airplanes.] This condition, if not corrected, can lead to further incidents of frozen water on aileron pulleys during operation of the aircraft, resulting in restricted roll control and/or higher control forces. Since an unsafe condition has been identified that is likely to exist or develop on other aircraft of the same type design, this Airworthiness Directive requires the inspection of the wing-to-fuselage fairings and, if necessary, the accomplishment of appropriate corrective action(s).

The inspection is intended to find indications of incorrect fit, damage, or wear. Corrective actions include a related investigative action (inspecting for incorrect fit, damage, or wear of the aerodynamic seal of the fairings, and inspecting for damage or wear of the abrasion resistant coating on the mating surface of the fuselage skin), restoring damaged abrasion-resistant coatings, correcting fairing positions, and replacing damaged fairing seals, as applicable.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 12 months after the effective date of this AD, inspect the wing-to-fuselage fairings for indications of incorrect fit, damage or wear, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–101, dated September 30, 2005.

(i) If no indications of incorrect fit, damage or wear are found, no further action is required by this AD.

(ii) If any incorrect fit, damage or wear is found, before next flight, do related investigative actions and applicable corrective actions in accordance with the Accomplishment Instructions of the service bulletin.

(2) When incorrect fit, damage or wear is found, within 30 days after the inspection or within 30 days after the effective date of the AD, whichever occurs later, report the findings to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. 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, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Dutch Airworthiness Directive NL–2005–013, dated October 17, 2005, and Fokker Service Bulletin SBF100–53–101, dated September 30, 2005, for related information.

Issued in Renton, Washington, on November 30, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–23950 Filed 12–10–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 2000P–0586 (Formerly Docket No. 00P–0586)]

Cheeses and Related Cheese Products; Proposal to Permit the Use of Ultrafiltered Milk; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until February 11, 2008, the comment period for the proposed rule published in the **Federal Register** of October 19, 2005 (70 FR 60751), (herein after referred to as the 2005 proposed rule). In that document, FDA proposed to amend its regulations to provide for the use of fluid ultrafiltered (UF) milk in the manufacture of standardized cheeses and related cheese products. FDA received a number of comments that were opposed to the proposed requirement to declare fluid UF milk, when used, as ''ultrafiltered milk'' or ''ultrafiltered nonfat milk,'' as appropriate, in the ingredient statement of the finished cheese. FDA is reopening the comment period on the 2005 proposed rule to seek further comment only on two specific issues raised by the comments concerning the proposed ingredient declaration.

DATES: Submit written or electronic comments by February 11, 2008.

ADDRESSES: You may submit comments, identified by Docket No. 2000P–0586, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ritu Nalubola, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION:

I. The 2005 Proposed Rule

In the 2005 proposed rule, FDA proposed to amend the definitions of ''milk'' and ''nonfat'' milk in § 133.3 (21 CFR 133.3) for cheeses and related cheese products to: (1) Provide for ultrafiltration of milk and nonfat milk; (2) define UF milk and UF nonfat milk as raw or pasteurized milk or nonfat milk that is passed over one or more semipermeable membranes to partially remove water, lactose, minerals, and water-soluble vitamins without altering the casein-to-whey protein ratio of the milk or nonfat milk and resulting in a liquid product; and (3) require that such treated milk be declared in the ingredient statement of the finished food as ''ultrafiltered milk'' and ''ultrafiltered nonfat milk,'' respectively.

FDA proposed these amendments principally in response to two citizen petitions, one submitted by the American Dairy Products Institute (Docket No. 1999P–5198 (formerly

Docket No. 99P–5198)) and another submitted jointly by the National Cheese Institute, the Grocery Manufacturers of America, Inc., and the National Food Processors Association (the NCI petition; Docket No. 2000P–0586 (formerly Docket No. 00P–0586)). In the 2005 proposed rule, FDA explained the scientific and legal basis for its tentative conclusion to permit the use of fluid UF milk as an ingredient and provided a tentative definition of fluid UF milk. In addition, FDA tentatively concluded that fluid UF milk, as defined, is significantly different in its composition from the starting material ''milk'' and, therefore, proposed that fluid UF milk must be declared as ''ultrafiltered milk'' in the ingredient statement of the finished cheese. FDA requested comments on the 2005 proposed rule by January 17, 2006.

II. Comments to the 2005 Proposed Rule

The agency received about 24 responses (letters and e-mails), each containing 1 or more comments, in response to the 2005 proposed rule. A majority of the comments were from industry, including cheese manufacturers and milk producers and processors, while other comments were from farmers or groups representing farmers, individual consumers, foreign governments, a research institution, and a member of Congress. Most comments supported the proposed use of fluid UF milk in standardized cheeses and related cheese products and several comments encouraged the agency to adopt the definition of fluid UF milk as proposed. However, although they did not disagree that fluid UF milk is significantly different from ''milk,'' several comments opposed the proposed provision to require fluid UF milk or fluid UF nonfat milk to be declared as ''ultrafiltered milk'' or ''ultrafiltered nonfat milk,'' respectively. They cited several reasons for their opposition. FDA is seeking public comment only with respect to two of their reasons that: (1) Due to economic and logistical burdens, it would be impracticable for cheese manufacturers to comply with the labeling requirement; and (2) the proposed provision to declare fluid UF milk as ''ultrafiltered milk'' would be misleading to consumers in that consumers incorrectly believe that cheeses that declare ''ultrafiltered milk'' as an ingredient are different from those cheeses that declare ''milk'' as an ingredient or ''milk and ultrafiltered milk'' as ingredients. In section III of this document, the agency discusses the primary arguments that the comments presented with respect to each of these reasons.

Comments also opposed other tentative conclusions that the agency stated in the 2005 proposed rule. The agency has considered those comments and intends to respond to all issues raised by the comments in any subsequent final rule. However, at this time, the agency is not seeking further comment on any topic other than the two related to the labeling provision, as described in section III of this document.

III. Request for Comments

By way of background, section 403(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343), which governs the labeling of ingredients in foods, requires, with few exceptions, the declaration of all ingredients by their individual common or usual names. Section 403(i) of the act also provides that to the extent that compliance with this requirement ''is impracticable, or results in deception or unfair competition,'' FDA shall establish regulations for exemptions from this requirement.

As noted in section II of this document, FDA received comments from industry opposing the proposed requirement to declare fluid UF milk as ''ultrafiltered milk'' or ''ultrafiltered nonfat milk'' in the ingredient statement of the finished cheese in which these ingredients are used. FDA is seeking comments with respect to two of the reasons that these comments cited in support of their opposition to the proposed labeling provision, i.e., that it would be impracticable for industry to comply with the proposed labeling requirement and that declaring fluid UF milk as ''ultrafiltered milk'' would be misleading to consumers.

Comments previously submitted to the Division of Dockets Management do not need to be and should not be resubmitted. All comments previously submitted to the docket number found in brackets in the heading of this document, and comments submitted in response to this limited reopening of the comment period, will be considered in any final rule to the 2005 proposed rule.

A. Impracticability

Some comments stated that the proposed labeling requirement would be impracticable for the cheese industry to implement in a cost-effective way. They stated that the cost of complying with the proposed labeling requirement would outweigh any economic benefits provided by the use of fluid UF milk in cheesemaking. They further maintained that cheese manufacturers have long used UF milk in cheddar and mozzarella cheeses without declaring it as ''ultrafiltered milk.'' Another comment emphasized that ''outsourced UF milk'' (a term the comments used to refer to milk that is ultrafiltered at a facility other than the plant where the cheese is produced) is widely used in today's marketplace and labeling changes at this time would reduce or eliminate the currently realized economic benefits of using UF milk. The comments contained several arguments in support of their claim of impracticability.

(Comment 1) Some comments stated that cheese manufacturers do not use ''outsourced UF milk'' on a consistent basis and that they use milk and ''outsourced UF milk'' interchangeably as needed and economically practical and, therefore, it would be economically and logistically burdensome to monitor the use of UF milk.

(Response) The agency questions the basis for this argument. The 2005 proposed rule provides for optional (not mandatory) use of fluid UF milk and, therefore, manufacturers have the option to use fluid UF milk as an ingredient only if it is economically practical. Cost considerations would factor into a firm's decision to use fluid UF milk, as with any other ingredient. Furthermore, it is FDA's understanding that fluid UF milk is likely to be used simultaneously, not interchangeably, with milk. As FDA explained in the 2005 proposed rule (70 FR 60751 at 60759), most cheeses are amenable to the use of fluid UF milk, not in lieu of milk, but as a supplement to milk to produce a protein-standardized milk and thus increase cheese yield. In addition, the petitioners acknowledged that fluid UF milk is economically beneficial to cheese manufacturers because it increases cheese yield, decreases production time, and decreases costs associated with shipping of raw materials and disposal of whey (a byproduct of cheesemaking) (pp. 8–9, the NCI petition).

(Comment 2) According to a trade association, cheese manufacturers do not have information technology systems in place to track and measure the presence of ''outsourced UF milk'' and tracking ''outsourced UF milk'' becomes even more unmanageable as the cheese is further processed into other products, such as shredded cheese blends. Further, the comment indicated that suppliers often do not provide information on whether the cheese product is made from UF milk and to do so would mean more logistical difficulties and added costs. The comment also argued that a cheese processor has no way to test a product from a supplier to determine if UF milk

was used and thus ensure that the correct label was affixed to the finished food.

(Response) It is the agency's understanding that most cheesemaking production lines are fully automated and allow manufacturers to track raw materials from receiving docks through to finished products. Published literature, including articles in trade journals, indicate that computer-integrated manufacturing systems are used to control ingredient feeders and maintain detailed records of the combination of ingredients used and results of laboratory analyses of ingredients and product formulations (Refs. 1 and 2). Another publication indicated that automation in the dairy industry enables manufacturers to track every batch of cheese that is produced, including the combination of ingredients that are fed into each batch (Ref. 3). Moreover, food manufacturers would have to monitor the ingredients that are used to manufacture the food they market in order to comply with the ingredient declaration provisions of § 101.4 (21 CFR 101.4). Therefore, it is unclear to the agency why a cheese supplier would not provide information about the ingredients (including fluid UF milk, when used) that are used to produce the cheese. With respect to the cost argument, the 2005 proposed rule provides for optional (not mandatory) use of fluid UF milk and, therefore, manufacturers have the option to weigh any associated costs against benefits to determine whether it would be economically beneficial to use fluid UF milk in cheese.

(Comment 3) The trade association also estimated that, in order to comply with the labeling requirement, cheese manufacturers will, at a minimum, need to triple their label inventory. According to this comment, associated costs that will also increase include:

- Producing more labels (estimated at $985,000 to $2.7 million);
- Carrying additional packaging inventory, risk of obsolete packaging, and additional storage space (estimated at doubling or tripling of current costs);
- Increasing raw material inventory (estimated at $470,000 to $5.8 million);
- Additional personnel (estimated at $240,000 to $900,000); and
- Administrative and logistical problems (estimates of $5.4 million and $72 million).

(Comment 4) Another comment stated that the proposed labeling requirement would result in costs to modify tracking systems, update specifications, and update quality control programs as well as costs associated with increased inventory of raw materials, packaging, and finished goods. This comment estimated the cost of complying with the labeling requirement to be about $23 million.

(Response) The comments did not provide a detailed or itemized breakdown of the estimation of these costs sufficient to enable the agency to conduct any meaningful analysis of these figures. FDA requests that interested persons submitting comments on this issue provide such data. It is FDA's current understanding that cheese manufacturing facilities are already equipped with systems that can handle multiple ingredients and combinations of ingredients in the manufacture of a cheese product and, therefore, can easily adapt to the introduction of a single, new ingredient. Indeed, manufacturers routinely adjust existing product formulations or introduce new ones based on supply and availability of ingredients and market demand. Thus, FDA questions the additional cost described in the comments associated with the labeling of this new ingredient given the extensive monitoring systems already in place.

(Comment 5) The trade association also asserted that under the proposed labeling requirement, operational efficiencies would decline, cheese plants would lose up to an hour a day changing packaging, and additional time would be spent auditing labels to ensure proper labeling.

(Response) It seems possible to FDA that declines in operational efficiencies can be avoided by proper planning of the production run. Further, any decrease in efficiency due to the labeling requirement is likely to be offset by increased yield, increased through-put (decreased time between coagulation and cutting phases), and increased overall production efficiency. Moreover, the provision for fluid UF milk, as stated in the 2005 proposed rule, is optional and, if finalized as proposed, would not limit manufacturers' ability to weigh different cost considerations to determine whether it would be economical to use fluid UF milk in their cheese production.

FDA is interested in factual information or data that would enable the agency to fully evaluate claims in these comments that it would be impracticable for the cheese industry to comply with the proposed labeling requirement. In particular, FDA seeks information on the following questions:

1. What systems do cheese plants use to monitor ingredients received and ingredients used in different cheeses and related cheese products?
2. How extensively are cheese plants automated with respect to tracking the use of different ingredients?
3. What types of costs are associated with introducing a new ingredient into cheesemaking?
4. How are costs associated with the use of fluid UF milk different from those associated with the use of any other new ingredient or other reformulation of a cheese product?
5. Are the costs associated with the labeling of UF milk that are estimated by the two comments noted previously reasonable? Explain.
6. What mechanisms do manufacturers of cheese-based products (for example, cheese spreads, processed cheeses, shredded cheese blends) currently employ to ensure that the ingredients used in their products, including the sub-ingredients of the cheeses used in their products, are accurately declared? Why are these same mechanisms inadequate to accurately identify fluid UF milk when it is a sub-ingredient of a cheese ingredient?

B. Misleading Ingredient Declaration

Comments that opposed the proposed labeling requirement stated that this requirement would lead to consumer confusion and deception. They stated that consumers would be misled by special ingredient labeling of UF milk, given that the finished cheeses made with or without UF milk are indistinguishable and that there are no differing consequences of use or allergen-related concerns between the two cheeses. One comment also stated that the use of UF milk is not material information because cheeses made with or without UF milk are the same. In addition, comments from Kraft and those submitted jointly by the International Dairy Foods Association (IDFA) and the National Milk Producers Federation (NMPF) included consumer research, which they claim indicates that consumers, when shown cheese labels that declare either ''milk,'' ''ultrafiltered milk,'' or ''milk and ultrafiltered milk'' in the ingredient statement, believe that the cheeses are different with respect to taste, healthfulness, and quality. Based on these results, these two comments stated that it would be misleading to consumers to declare UF milk as ''ultrafiltered milk'' because it would lead them to believe that the cheeses are ''different'' when, in fact, cheeses made with or without UF milk are ''identical.'' These comments urged the agency to remove the proposed labeling requirement from any final rule on this issue such that ultrafiltered milk and

ultrafiltered nonfat milk, when used as ingredients in standardized cheeses and related cheese products, would be declared as simply ''milk'' and ''nonfat milk,'' respectively, in the ingredient statement of the finished food.

With respect to the consumer research information that Kraft and IDFA/NMPF submitted, the agency reviewed these submissions and notes several limitations in the design of the surveys and interpretation of the results from these surveys (Refs. 4 and 5). In the case of the IDFA-commissioned consumer research (IDFA study; n=672), as an Internet study, the survey sample cannot be considered representative of the population as a whole. The study is essentially a survey with a key measure being forced comparisons between two product labels. However, a substantial limitation of the study is that the forced comparison questions (in which respondents are directed to examine specific label information) are not reliable indicators of what consumers are likely to do in realistic product selection situations (in which consumers may or may not review or consider such information in making their choices). A more useful and appropriate research method would be an experimental study, which looks to establish cause-effect relationships between changes in label information and consumers' judgments and inferences. The results of the IDFA study suggest that some study participants whose attention is directed to the ''ultrafiltered milk'' in a product's ingredient list may infer that the product may be different somehow from a product that does not have that specific ingredient listed. However, this conclusion is likely to be more a product of the logical deduction that something that is labeled differently must be different than it is to any understanding of what ''ultrafiltered milk'' is or how this ingredient may affect the product. The IDFA study demonstrates that when study participants notice or are directed to notice a single ingredient difference between two otherwise similar product labels, some will believe the products differ in some way. Of the attributes tested, healthfulness of the product was believed to differ by the largest minority (45 percent). For taste and quality fewer expected a difference (38 percent and 35 percent respectively).

The Kraft consumer research is nearly identical to the IDFA study. It is an Internet panel study, with a smaller sample size (n=301), conducted among individuals who reported that they were cheese product consumers. Like the IDFA study, the Kraft study sample cannot be considered representative of the population as a whole or of all consumers of cheese products. As did the IDFA study, the Kraft study focuses narrowly on the question of whether disclosing ''milk'' or ''ultrafiltered milk'' in the ingredient list of a cheese product affects study participants' perceptions of the product, and the Kraft study suffers from the same shortcomings as does the IDFA study. Kraft's study demonstrates that when study participants noticed or were directed to notice the ingredient difference between two otherwise identical product labels, some inferred that the products differ in some way. Of the attributes tested, healthfulness of the product was believed to differ by nearly half (48 percent) of the respondents. For taste and quality fewer respondents expected a difference (32 percent and 42 percent respectively).

Because of the limitations in the design of these studies as noted previously, FDA tentatively concludes that the findings from both the IDFA study and the Kraft study fail to provide sufficient support for their assertion that labeling fluid UF milk on cheese products as ''ultrafiltered milk'' would be deceptive to consumers.

With respect to the recommendation of some comments that fluid UF milk and fluid UF nonfat milk should be permitted to be declared by the collective terms ''milk'' and ''nonfat milk,'' respectively, the agency seeks comment on the need for and appropriateness of such declaration. The existing provisions for the use of the collective terms ''milk'' and ''nonfat milk'' in § 101.4(b) are relatively narrow and limited to those forms of milk and nonfat milk from which only water is removed to varying degrees. For example, concentrated milk, reconstituted milk, and dry whole milk are all permitted as basic ingredients in standardized cheeses and § 101.4(b)(4) permits these ingredients to be declared as ''milk.'' However, the agency is being asked to consider extending this collective declaration provision to fluid UF milk. The petitioners and a number of comments in response to the petitions and to the 2005 proposed rule have noted that several substances present in milk (such as lactose, minerals, and water-soluble vitamins) are lost during the ultrafiltration process. The agency also explained the process of ultrafiltration and its effect on milk composition based on its own review of the scientific literature in the 2005 proposed rule (70 FR 60751 at 60752). Unlike concentrated milk, reconstituted milk, and dry whole milk, all of which differ from milk only with respect to their moisture content (and which are permitted under § 101.4 to be declared by the generic term ''milk''), fluid UF milk, as defined in the 2005 proposed rule, has a composition that is significantly different from that of milk.

Another factor that should be considered is that fluid UF milk is not the standardized food ''milk'' as defined 21 CFR 131.110. Given that there is currently no provision in § 101.4 for fluid UF milk to be declared as ''milk'' in the ingredient statement of a finished food, and that fluid UF milk does not comply with the standard of identity for ''milk,'' current regulations do not permit fluid UF milk to be declared as ''milk.'' In such instances, consistent with 21 CFR 101.3, the agency generally applies the principles of common or usual name regulations in 21 CFR 102.5 to determine an appropriate name that accurately identifies or describes the basic identity of the food. Consequently, in the 2005 proposed rule, the agency proposed ''ultrafiltered milk'' as the appropriate declaration of this ingredient. In addition, in response to the petitions, the agency previously received comments from consumers who requested that, if ultrafiltered milk is permitted as an ingredient, cheeses made with this ingredient should be clearly labeled to distinguish them from cheeses made with only milk. The agency seeks public comment on the need for, and appropriateness of, declaring fluid UF milk (or fluid UF nonfat milk) as simply ''milk'' (or ''nonfat milk'') when used as an ingredient in standardized cheeses and related cheese products.

Under certain conditions, FDA has previously permitted the use of ''or,'' ''and/or,'' or ''contains one or more of the following:'' in the declaration of ingredients to accommodate relevant concerns related to ingredient supply and availability. For example, § 101.4(b)(23) provides that when manufacturers are unable to adhere to a constant pattern of fish species ingredient(s) in the manufacture of processed seafood products containing fish protein, due to seasonal or other limitations of species availability, the common or usual name of each individual fish species need not be declared in descending order of predominance, and fish species not present in the fish protein product may be listed if they are sometimes used in the product. This provision permits the declaration of such ingredients using the terms ''or,'' ''and/or,'' or ''contains one or more of the following:'' to indicate to consumers that all of the listed ingredients may not be present or that they may not be present in the listed descending order of

predominance. For example, the provision allows for the declaration ''fish protein (contains one or more of the following: Pollock, cod, and/or pacific whiting).'' Given the concerns that industry has expressed with respect to impracticability of the agency's proposed labeling requirement (see section III.A of this document), we seek comment on the need for and appropriateness of a similar provision for the labeling of fluid UF milk that is used interchangeably with milk, as needed and when economically and logistically practical, in the manufacture of standardized cheeses and related cheese products.

The agency seeks public comment on whether the labeling requirement that the agency proposed would be misleading or deceptive to consumers. Specifically, the agency seeks comment on the following questions:

1. Considering that the products of ultrafiltration, as defined in proposed § 133.3(f) and (g) in the 2005 proposed rule, are significantly different in composition from milk and nonfat milk, is it or is it not appropriate to require that they must be identified by a common or usual name other than ''milk'' and ''nonfat milk,'' respectively?

2. If it is appropriate to permit fluid UF milk and fluid UF nonfat milk to be declared by the collective terms ''milk'' and ''nonfat milk,'' respectively, when used in standardized cheeses and related cheese products, what is the scientific and legal justification?

3. Is there a need to consider the declaration of fluid UF milk and fluid UF nonfat milk by a term(s) other than their specific, individual common, or usual names when they are used as ingredients in standardized cheeses and related cheese products? Should this consideration be extended to fluid UF milk and fluid UF nonfat milk when they are used as ingredients in other foods? If they are required to be declared by different terms when used in standardized cheeses as compared to other foods, what would be the scientific and legal basis for the different labeling requirements?

4. Is there a need for the agency to consider providing for ''and/or'' labeling (similar to such provisions in § 101.4(b)) when fluid UF milk or fluid UF nonfat milk are used as ingredients in standardized cheeses and related cheese products? What is the scientific and legal justification for such a provision?

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Johnson, M.E. and J.A. Lucey, ''Major Technological Advances and Trends in Cheese,'' *Journal of Dairy Science*, 89:1174–1178, 2006.

2. Dudlicek, J., ''Cutting Edge: Innovative Processes Keep Dairy Manufacturing Moving,'' in the February 2006 ed. of Dairy Field (*http://www.dairyfield.com/content.php?s=DF/2006/02&p=10*), accessed July 2, 2007.

3. Tamime, A.Y. and B.A. Law (Eds.), *Mechanisation and Automation in Dairy Technology*, pp. 1–29 and 204–295, Sheffield Academic Press Ltd., Sheffield, England, 2001.

4. Derby, B.M., Memorandum to Nalubola, R., Consumer Research on Ultrafiltered Milk Labeling, February 10, 2006.

5. Derby, B.M., Memorandum to Nalubola, R., Kraft Consumer Research on Ultrafiltered Milk Labeling, August 16, 2006.

Dated: December 3, 2007.

Leslye M. Fraser,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. E7–23981 Filed 12–10–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2007–0957; FRL–8504–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of Kewaunee County Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination under the Clean Air Act (CAA) that the nonattainment area of Kewaunee County has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on quality-assured ambient air quality monitoring data for the 2004–2006 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Preliminary monitoring data for 2007 continue to show monitored attainment of the NAAQS.

EPA is proposing to approve a request from the State of Wisconsin to redesignate the Kewaunee County area to attainment of the 8-hour ozone NAAQS. The Wisconsin Department of Natural Resources (WDNR) submitted this request on June 12, 2007. In proposing to approve this request EPA is also proposing to approve, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2018 in the area. EPA also finds adequate and is proposing to approve the State's 2012 and 2018 Motor Vehicle Emission Budgets (MVEBs) for the Kewaunee County area.

DATES: Comments must be received on or before January 10, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0957, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 886–5824.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77

West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–0957. 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

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

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I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Kewaunee County nonattainment area has attained the 8-hour ozone standard and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Wisconsin's request to change the legal designation of the Kewaunee County area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Wisconsin's maintenance plan SIP revision for Kewaunee County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Kewaunee County area in attainment of the ozone NAAQS through 2018. Additionally, EPA is proposing to approve the newly-established 2012 and 2018 MVEBs for the Kewaunee County area. The adequacy comment period for the MVEBs began on September 24, 2007, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on October 24, 2007. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated November 6, 2007, EPA informed WDNR that we had found the 2012 and 2018 MVEBs to be adequate for use in transportation conformity analyses. Please see the Adequacy section of this rulemaking for further explanation on this process. Therefore, we find adequate, and are proposing to approve, the State's 2012 and 2018 MVEBs for transportation conformity purposes.

III. What Is the Background for These Actions?

A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the current 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56852), the Kewaunee County area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment of the 1-hour standard on August 26, 1996 (61 FR 43668). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Kewaunee County area was designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's 8-hour ozone implementation rule, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (i.e. the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Kewaunee County area was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23947) based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I provide that the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR Part 50, Appendix I, 2.3(d).

On June 12, 2007, Wisconsin requested that EPA redesignate the Kewaunee County area to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2004 through 2006, indicating the 8-hour NAAQS for ozone had been attained for the Kewaunee County area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

B. What Is the Impact of the December 22, 2006 United States Court of Appeals Decision Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA*, Docket No. 04 1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the Act as 8-hour nonattainment areas, the 8 hour attainment dates and the timing for emissions reductions needed for attainment of the 8 hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of federal actions. The June 8 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Kewaunee County area was classified under

subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). See *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, *e.g.* also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club* v. *Whitman*, 285 F. 3d 63 (DC Cir. 2002), the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Kewaunee County area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The DC Circuit's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8 decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requrements of EPA's conformity regulations at 40 CFR Part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Kewaunee County area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in South Coast Air Quality Management Dist. should not alter requirements that would preclude EPA from finalizing the redesignation of this area.

IV. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, dated November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. Why Is EPA Proposing To Take These Actions?

On June 12, 2007, Wisconsin requested redesignation of the Kewaunee County area to attainment for the 8-hour ozone standard. EPA believes that the area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

VI. What Is the Effect of These Actions?

Approval of the redesignation request would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Wisconsin SIP a plan for maintaining the 8-hour ozone NAAQS through 2018. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs of 0.43 and 0.32 tons per day (tpd) VOC and 0.80 and 0.47 tpd NO_X for the years 2012 and 2018, respectively.

VII. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation

EPA is proposing to make a determination that the Kewaunee County area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determination is as follows:

1. The Area Has Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Kewaunee County area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

WDNR submitted ozone monitoring data for the 2004 to 2006 ozone seasons. The WDNR quality-assured the ambient monitoring in accordance with 40 CFR 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three year period. Preliminary 2007 monitoring data show that the area continues to meet the 8-hour ozone NAAQS. Monitoring data is presented in Table 1 below.

TABLE 1.—KEWAUNEE COUNTY ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS.

Monitor	2004 4th high (ppm)	2005 4th high (ppm)	2006 4th high (ppm)	2004–2006 average 4th high (ppm)
55–061–0002	0.073	0.088	0.077	0.079

In addition, as discussed below with respect to the maintenance plans, WDNR has committed to continue monitoring ozone levels in Kewaunee County and to discuss with EPA any changes in the siting that may become necessary. WDNR will continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System on a timely basis in accordance with federal guidelines. In summary, EPA believes that the data submitted by Wisconsin provide an adequate demonstration that the Kewaunee County area has attained the 8-hour ozone NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Wisconsin has met all currently applicable SIP requirements for purposes of redesignation for the Kewaunee County area under Section 110 of the CAA (general SIP requirements). We have also determined that the Wisconsin SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we have determined that the Wisconsin SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

a. The Kewaunee County Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable

until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements. Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call,[1] Clean Air Interstate Rule (CAIR) (70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. When the transport SIP submittal requirements are applicable to a state, they will continue to apply to the state regardless of the attainment designation of any one particular area in the state. Therefore, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh ozone redesignation (66 FR 50399, October 19, 2001).

As discussed above, we believe that section 110 elements which are not linked to the area's nonattainment status are not applicable for purposes of redesignation. Because there are no section 110 requirements linked to the part D requirements for 8-hour ozone nonattainment areas that have become due, as explained below, there are no part D requirements applicable for purposes of redesignation under the 8-hour standard.

Part D Requirements. EPA has determined that the Wisconsin SIP meets applicable SIP requirements under part D of the CAA, since no requirements applicable for purposes of redesignation became due for the 8-hour ozone standard prior to WDNR's submission of the redesignation request for the Kewaunee County area. Under part D, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. The Kewaunee County area was classified as a subpart 1 nonattainment area, and, therefore, subpart 2 requirements do not apply.

Part D, subpart 1 applicable SIP requirements. For purposes of evaluating these redesignation requests, the applicable part D, subpart 1 SIP requirements for the Kewaunee County area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

No requirements applicable for purposes of redesignation under part D became due prior to submission of the redesignation request, and, therefore, none are applicable to the areas for purposes of redesignation. Since the State of Wisconsin has submitted a complete ozone redesignation request for the Kewaunee County area prior to the deadline for any submissions required for purposes of redesignation, we have determined that these requirements do not apply to the Kewaunee County area for purposes of redesignation.

Furthermore, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Wisconsin has demonstrated that the area to be redesignated will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Kewaunee County area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 176 conformity requirements. Section 176(c) of the CAA requires states to establish criteria and

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. Wisconsin was not included in EPA's NO_X SIP call.

procedures to ensure that federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State conformity revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Wisconsin's general and transportation conformity SIPs on July 29, 1996 (61 FR 39329) and August 27, 1996 (61 FR 43970), respectively. Wisconsin has submitted onroad motor vehicle budgets for the Kewaunee County area of 0.43 and 0.32 tpd VOC and 0.80 and 0.47 tpd NO_X for the years 2012 and 2018, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval. Thus, the Kewaunee County area has satisfied all applicable requirements under section 110 and part D of the CAA.

b. The Kewaunee County Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Wisconsin SIP for the Kewaunee County area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Wisconsin has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Kewaunee County area under the 1-hour ozone standard. No Kewaunee County area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Wisconsin has demonstrated that the observed air quality improvement in the Kewaunee County area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2002, one of the years used to designate the area as nonattainment, and 2005, one of the years the Kewaunee County area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Kewaunee County and upwind areas have implemented in recent years. The Kewaunee County area is impacted by the transport of ozone and ozone precursors from upwind areas. Therefore, local controls as well as controls implemented in upwind areas are relevant to the improvement in air quality in the Kewaunee County area.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

NO_X rules. Wisconsin adopted NO_X controls for large existing sources and established emissions standards for new sources as part of their rate of progress plan under the 1-hour ozone standard.

Federal Emission Control Measures. Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: Maximum Achievable Control Technology Standards, the National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule (69 FR 38958 (July 29, 2004)). EPA expects this rule to reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

Control Measures in Upwind Areas. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Kewaunee County area. Emission reductions resulting from regulations developed in response to the NO_X SIP call are permanent and enforceable.

b. Emission Reductions

Wisconsin is using 2002 for the nonattainment inventory and 2005, one of the years used to demonstrate monitored attainment of the NAAQS, for the attainment inventory. WDNR prepared comprehensive inventories for both 2002 and 2005 for Kewaunee County as part of a larger inventory effort. Point source inventories were developed using source specific data. Area source emissions were estimated based on various activity data compiled by the Census Bureau, the Energy Information Administration, the Bureau of Economic Analysis, and several Wisconsin State agencies. Nonroad mobile emissions were generated using EPA's National Mobile Inventory Model (NMIM) and adding emissions estimates for aircraft, commercial marine vessels, and railroads, three nonroad categories not included in NMIM. Onroad mobile

emissions were calculated using MOBILE6.2.

Using the inventories described above, Wisconsin's submittal documents changes in VOC and NO_X emissions from 2002 to 2005 for the Kewaunee County area. Because Kewaunee County is impacted by transport, WDNR also documented emissions reductions for the upwind Wisconsin areas of Milwaukee-Racine, Sheboygan, and Manitowoc County. Emissions data are shown in Tables 3 through 5 below.

TABLE 3.—VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2002 (tpd)

	Kewaunee County		Milwaukee-Racine		Sheboygan		Manitowoc County		Wisconsin upwind areas total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	0.3	0.05	14.7	114.9	2.5	26.1	1.6	2.9	18.8	143.9
Area	1.3	0.1	120.6	12.1	10.9	0.9	5.1	0.4	136.6	13.4
Nonroad	1.7	2.1	62.1	52.2	5.6	4.5	3.7	4.2	71.4	60.9
Onroad	0.8	1.2	45.4	101.6	4.1	8.2	3.6	7.4	53.1	117.2
Total	4.1	3.5	242.8	280.8	23.1	39.7	14.0	14.9	279.9	335.4

TABLE 4.—VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2005 (TPD)

	Kewaunee County		Milwaukee-Racine		Sheboygan		Manitowoc County		Wisconsin upwind areas total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	0.2	0.01	13.8	68.6	2.3	13.2	1.3	3.2	17.4	85.0
Area	1.3	0.1	107.5	13.4	7.8	1.1	4.9	0.5	120.2	15.0
Nonroad	1.6	1.7	54.0	49.1	5.4	4.1	3.4	3.8	62.8	57.0
Onroad	0.6	1.2	36.0	86.2	2.9	7.8	2.6	7.4	41.5	101.4
Total	3.7	3.0	211.3	217.3	18.4	26.2	12.2	14.9	241.9	258.4

TABLE 5. COMPARISON OF 2002 AND 2005 VOC AND NO_X EMISSIONS (TPD)

Sector	Kewaunee County						Wisconsin upwind areas total					
	VOC			NO_X			VOC			NO_X		
	2002	2005	Net change (2002–2005)	2002	2005	Net change (2002–2005)	2002	2005	Net change (2002–2005)	2002	2005	Net change (2002–2005)
Point	0.3	0.2	−0.1	0.05	0.01	−0.04	18.8	17.4	−1.4	143.9	85.0	−58.9
Area	1.3	1.3	0.0	0.1	0.1	0.0	136.6	120.2	−16.4	13.4	15.0	1.6
Nonroad	1.7	1.6	−0.1	2.1	1.7	−0.4	71.4	62.8	−8.6	60.9	57.0	−3.9
Onroad	0.8	0.6	−0.2	1.2	1.2	0.0	53.1	41.5	−11.6	117.2	101.4	−15.8
Total	4.1	3.7	−0.4	3.45	3.01	−0.4	279.9	241.9	−38.0	335.4	258.4	−77.0

Table 5 shows that the Kewaunee County area reduced VOC emissions by 0.4 tpd and NO_X emissions by 0.4 tpd between 2002 and 2005. In addition, upwind areas in Wisconsin reduced VOC emissions by 38.0 tpd and NO_X emissions by 77.0 tpd between 2002 and 2005. Based on the information summarized above, Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the Kewaunee County nonattainment area to attainment status, Wisconsin submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2018.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a

maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: The attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The WDNR developed an emissions inventory for 2005, one of the years Wisconsin used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 4, above.

c. Demonstration of Maintenance

Wisconsin submitted with the redesignation request a revision to the 8-hour ozone SIP to include a maintenance plan for the Kewaunee County area, in compliance with section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone standard through 2018 by assuring that current and future emissions of VOC and NO_X for the Kewaunee County area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Wisconsin is using projected emissions inventories for the years 2012 and 2018 to demonstrate maintenance. Point and area source emissions were projected from the 2005 base year using growth factors. Nonroad mobile emissions were generated for 2012 and 2018 using NMIM and grown emissions for aircraft, commercial marine vessels, and railroads were added in. Onroad mobile source emissions projections were created using MOBILE6.2. Emissions estimates are presented in Table 6 below.

TABLE 6.—KEWAUNEE COUNTY: COMPARISON OF 2005–2018 VOC AND NO_X EMISSIONS (TPD)

Sector	VOC				NO_X			
	2005	2012	2018	Net change 2005–2018	2005	2012	2018	Net change 2005–2018
Point	0.2	0.3	0.3	0.10	0.01	0.01	0.0	−0.01
Area	1.3	1.4	1.3	0.00	0.1	0.1	0.1	0.00
Nonroad	1.6	1.3	1.2	−0.40	1.7	1.5	1.4	−0.30
Onroad	0.6	0.43	0.32	−0.28	1.2	0.80	0.47	−0.73
Total	3.7	3.43	3.12	−0.58	3.01	2.41	1.97	−1.04

The emission projections show that WDNR does not expect emissions in the Kewaunee County area to exceed the level of the 2005 attainment year inventory during the maintenance period. In the Kewaunee County area, WDNR projects that VOC and NO_X emissions will decrease by 0.58 tpd and 1.04 tpd, respectively.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the area. A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Kewaunee County area attained the 8-hour ozone NAAQS during the 2004–2006 time period. Wisconsin used 2005 as the attainment level of emissions for the area. In the maintenance plan, WDNR projected emission levels for 2018. For Kewaunee County, the emissions from point, area, nonroad, and mobile sources in 2005 equaled 3.7 tpd of VOC. WDNR projected VOC emissions for the year 2018 to be 3.12 tpd of VOC. The SIP submission demonstrates that the Kewaunee County area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 0.58 tpd of VOC for 2018. By this same method, 1.04 tpd (i.e., 3.01 tpd less 2.41 tpd) is the safety margin for NO_X for 2018. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Wisconsin currently operates one ozone monitor in Kewaunee County. Wisconsin has committed to continue to operate and maintain an approved ozone monitoring network in Kewaunee. WDNR has also committed to consult with EPA regarding any changes in siting that may become necessary in the future. WDNR will continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System on a timely basis in accordance with federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Kewaunee County area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Wisconsin's plan for verifying continued attainment of the 8-hour standard in the Kewaunee County area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. The State will also evaluate future VOC and NO_X emissions inventories for increases over 2005 levels.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by

the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted a contingency plan for the Kewaunee area to address possible future ozone air quality problems. A contingency plan response will be triggered whenever a three-year average fourth-high monitored value of 0.085 ppm or greater is monitored within the maintenance area. When a response is triggered, WDNR will determine whether a special event, malfunction, or non-compliance with permit conditions or rule requirements resulted in high ozone concentrations in order to immediately address needed corrective measures. The WDNR will also review meteorological conditions during high ozone episodes. The State will conduct this review within 6 months following the close of the ozone season. If the high values were found not to be prompted by an exceptional event, malfunction, or non-compliance with a permit condition or rule requirement, WDNR will evaluate existing but not fully implemented, on-the way, and, if necessary, new control measures necessary to return the area to attainment within 18 months. EPA is interpreting this commitment to mean that the measure will be in place within 18 months. In addition, it is EPA's understanding that to acceptably address a violation of the standard, existing and on-the way control measures must be in excess of emissions reductions included in the projected maintenance inventories.

In its maintenance plan, WDNR included the following list of potential contingency measures:

i. Broaden the application of the NO_X RACT program by including a larger geographic area, and/or including sources with potential emissions of 50 tons per year, and/or increasing the cost-effectiveness thresholds utilized as a basis for Wisconsin's NO_X RACT Program; and/or

ii. Broaden the geographic area for the idling control program for mobile sources targeting diesel vehicles; and/or

iii. Reduced VOC content in Architectural, Industrial and Maintenance coatings rule; and/or

iv. Reduced VOC content in commercial and consumer products; and/or

v. Reduced VOC content from federal motor vehicle toxics rule; and/or

Control measures identified as RACM in a regional attainment demonstration for ozone control.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Wisconsin commits to submit to the EPA updated ozone maintenance plans eight years after redesignation of the Kewaunee County area to cover an additional 10-year period beyond the initial 10-year maintenance period. As required by section 175(A) of the CAA, Wisconsin has committed to maintaining the existing controls after redesignation unless the State demonstrates that the standard can be maintained without one or more controls. Wisconsin also commits that any changes to its rules or emission limits applicable to VOC and/or NO_X sources, as required for maintenance of the ozone standard in the Kewaunee County area as well as contingency measures adopted under the section 175A maintenance plan, will be submitted to EPA for approval as a SIP revision. Wisconsin has also asserted that the WDNR has the necessary resources to actively enforce any violations of its rules or permit provisions.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Wisconsin for the Kewaunee County area meets the requirements of section 175A of the CAA.

B. Adequacy of Wisconsin's MVEBs

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.,* reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR Part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was codified in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM 2.5 National Ambient

Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Kewaunee County area's maintenance plan contains new VOC and NO_X MVEBs for the years 2012 and 2018. The availability of the SIP submission with these 2012 and 2018 MVEBs was announced for public comment on EPA's Adequacy Web page on September 24, 2007 at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on adequacy of the 2012 and 2018 MVEBs for the Kewaunee County area closed on October 24, 2007. No requests for this submittal or adverse comments on the submittal were received during the adequacy comment period. In a letter dated November 6, 2007, EPA informed WDNR that we had found the 2012 and 2018 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Kewaunee County area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. WDNR has determined the 2012 MVEBs for the Kewaunee County area to be 0.43 tpd for VOC and 0.80 tpd for NO_X. WDNR has determined the 2018 MVEBs for the area to be 0.32 tpd for VOC and 0.47 tpd for NO_X. These MVEBs are consistent with the onroad mobile source VOC and NO_X emissions projected by MDEQ for 2012 and 2018, as summarized in Table 6 above (''onroad'' source sector). Wisconsin has demonstrated that the Kewaunee County area can maintain the 8-hour ozone NAAQS with mobile source emissions of 0.43 tpd and 0.32 tpd of VOC and 0.80 tpd and 0.47 tpd of NO_X in 2012 and 2018, respectively, since emissions will remain under attainment year emission levels.

VIII. What Action Is EPA Taking?

EPA is proposing to make a determination that the Keweaunee County area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Kewaunee County area. EPA's proposed approval of the maintenance plan is based on Wisconsin's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. After evaluating Wisconsin's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Kewaunee County area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Kewaunee County area from nonattainment to attainment for the 8-hour ozone standard. Finally, EPA is proposing to approve the 2012 and 2018 MVEBs submitted by Wisconsin in conjunction with the redesignation request.

IX. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (*58 FR 51735,* September 30, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law, and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (*64 FR 43255,* August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program

submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air Pollution Control, Environmental protection, National parks, Wilderness areas.

Dated: November 29, 2007.

Walter W. Kovalick,

Acting Regional Administrator, Region 5.

[FR Doc. E7–23949 Filed 12–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2007–0999; FRL–8504–3]

Rhode Island: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Rhode Island has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Rhode Island. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through an immediate final action.

DATES: Comments must be received on or before January 10, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. PA–R01–RCRA–2007–0999, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: biscaia.robin@epa.gov.*
- *Fax:* (617) 918–0642, to the attention of Robin Biscaia.
- *Mail:* Robin Biscaia, Hazardous Waste Unit, EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023.
- *Hand Delivery or Courier:* Deliver your comments to: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystem Protection, EPA New England—Region 1, One Congress Street, 11th Floor, (CHW), Boston, MA 02114–2023. Such deliveries are only accepted during the Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

For further information on how to submit comments, please see today's immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, U.S. EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone number: (617) 918–1642; fax number: (617) 918–0642, e-mail address: *biscaia.robin@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing these changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect adverse comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written adverse comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time.

Dated: November 2, 2007.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E7–23947 Filed 12–10–07; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–39

[FMR Case 2007–102–1; Docket 2007-0001; Sequence 3]

RIN 3090–AI38

Federal Management Regulation; FMR Case 2007–102–1, Replacement of Personal Property Pursuant to the Exchange/Sale Authority

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the Federal Management Regulation (FMR) by updating coverage on the replacement of personal property pursuant to the exchange/sale authority. The proposed changes were prompted by recommendations of the Federal Asset Management Evaluation (FAME) interagency working group led by GSA.

DATES: Interested parties should submit comments in writing on or before January 10, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR case 2007–102–1 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''General Services Administration'' as the agency of choice. At the ''Keyword'' prompt, type in the FMR case number (for example, FMR Case 2007–102–1) and click on the ''Submit'' button. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration'', and typing the FMR case number in the keyword field. Select the ''Submit'' button.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FMR case 2007–102–1 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Robert Holcombe, Office of

Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 501–3828 or e-mail at *Robert.Holcombe@gsa.gov*. For information pertaining to status or publication schedules contact the Regulatory Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405, (202) 501–4755. Please cite FMR case 2007–102–1.

SUPPLEMENTARY INFORMATION:

A. Background

The regulations in this part were last substantively updated on September 21, 2001 (66 FR 48614). Early in fiscal year 2005, a project entitled Federal Asset Management Evaluation (FAME) was initiated to identify any and all areas of Federal personal property management needing improvement. An interagency working group, led by GSA, was formed to work on the FAME project. At the conclusion of the FAME project, the working group identified the exchange/sale authority as an area where changes should be made. A team of GSA Office of Governmentwide Policy employees has reviewed all of the provisions in this part and has recommended a number of changes intended to update, streamline, and clarify the part. The most significant changes include:

1. Adding a new section that explains the exchange/sale authority by quoting relevant language from the statute (40 U.S.C. 503).
2. Adding definitions for ''excess property'', ''surplus property ''and ''Service Life Extension Program''.
3. Revising the definitions for ''acquire'', ''replacement'', and ''similar''.
4. Adding a new section that addresses which provisions in this part are subject to deviation.
5. Adding a new section that explains when agencies should consider using the exchange/sale authority.
6. Revising the section that explains why the exchange/sale authority should be used.
7. Amending the restrictions and prohibitions applicable to the exchange/sale of personal property, including the addition of language which: 1) states that under no circumstances will deviations be granted for FSC Class 1005, Guns through 30mm; and 2) clarifies the requirement for the exchange/sale of weapons for Department of Defense property in FSC Group 10, Weapons.
8. Removing the requirement that the number of items acquired must equal the number of items exchanged or sold, as this is not a requirement imposed by 40 U.S.C. 503.
9. Adding a new provision which clarifies that the exchange/sale authority can only be used to acquire property, not services.
10. Revising the requirement for documentation of exchange/sale transactions.
11. Revising the accounting requirements applicable to the exchange/sale authority.
12. Revising the annual reporting requirement.

B. Executive Order 12866

This regulation is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553 (a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–39

Government property management, Reporting and recordkeeping requirements, and Government property.

Dated: August 28, 2007.

Kevin Messner

Acting Associate Administrator.

Editorial Note: This document was received at the Office of the Federal Register on December 5, 2007.

For the reasons set forth in the preamble, GSA amends 41 CFR part 102–39 as set forth below:

PART 102–39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

1. The authority citation for 41 CFR part 102–39 is amended to read as follows:

Authority: 40 U.S.C. 121(c); 40 U.S.C. 501; 40 U.S.C. 503

§ 102–39.50 [Removed]

2. Remove § 102–39.50.

§ 102–39.55 [Removed]

3. Remove § 102–39.55.

§§ 102–39.5, 102–39.15, 102–39.25, 102–39.30, 102–39.35, 102–39.40, 102–39.45, 102–39.60, 102–39.65, 102–39.70, 102–39.75 [Redesignated]

4. Redesignate §§ 102–39.5, 102–39.15, 102–39.25, 102–39.30, 102–39.35, 102–39.40, 102–39.45, 102–39.60, 102–39.65, 102–39.70, 102–39.75 as follows:

Old section	New section
102–39.5	102–39.15
102–39.15	102–39.40
102–39.25	102–39.30
102–39.30	102–39.45
102–39.35	102–39.50
102–39.40	102–39.55
102–39.45	102–39.60
102–39.60	102–49.70
102–39.65	102–39.75
102–39.70	102–39.80
102–39.75	102–39.85

5. Add new § 102–39.5 to read as follows:

§ 102–39.5 What is the exchange/sale authority?

The exchange/sale authority is a statutory provision, (40 U.S.C. 503), which states in part: ''In acquiring personal property, an executive agency may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in whole or in part payment for the property acquired.''

6. Amend § 102–39.20 by revising the definitions of the terms ''Acquire'', ''Replacement'', and ''Similar''; and, by alphabetically adding the terms and definitions ''Excess property'', ''Service Life Extension Program (SLEP)'', and ''Surplus property'' to read as follows:

§ 102–39.20 What definitions apply to this part?

* * * * *

Acquire means to procure or otherwise obtain personal property, including by lease (sometimes known as rent).

* * * * *

Excess property means any personal property under the control of any Federal agency that is no longer required for that agency's needs or

responsibilities, as determined by the agency head or designee.

* * * * *

Replacement means the process of acquiring personal property to be used in place of personal property that is still needed but:

(1) No longer adequately performs the tasks for which it is used; or

(2) Does not meet the agency's need as well as the personal property to be acquired.

Service Life Extension Program (SLEP) means the modification of a personal property item undertaken to extend the life of the item beyond what was previously planned. SLEPs extend capital asset life by retrofit, major modification, remanufacturing, betterment, or enhancement.

Similar means the acquired item(s) and replaced item(s):

(1) Are identical; or

(2) Fall within a single Federal Supply Classification (FSC) Group of property (includes any and all forms of property within a single FSC Group); or

(3) Are parts or containers for similar end items; or

(4) Are designed or constructed for the same purpose (includes any and all forms of property regardless of the FSC Group to which they are assigned).

Surplus property means excess personal property not required for the needs of any Federal agency, as determined by GSA under part 102–37 of this chapter.

7. Add new § 102–39.25 to Subpart A to read as follows:

§ 102–39.25 Which exchange/sale provisions are subject to deviation?

All of the provisions in this part are subject to deviation (upon presentation of adequate justification) except those mandated by statute. See the link on ''Exchange/Sale'' at *www.gsa.gov/personalpropertypolicy* for additional information on requesting deviations from this part.

8. Revise newly redesignated § 102–39.30 to read asfollows:

§ 102–39.30 How do I request a deviation from this part?

See part 102–2 of this chapter (41 CFR part 102–2) to request a deviation from the requirements of this part.

9. Add new § 102–39.35 to Subpart B to read as follows:

§ 102–39.35 When should I consider using the exchange/sale authority?

You should consider using the exchange/sale authority when replacing personal property.

10. Amend newly redesignated § 102–39.40 to read as follows:

§ 102–39.40 Why should I use the exchange/sale authority?

You should use the exchange/sale authority to reduce the cost of replacement personal property. When you have personal property that is wearing out or obsolete and must be replaced, you should consider either exchanging or selling that property and using the exchange allowance or sales proceeds to offset the cost of the replacement personal property. Conversely, if you choose not to replace the property using the exchange/sale authority, you may declare it as excess and dispose of it through the normal disposal process as addressed in part 102–36 of this chapter. Keep in mind, however, that any net proceeds from the eventual sale of that property as surplus generally must be forwarded to the miscellaneous receipts account at the United States Treasury and thus would not be available to you. You may use the exchange/sale authority in the acquisition of personal property even if the contract is for services as long as the property acquired under the services contract is similar to the property exchanged or sold (*e.g.*, for a SLEP, exchange allowances or sales proceeds would be available for replacement of similar items, but not for services).

11. Amend newly redesignated § 102–39.55 by revising the section heading to read as follows:

§ 102–39.55 When should I offer property I am exchanging or selling under the exchange/sale authority to other Federal agencies or State Agencies for Surplus Property (SASP)?

* * * * *

12. Amend newly redesignated § 102–39.60 by revising the section heading, the introductory text, paragraph (a), the note to paragraph (a), and paragraph (i) to read as follows:

§ 102–39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?

Unless a deviation is requested of and approved by GSA as addressed in part 102–2 of this chapter and the provisions of §§ 102–39.25 and 102–39.30, you must not use the exchange/sale authority for:

(a) The following FSC groups of personal property:

10 Weapons.

11 Nuclear ordnance.

12 Fire control equipment.

14 Guided missiles.

15 Aircraft and airframe structural components (except FSC Class 1560 Airframe Structural Components).

42 Firefighting, rescue, and safety equipment.

44 Nuclear reactors (FSC Class 4470 only).

51 Hand tools.

54 Prefabricated structure and scaffolding (FSC Class 5410 Prefabricated and Portable Buildings, FSC Class 5411 Rigid Wall Shelters, and FSC Class 5419 Collective Modular Support System only).

68 Chemicals and chemical products, except medicinal chemicals.

84 Clothing, individual equipment, and insignia.

Note to § 102–39.60(a): Under no circumstances will deviations be granted for FSC Class 1005, Guns through 30mm. Deviations are not required for Department of Defense (DoD) property in FSC Groups 10 (for classes other than FSC Class 1005), 12 and 14 for which the applicable DoD demilitarization requirements, and any other applicable regulations and statutes are met.

* * * * *

(i) Flight Safety Critical Aircraft Parts (FSCAP) and Critical Safety Items (CSI) unless you meet the provisions of § 102–33.370 of this title.

* * * * *

13. New § 102–39.65 is added to Subpart B to read as follows:

§ 102–39.65 What conditions apply to the exchange/sale of personal property?

You may use the exchange/sale authority only if you meet all of the following conditions:

(a) The property exchanged or sold is similar to the property acquired;

(b) The property exchanged or sold is not excess or surplus and you have a continuing need for similar property;

(c) The property exchanged or sold was not acquired for the principal purpose of exchange or sale;

(d) When replacing personal property, the exchange allowance or sales proceeds from the disposition of that property may only be used to offset the cost of the replacement property, not services; and

(e) Except for transactions involving books and periodicals in your libraries, you document the basic facts associated with each exchange/sale transaction. At a minimum, the documentation must include the type, amount, and value of the property to be replaced and the property to be acquired; the date of the transaction(s); the names of the parties involved; and a statement that the transactions comply with the requirements of this part 102–39.

Note to § 102–39.65: In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the

FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

14. Revise newly redesignated § 102–39.80 to read as follows:

§ 102–39.80 What are the accounting requirements for exchange allowances or proceeds of sale?

You must account for exchange allowances or proceeds of sale in accordance with the general finance and accounting rules applicable to you. Except as otherwise authorized by law, all exchange allowances or proceeds of sale under this part will be available during the fiscal year in which the property was sold and for one fiscal year thereafter for the purchase of replacement property. Any proceeds of sale not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

15. Amend newly redesignated § 102–39.85 by adding paragraph (a)(3) to read as follows:

§ 102–39.85 What information am I required to report?

* * * * *

(3) A list by Federal Supply Classification Group of property acquired under this part, to include:

(i) Number of items acquired;

(ii) Acquisition cost.

* * * * *

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV02

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pecos Sunflower (*Helianthus paradoxus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and revisions to proposal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for Helianthus paradoxus (Pecos sunflower) under the Endangered Species Act of 1973, as amended (Act). We also announce a revision to proposed critical habitat Unit 4 and clarification of Unit 5, the availability of a draft economic analysis and draft environmental assessment, and an amended required determinations section of the proposal. The draft economic analysis estimates costs associated with conservation activities for *H. paradoxus* to be approximately $3.9 to $4.4 million in undiscounted dollars over the next 20 years ($193,000 to $221,000 annualized). We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule, our revisions to the proposed rule, the associated draft economic analysis and environmental assessment, and the amended required determinations section. You do not have to resend comments sent earlier. We will incorporate them into the public record as part of this comment period, and we will fully consider them when preparing our final determination.

DATES: We will accept public comments until January 10, 2008.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV02; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE., Albuquerque, NM 87113; telephone 505/346–2525; facsimile 505/346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period on the original proposed critical habitat designation for *H. paradoxus* published in the **Federal Register** on March 27, 2007 (72 FR 14328), the revisions to proposed critical habitat described herein (see ''Changes to the Proposed Rule'' section), the draft economic analysis and draft environmental assessment of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as ''critical habitat'' for *H. paradoxus* under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the designation of critical habitat is prudent.

(2) Specific information on the amount and distribution of *H. paradoxus* habitat, including which areas occupied by the species at the time of listing and that contain features essential for the conservation of the species should be included in the designation and why, and which areas that were not occupied by the species at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(5) The existence of lands included in the proposed designation that are covered under any conservation or management plans, which we should consider for exclusion from the designation pursuant to section 4(b)(2) of the Act.

(6) Information on the benefits of including or excluding lands managed by Bitter Lake National Wildlife Refuge from the final critical habitat designation.

(7) Information on any direct or indirect impacts to the human environment as a result of designating critical habitat for *H. paradoxus*.

(8) Information on whether the draft economic analysis identifies all local costs attributable to the proposed critical habitat designation and information on any costs that have been inadvertently overlooked.

(9) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat.

(10) Whether the draft economic analysis or draft environmental assessment makes appropriate

assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat.

(11) Whether the draft economic analysis and draft environmental assessment appropriately identify all costs and benefits that could result from the designation.

(12) Information on whether there are any quantifiable economic benefits that could result from the designation of critical habitat.

(13) Economic data on the incremental effects that would result from designating any particular area as critical habitat, since it is our intent to include the incremental costs attributed to the critical habitat designation in the final economic analysis.

(14) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information during the initial comment period from March 27, 2007, to May 29, 2007, on the proposed rule (72 FR 14328), please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comment, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning this proposed rule, our revisions to the proposed rule, the associated draft economic analysis and draft environmental assessment of the proposed designation, and the amended required determinations section by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE., Albuquerque, NM 87113; telephone 505/346–2525.

You may obtain copies of the original proposed rule, the draft economic analysis, and the draft environmental assessment by mail from the New Mexico Ecological Services Field Office at the address listed above or by visiting our Web site at *http://www.fws.gov/southwest/es/NewMexico/.*

Background

It is our intent to discuss only those topics directly relevant to designation of critical habitat in this proposal. For more information on *H. paradoxus*, refer to the final listing rule published in the **Federal Register** on October 20, 1999 (64 FR 56582), the *Pecos Sunflower* Recovery Plan posted at *http://ecos.fws.gov/docs/recovery_plans/2005/050915.pdf,* and the original proposed critical habitat designation published on March 27, 2007 (72 FR 14328).

Helianthus paradoxus was listed as a threatened species on October 20, 1999 (64 FR 56582). At the time this plant was federally listed, the Service determined that the designation of critical habitat was not prudent because we believed publication of critical habitat maps would increase the degree of threats to the species by vandalism and commercial collection. On September 27, 2005, the Forest Guardians filed suit against the Service for failure to designate critical habitat for this species (*Forest Guardians* v. *Hall* 2005). On March 20, 2006, a settlement was reached that requires the Service to re-evaluate our original prudency determination. The settlement stipulated that, if prudent, a proposed rule would be submitted to the **Federal Register** for publication on or before March 16, 2007, and a final rule by March 16, 2008.

On March 15, 2007, we determined that critical habitat for *Helianthus paradoxus* was prudent and we subsequently published a proposed rule (72 FR 14328) to designate critical habitat for *H. paradoxus* on March 27, 2007. We proposed five units as critical habitat in the original proposal, encompassing approximately 1,579.3 acres (ac) (639.1 hectares (ha)). We now revise our original March 27, 2007, proposed rule (72 FR 14328) to add areas to one of the units and clarify the boundaries of another unit, as described in the ''Changes to the Proposed Rule'' section. As a result of these additions and revisions, the proposed critical habitat now encompasses 5,745.5 ac (3,733.4 ha).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis based on the March 27, 2007, proposed rule (72 FR 14328) and the revised units described in this document.

The draft economic analysis considers the potential economic effects of all actions related to the conservation of *Helianthus paradoxus,* including costs associated with sections 4, 7, and 10 of the Act, as well as those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *H. paradoxus* in proposed critical habitat units. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect lost economic opportunities associated with restrictions on land use (opportunity costs). This analysis also

addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date this species was listed as threatened (October 20, 1999; 64 FR 56582), and considers those costs that may occur in the 20 years following designation of critical habitat (i.e., 2007 to 2026).

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for *Helianthus paradoxus*; some of these costs will likely be incurred regardless of whether critical habitat is designated. This analysis estimated economic impacts resulting from the implementation of *H. paradoxus* conservation efforts in four categories: (a) Treatment of non-native species; (b) wetland filling and development; (c) livestock management; and (d) road maintenance. Over the 20-year period 2007 to 2026, the draft economic analysis finds that costs associated with conservation activities within these four categories are estimated at $3.9 to $4.4 million in undiscounted dollars over the next 20 years ($193,000 to $221,000 annualized). The present value of these impacts is $3.3 million to $3.6 million ($186,000 to $213,000 annualized), using a discount rate of three percent; or $2.5 million to $2.9 million ($205,000 to $225,000 annualized), using a discount rate of seven percent.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Changes to the Proposed Rule

We proposed five units as critical habitat for *Helianthus paradoxus.* The original proposed critical habitat in our March 27, 2007, proposed rule (72 FR 14328), and the additional proposed areas of critical habitat as described below, constitute our best assessment of areas that meet the definition of critical habitat under section 3(5)(a) of the Act. In the proposed regulation section of this notice, we provide maps and textual descriptions of the boundaries for Subunits 4a and 4b. These descriptions and maps are in addition to those published in our March 27, 2007, proposed rule, and thus included in the proposed critical habitat designation. We have also provided clarification on our Unit 5 description below.

Subunits 4a and 4b are in close proximity with or connected to Unit 4 described in the original proposed rule. Below, we present brief descriptions of the two subunits, the primary constituent elements (PCEs) they contain, and reasons why they meet the definition of critical habitat for *Helianthus paradoxus*. Within areas occupied by *H. paradoxus* at the time of listing and containing sufficient PCEs to support *H. paradoxus's* life processes, we previously identified the Bitter Lake National Wildlife Refuge (portion of Subunit 4a) and the associated Refuge Farm (Subunit 4b) as areas that do not require special management or protections. As a result, these areas were not originally proposed to be included in the critical habitat designation. However, we have reconsidered our preliminary analysis of section 3(5)(a) of the Act and special management or protection needs of the PCEs on these refuge lands, and are now proposing to include these areas as critical habitat. However, we are considering their exclusion from the final designation pursuant to section 4(b)(2) of the Act.

In addition to the revision of proposed critical habitat, we have provided a clarified unit description for Unit 5. In the Unit 5 description found in the preamble of the proposed rule (72 FR 14328), we identified that Unit 5 contained a small group of plants downstream of The Nature Conservancy's Diamond Y Spring Preserve at a nearby highway right-of-way. This right-of-way site should not have been included in the unit description, for this small area is not known to be able to support sufficient numbers of plants to be considered stable (Blue Earth Ecological Consultants, Inc., 2007b, p 3; Poole 2006, p. 3). While the Unit 5 description in the preamble of the proposed rule was incorrect, the map and textual boundary description for Unit 5 found in the proposed regulation section did not include the right-of-way site and thus is still accurate.

Below, we present brief descriptions of these three areas (Subunits 4a and 4b, and Unit 5), and reasons why they meet the definition of critical habitat for *Helianthus paradoxus* (see ''Criteria Used To Identify Critical Habitat'' in the March 27, 2007, proposed rule (72 FR 14328)).

Revised and New Unit Descriptions

Unit 4: Roswell/Dexter

Subunit 4a includes 3,572.2 ac (1,445.6 ha) of Bitter Lake National Wildlife Refuge/City of Roswell land located in Chaves County, New Mexico. This subunit is located approximately 5 miles (mi) (8 kilometers (km)) northeast of the city of Roswell.

One of the largest *Helianthus paradoxus* populations occurs on the Bitter Lake National Wildlife Refuge in New Mexico on Federal lands managed by the Service. Several hundred thousand to a few million plants occur nearly continuously along the shores and small islands of all the artificial lakes in the southern unit of the refuge. Also, a few small patches of plants occur on the west side of Bitter Lake Playa and adjacent springs on Lost River.

This area was occupied at the time of listing and has been visited by species experts during four or more seasons. These experts found the site occupied by *Helianthus paradoxus* on every visit (Ulibarri 2006a, p. 1; Sivinski 2007a, p. 2; Blue Earth Ecological Consultants, Inc. 2007a, p. 3). This area is currently occupied by the species and contains all of the PCEs essential to the conservation of the species. As noted, the portion of this subunit within Bitter Lake National Wildlife Refuge is proposed as critical habitat, but is being considered for exclusion from the final designation. Please see ''Application of Section 4(b)(2) of the Act'' section below for additional discussion.

Subunit 4b includes 686.2 ac (277.7 ha) of land within the Bitter Lake National Wildlife Refuge Farm (Refuge Farm). This subunit is located in Chaves County, New Mexico, approximately 5 mi (8 km) east of Roswell on the west side of the Pecos River.

Subunit 4b consists of a few large patches with several thousand plants on alkaline seeps behind the dikes on the western edge of the Refuge Farm south of Highway 380. This land is owned and managed by the Service as a grain farm and feeding area for migratory birds. The eastern portion of the Refuge Farm is a marshy spring-seep area that contains a large population of *Helianthus paradoxus*. The wet soils in this population are not cultivated.

This Refuge Farm subunit was occupied at the time of listing and has been visited by species experts during four or more seasons. The experts found the site occupied by *Helianthus*

paradoxus on every visit (Ulibarri 2006b, p. 1; Sivinski 2007a, p. 2; Blue Earth Ecological Consultants, Inc. 2007a, p. 3). This subunit is currently occupied by the species and contains all of the PCEs essential to the conservation of the species. As noted, the portion of this subunit within Bitter Lake National Wildlife Refuge is proposed as critical habitat, but is being considered for exclusion from the final designation. Please see ''Application of Section 4(b)(2) of the Act'' section below for additional discussion.

Unit 5: West Texas

Unit 5 includes 239.7 ac (97.0 ha) located solely on Diamond Y Spring in Pecos County, Texas. The unit is located approximately 12 mi (20 km) north-northwest of Fort Stockton, Texas.

Unit 5 consists of several hundred thousand to one million plants found on The Nature Conservancy's Diamond Y Spring Preserve and a contiguous parcel of private land. This site was occupied by the species at the time of its listing. This site has been visited by species experts during four or more seasons and has been documented to be occupied by *Helianthus paradoxus* on every visit (Poole 2006, p. 2). This unit is currently occupied by the species (Blue Earth Ecological Consultants, Inc. 2007b, p. 3) and contains all of the PCEs essential to the conservation of the species.

The land within The Nature Conservancy's Diamond Y Spring Preserve was purchased to protect Diamond Y Spring Preserve and other rare or endangered aquatic species in the Diamond Y Spring system. This habitat is managed for the conservation of such species (Service 2005, p. 12). Diamond Y Spring Preserve has recently expanded from 1,500 to 4,000 ac (607 to 1619 ha). However, *Helianthus paradoxus* on the Preserve is threatened by water withdrawal occurring outside the Preserve. On the adjacent private land, *H. paradoxus* is also threatened by water withdrawal, plus wetland filling and development, and livestock grazing during the growing and flowering season. As a result, special management or protections may be required to minimize these threats. At this time, we are not aware of any completed management plans that address *H. paradoxus* in this area.

Table 1 shows the areas occupied by *Helianthus paradoxus* at the time of listing, those areas that are currently occupied, and the threats to the primary constituent elements that may require special management or protections.

TABLE 1.—THREATS AND OCCUPANCY IN AREAS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF HELIANTHUS PARADOXUS

Geographic area/unit	Threats requiring special management or protections	Occupied at the time of listing	Currently occupied
Unit 1. West-Central New Mexico			
Subunit 1a. Rancho del Padre Spring Cienega	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 1b. Grants Salt Flat Wetland	Wetland filling and development, encroachment by nonnative vegetation, incompatible livestock management.	Yes	Yes.
Subunit 1c. Pueblo of Laguna	Water withdrawal, incompatible livestock management, encroachment by nonnative vegetation.	Yes	Yes.
Unit 2. La Joya-La Joya State Wildlife Management Area	Encroachment by nonnative vegetation	No	Yes.
Unit 3. Santa Rosa			
Subunit 3a. Blue Hole Cienega/Blue Hole Fish Hatchery Ponds.	Encroachment by nonnative vegetation; on City land, wetland filling and recreation use, mowing to edges of ponds, dredging ponds and filling of wetlands.	Yes	Yes.
Subunit 3b. Westside Spring	Next to major road, water withdrawal, wetland filling and development, encroachment by nonnative vegetation.	No	Yes.
Unit 4. Roswell/Dexter			
Subunit 4a. Bitter Lake National Wildlife Refuge/City of Roswell Land.	Water withdrawal; on City land, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 4b. Bitter Lake National Wildlife Refuge Farm	Water withdrawal	Yes	Yes.
Subunit 4c. Oasis Dairy	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 4d. Lea Lake at Bottomless Lakes State Park	Campgrounds and human trampling, encroachment by nonnative vegetation.	Yes	Yes.
Subunit 4e. Dexter Cienega	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Unit 5. West Texas-Diamond Y Spring	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR HELIANTHUS PARADOXUS AND AREAS CONSIDERED FOR EXCLUSION FROM THE FINAL DESIGNATION

[Area estimates reflect all land within proposed critical habitat unit boundaries.]

Geographic area/unit	Land ownership	Proposed critical habitat areas in acres (hectares)	Areas considered for exclusion in acres (hectares)
Unit 1. West-Central New Mexico			
Subunit 1a. Rancho del Padre Spring Cienega	Private and Tribal	25.5 (10.3).	
Subunit 1b. Grants Salt Flat Wetland	Private	62.5 (25.3).	
Subunit 1c. Pueblo of Laguna	Tribal	Undefined [1]	Undefined.[1]
Unit 2. La Joya-La Joya State Wildlife Management Area.	State of New Mexico	854.3 (345.7).	
Unit 3. Santa Rosa			
Subunit 3a. Blue Hole Cienega/Blue Hole Fish Hatchery Ponds.	State of New Mexico and City of Roswell.	133.9 (54.2).	
Subunit 3b. Westside Spring	Private	6.4 (2.6).	
Unit 4. Roswell/Dexter			
Subunit 4a. Bitter Lake National Wildlife Refuge/ City of Roswell Land.	U.S. Fish and Wildlife Service and City of Roswell.	3,572.2 (1,445.6)	3,480 (1408.3).
Subunit 4b. Bitter Lake National Wildlife Refuge Farm	U.S. Fish and Wildlife Service.	686.2 (277.7)	686.2 (277.7).
Subunit 4c. Oasis Dairy	Private	103.9 (42.0).	
Subunit 4d. Lea Lake at Bottomless Lakes State Park	State of New Mexico	19.5 (7.9).	
Subunit 4e. Dexter Cienega	Private	41.4 (16.8).	
Unit 5. West Texas-Diamond Y Spring	Private	239.7 (97.0).	
Total Acres (Hectares)		5,745.5 (3,733.4)	4,166.2 (3094.3).

[1] This subunit consists of areas along the Rio San Jose located on the Pueblo of Laguna. Due to the sensitivity of tribal lands, the acreage for this subunit is undetermined at this time. However, on the basis of our partnership with the Pueblo, and in anticipation of completion of the Pecos Sunflower Draft Management Plan, Pueblo of Laguna, this subunit is being considered for exclusion from the final critical habitat designation under section 4(b)(2) of the Act.

Application of Section 4(b)(2) of the Act—Bitter Lake National Wildlife Refuge

Under section 4(b)(2), in considering whether to exclude a particular area from designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the original proposed rule, we addressed a number of general issues that are relevant to the exclusions under section 4(b)(2) of the Act that we are considering (72 FR 14328). In addition, we have conducted a draft economic analysis and draft environmental assessment analyzing the potential impacts of the proposed critical habitat designation and related factors, which are available for public review and comment. Based on public comment on these documents and the proposed designation, additional areas may be excluded from final critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in our implementing regulations at 50 CFR 424.19.

We have determined that areas managed by Bitter Lake National Wildlife Refuge (Refuge) meet the definition of critical habitat for Helianthus paradoxus. The Refuge has developed and completed a Comprehensive Conservation Plan (CCP) that provides the framework for protection and management of all trust resources, including federally listed species and sensitive natural habitats. We believe that there is minimal benefit from designating critical habitat for H. paradoxus within Refuge lands because these lands are protected areas for wildlife, and are currently managed for the conservation of wildlife, including threatened and endangered species, specifically H. paradoxus. Below we provide a description of the management being provided by the Refuge for the conservation of H. paradoxus within areas proposed for designation as critical habitat.

The Refuge was established on October 8, 1937, by Executive Order 7724 ''as a refuge and breeding ground for migratory birds and other wildlife.'' The Refuge Recreation Act (16 U.S.C. 460k *et seq.*) identifies the refuge as being suitable for incidental fish and wildlife-oriented recreational development, the protection of natural resources, and the conservation of endangered species or threatened species. The Wilderness Act of 1964 (16 U.S.C. 1131–1136) directs the Service to ''maintain wilderness as a naturally functioning ecosystem'' on portions of the Refuge. While the Refuge was originally established to save wetlands vital to the perpetuation of migratory birds, the isolated gypsum springs, seeps, and associated wetlands protected by the Refuge have been recognized as providing the last known habitats in the world for several unique species. Management emphasis of the Refuge is placed on the protection and enhancement of habitat for endangered species and Federal candidate species, maintenance and improvement of wintering crane and waterfowl habitat, and monitoring and maintenance of natural ecosystem values.

The Refuge sits at a juncture between the Roswell Artesian Groundwater Basin and the Pecos River. These two systems and their interactions account for the diversity of water resources on the Refuge, including sinkholes, springs, wetlands, oxbow lakes, and riverine

habitats. The federally reserved water right for Bitter Lake National Wildlife Refuge has been signed by the State of New Mexico but awaits final approval by the Federal government, a procedural process. The Refuge is currently in negotiations with the New Mexico Office of the State Engineer, a State agency responsible for administering New Mexico's water resources, to quantify these reserved rights. This water right allows for an in-stream flow in Bitter Creek and allows the Refuge to manage impounded springs for the benefit of many species, including *Helianthus paradoxus.* This water right protects against the threat of a future water user purchasing a Pecos River Basin water right and moving the use to a location that would be detrimental to the Refuge's ability to manage for the conservation of *H. paradoxus.* While the water right does not specifically protect water for the purposes of *H. paradoxus* conservation, it combines with management under the Refuge's CCP (discussed below) to remove the threat of water withdrawal on Refuge lands.

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) (Refuge Improvement Act) establishes a conservation mission for refuges, gives policy direction to the Secretary of the Interior and refuge managers, and contains other provisions such as the requirement to integrate scientific principles into the management of the refuges. According to section 7(e)(1)(E) of the Refuge Improvement Act, all lands of the Refuge System are to be managed in accordance with an approved CCP that will guide management decisions and set forth strategies for achieving refuge purposes. In general, the purpose of the CCP is to provide long-range guidance for the management of National Wildlife Refuges. The Refuge Improvement Act requires all refuges to have a CCP and provides the following legislative mandates to guide the development of the CCP: (1) Wildlife has first priority in the management of refuges; (2) wildlife-dependent recreation, including hunting, fishing, wildlife observation, wildlife photography, environmental education, and environmental interpretation, are the priority public uses of the refuge system, and shall be allowed when compatible with the refuge purpose; and (3) other uses have lower priority in the refuge system and are only allowed if not in conflict with any of the priority uses and determined appropriate and compatible with the refuge purpose.

The CCP must also be revised if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly. In other words, a CCP must be followed once it is approved, and regularly updated in response to environmental changes or new scientific information.

The Bitter Lake National Wildlife Refuge has a final CCP that was approved in September 1998. The CCP serves as a management tool to be used by the Refuge staff and its partners in the preservation and restoration of the ecosystem's natural resources. The plan is intended to guide management decisions for 15 years, and sets forth strategies for achieving Refuge goals and objectives within that timeframe. In 2013, the plan will not expire, but will undergo review, and any needed revisions will be incorporated at that time. Key goals of the CCP related to *Helianthus paradoxus* include the following:

(1) To restore, enhance, and protect the natural diversity on the Refuge including threatened and endangered species by:

(a) Appropriate management of habitat and wildlife resources on Refuge lands and

(b) Strengthening existing and establishing new cooperative efforts with public and private stakeholders and partners; and

(2) To restore and maintain selected portions of a hydrological system that more closely mimics the natural processes along the reach of the Pecos River adjacent to the Refuge by:

(a) Restoration of the river channel, as well as restoration of threatened, endangered, and special concern species, and

(b) Control of exotic species and management of trust responsibilities for maintenance of plant and animal communities and to satisfy traditional recreational demands (Service 1998, pp. 5, 46–52).

Specific objectives related to these goals include: (1) The restoration of populations of aquatic species designated as endangered, threatened, or of special concern to a sustainable level (*Helianthus paradoxus* is specifically mentioned in this goal); and (2) following existing recovery plan objectives to monitor and study threatened or endangered species, their habitat requirements, exotic species encroachment, and human-induced impacts to prevent further decline and loss (Service 1998, pp. 49–52).

In summary, we believe that the Refuge lands are being adequately protected and managed for the conservation of *Helianthus paradoxus* and that current management provides a conservation benefit to this species and its PCEs. Furthermore, we believe that there is minimal benefit from designating critical habitat for *H. paradoxus* on Refuge lands because, as explained in detail above, these lands are already managed for the conservation of the species. On the basis of this management, we intend to consider lands within the Bitter Lake National Wildlife Refuge and the associated Refuge Farm containing populations of *H. paradoxus* for exclusion from the final critical habitat designation pursuant to section 4(b)(2) of the Act. We will complete a full analysis of the benefits of excluding and the benefits of including these lands prior to making a final decision.

Required Determinations—Amended

In our March 27, 2007, proposed rule (72 FR 14328), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for *Helianthus paradoxus*, costs related to conservation activities for *H. paradoxus* pursuant to sections 4, 7, and 10 of the Act are estimated at $3.9 to $4.4 million in undiscounted dollars over the next 20 years ($193,000 to $221,000 annualized). The present value of these impacts is $3.3 million to $3.6 million ($186,000 to $213,000 annualized), using a discount rate of three percent; or $2.5 million to $2.9 million ($205,000 to $225,000 annualized), using a discount rate of seven percent. Therefore, based on our draft economic analysis, we have determined that the proposed

designation of critical habitat for *H. paradoxus* would not result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed *Helianthus paradoxus* critical habitat designation would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development and agriculture). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

In the draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Helianthus paradoxus* and proposed designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of *H. paradoxus* conservation efforts in four categories: (a) Treatment of non-native species; (b) wetland filling and development; (c) livestock management; and (d) road maintenance. We determined from our analysis that the economic impacts of the designation on small entities are expected to be borne primarily by modifications to wetland filling and development activities. We assumed that if owners of parcels containing designated critical habitat face land use restrictions that preclude development on some or all of the parcel, the value of the properties will be reduced, essentially eliminating the option that those areas be developed. This draft economic analysis assumes that, in a high-end scenario, the entirety of forecast impacts would be borne by one small developer. The one small developer estimated to be affected represents approximately 20 percent of total small developers in the region. The total potential impact resulting from land use restrictions on development activities is forecast to be, at most, $290,000 over 20 years, or approximately $20,000 annually. Assuming the annual revenues of an average small developer in Cibola County are $400,000, the total potential impact resulting from the proposed designation would amount to approximately 5.0 percent of typical annual sales of one entity. Consequently, we certify that the designation of critical habitat for *H. paradoxus* will not result in a significant economic impact on a substantial number of small business entities. Please see the ''Economic Analysis'' section above and the draft economic analysis itself for a more detailed discussion of potential economic impacts.

Executive Order 13211—Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed designation of critical habitat for *Helianthus paradoxus* is considered a significant regulatory action under Executive Order 12866 because it raises novel legal and policy issues. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in

the draft economic analysis, energy-related impacts associated with *H. paradoxus* conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The proposed designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for *Helianthus paradoxus.* Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. We conclude that this designation of critical habitat for *H. paradoxus* does not pose significant takings implications.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the Jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U. S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of *H. paradoxus*, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we conduct an environmental assessment under NEPA for the proposed critical habitat designation. The draft environmental assessment for this proposal is now available (*http://www.fws.gov/southwest/es/NewMexico/*). We solicit data and comments from the public on this draft document (See **FOR FURTHER INFORMATION CONTACT** section).

References Cited

To obtain a complete list of all references we cited in this rulemaking, contact the Field Supervisor, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary authors of this package are staff of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 72 FR 14328, March 27, 2009, set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for *Helianthus paradoxus* (Pecos sunflower) in § 17.96(a), which was proposed to be added on March 27, 2007, at 72 FR 14346, is proposed to be amended by:

a. Revising paragraph (5), including the text and the map;

b. Revising the text in paragraphs (6)(iii) and (v);

c. Revising the text in paragraph (7)(ii);

d. Revising the text in paragraphs (8)(ii) and (iv);

e. Revising the text in paragraph (9)(i) and the text and map in paragraph (9)(ii);

f. Redesignating paragraphs (9)(iii) through (9)(viii) as paragraphs (9)(v) through (9)(x);

g. Adding new paragraphs (9)(iii) and (iv), including a map;

h. Revising the text in newly designated paragraphs (9)(vi), (viii), and (x); and

i. Revising the text in paragraph (10)(ii) as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Helianthus paradoxus* (Pecos sunflower)

* * * * *

(5) *Note:* Index map for *Helianthus paradoxus* (Pecos sunflower) critical habitat units follows:

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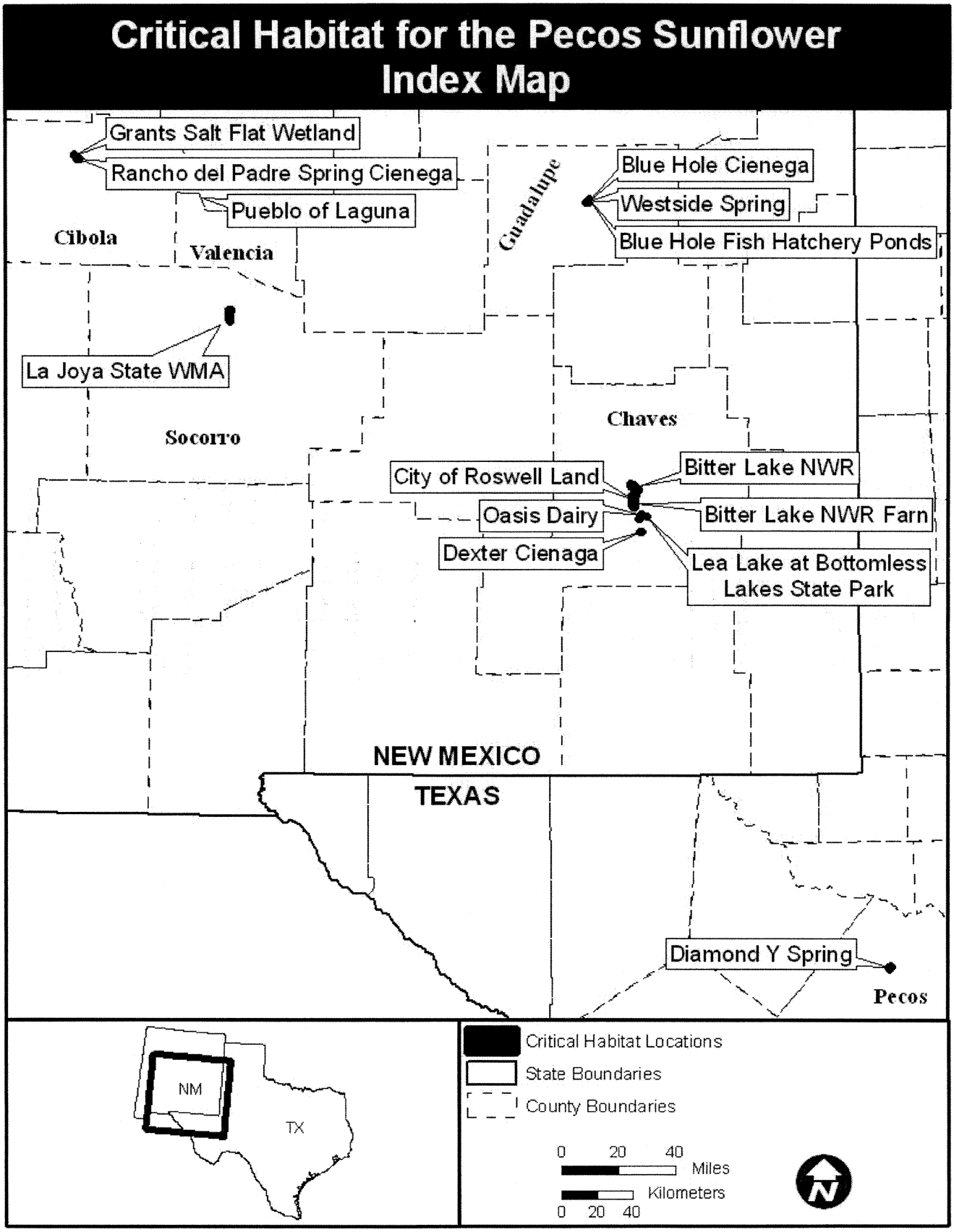
Critical Habitat for the Pecos Sunflower
Index Map
Grants Salt Flat Wetland
Rancho del Padre Spring Cienega
Pueblo of Laguna
Cibola
Valencia
Guadalupe
Blue Hole Cienega
Westside Spring
Blue Hole Fish Hatchery Ponds
La Joya State WMA
Socorro
Chaves
City of Roswell Land
Bitter Lake NWR
Oasis Dairy
Bitter Lake NWR Farn
Dexter Cienaga
Lea Lake at Bottomless Lakes State Park
NEW MEXICO
TEXAS
Diamond Y Spring
Pecos
NM
TX
Critical Habitat Locations
State Boundaries
County Boundaries
0 20 40
Miles
Kilometers
0 20 40
N

(6) * * *

(iii) *Note:* Map of subunits 1a and 1b for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

(v) *Note:* Map of subunit 1c for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

(7) * * *

(ii) *Note:* Map of unit 2 for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

(8) * * *

(ii) *Note:* Map of subunit 3a for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

(iv) *Note:* Map of subunit 3b for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

(9) * * *

(i) Subunit 4a for *Helianthus paradoxus*, Bitter Lake National Wildlife Refuge/City of Roswell Land, Chaves County, New Mexico. From USGS 1:24,000 quadrangle Bitter Lake, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 553362, 3705257; 553381, 3705283; 553418, 3705283; 553444, 3705255; 553427, 3705221; 553405, 3705160; 553392, 3705130; 553383, 3705102; 553383, 3705076; 553392, 3705037; 553442, 3705004; 553457, 3704987; 553465, 3704961; 553437, 3704931; 553429, 3704909; 553407, 3704896; 553357, 3704881; 553329, 3704836; 553316, 3704760; 553316, 3704643; 553342, 3704529; 553349, 3704455; 553347, 3704404; 553334, 3704362; 553342, 3704308; 553370, 3704265; 553418, 3704241; 553470, 3704235; 553528, 3704291; 553621, 3704345; 553686, 3704358; 553805, 3704429; 553841, 3704466; 553887, 3704557; 553947, 3704609; 553982, 3704710; 554021, 3704786; 554079, 3704838; 554168, 3704829; 554224, 3704775; 554280, 3704790; 554334, 3704868; 554351, 3704926; 554410, 3705025; 554492, 3705034; 554589, 3705001; 554658, 3704947; 554775, 3704878; 554900, 3704854; 554943, 3704785; 554974, 3704688; 555032, 3704604; 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553930, 3697605; 553934, 3697207; 554338, 3697211; 554336, 3696806; 554330, 3696733; 554330, 3696665; 554327, 3696605; 554268, 3696635; 554205, 3696666; 554127, 3696699; 554092, 3696768; 554089, 3696787; 554084, 3696811; 554048, 3696856; 554021, 3696861; 553990, 3696861; 553957, 3696849; 553925, 3696849; 553881, 3696851; 553847, 3696860; 553809, 3696885; 553793, 3696903; 553765, 3696930; 553751, 3696954; 553740, 3696972; 553738, 3696995; 553733, 3697019; 553718, 3697038;

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(ii) *Note:* Map of subunit 4a for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

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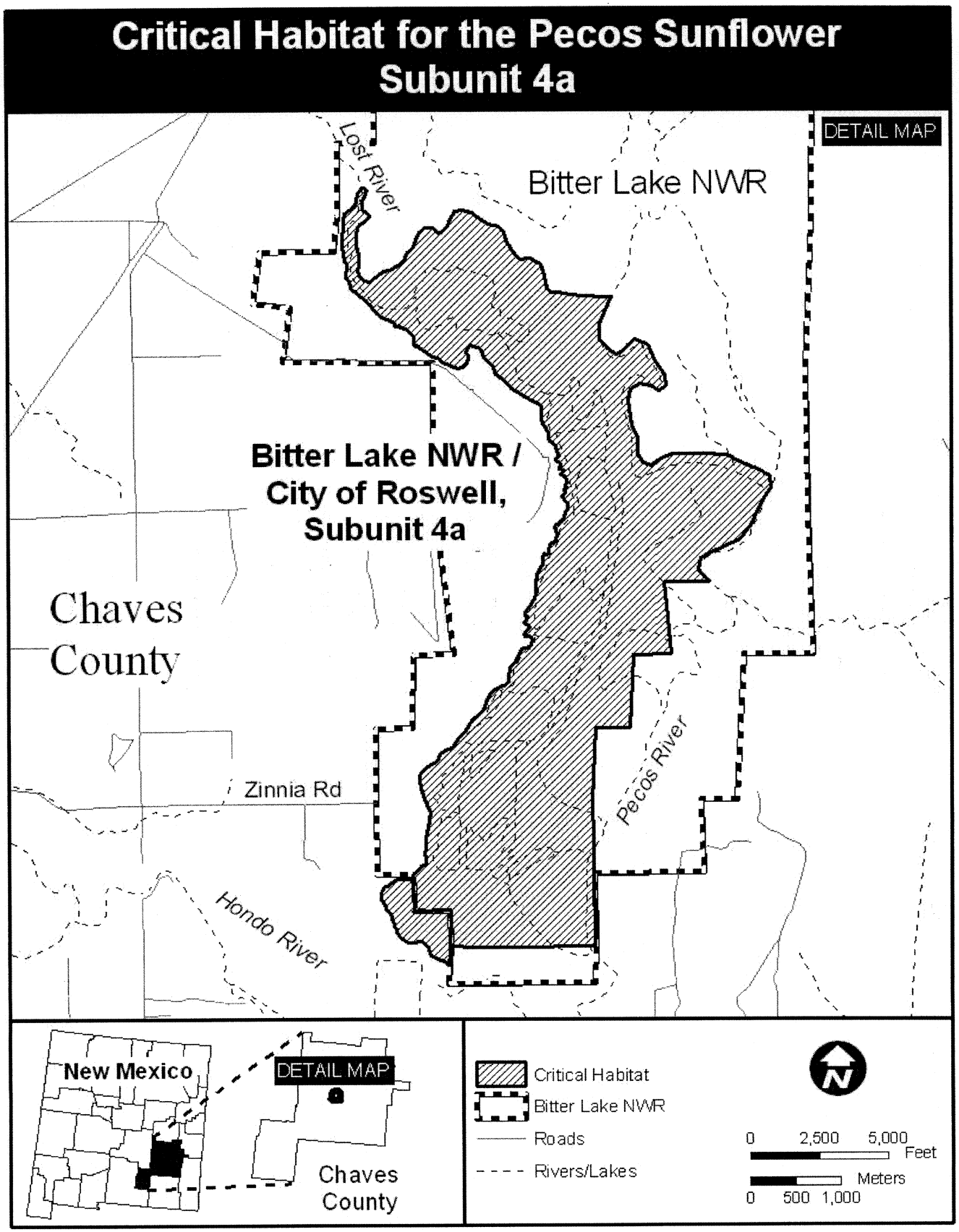
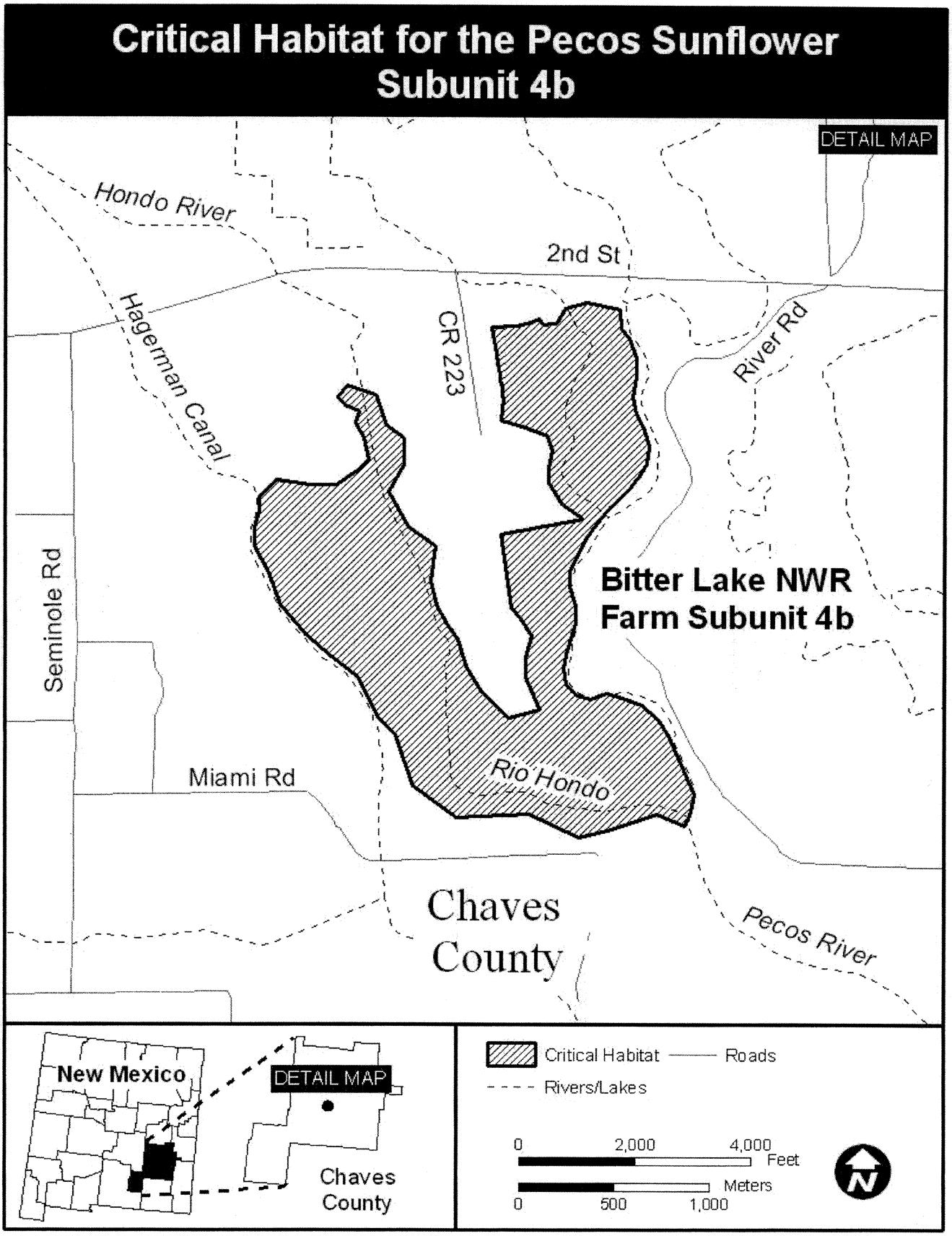

Critical Habitat for the Pecos Sunflower
Subunit 4a
DETAIL MAP
Lost River
Bitter Lake NWR
Bitter Lake NWR /
City of Roswell,
Subunit 4a
Chaves
County
Zinnia Rd
Pecos River
Hondo River
New Mexico
DETAIL MAP
Chaves
County
Critical Habitat
Bitter Lake NWR
Roads
Rivers/Lakes
N
0 2,500 5,000
Feet
Meters
0 500 1,000

(iii) Subunit 4b for *Helianthus paradoxus*, Bitter Lake National Wildlife Refuge Farm, Chaves County, New Mexico. From USGS 1:24,000 quadrangles Bottomless Lakes and South Spring, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 555093, 3693168; 555018, 3693338; 555018, 3693440; 555053, 3693558; 554996, 3693646; 554948, 3693704; 554930, 3693796; 554886, 3694091; 555317, 3694170; 555203, 3694254; 555137, 3694364; 555137, 3694447; 555159, 3694535; 555129, 3694614; 554983, 3694672; 554890, 3694698; 554899, 3694810; 554897, 3694841; 554894, 3694878; 554885, 3694912; 554882, 3694940; 554868, 3695008; 554856, 3695090; 554839, 3695191; 554971, 3695198; 555042, 3695216; 555087, 3695235; 555104, 3695208; 555159, 3695215; 555176, 3695212; 555225, 3695291; 555339, 3695326; 555511, 3695287; 555515, 3695190; 555559, 3695133; 555599, 3695031; 555599, 3694930; 555581, 3694820; 555599, 3694732; 555643, 3694648; 555669, 3694556; 555652, 3694468; 555616, 3694402; 555573, 3694345; 555515, 3694288; 555462, 3694235; 555405, 3694164; 555339, 3694072; 555247, 3693901; 555247, 3693818; 555282, 3693712; 555278, 3693624; 555229, 3693457; 555216, 3693382; 555229, 3693303; 555295, 3693241; 555361, 3693219; 555441, 3693250; 555529, 3693228; 555630, 3693188; 555718, 3693118; 555771, 3693027; 555907, 3692714; 555889, 3692626; 555859, 3692547; 555709, 3692613; 555476, 3692530; 555301, 3692484; 555040, 3692613; 554657, 3692591; 554428, 3692763; 554336, 3693027; 554243, 3693128; 554133, 3693338; 554001, 3693444; 553861, 3693563; 553733, 3693721; 553667, 3693888; 553597, 3694029; 553597, 3694122; 553619, 3694219; 553619, 3694293; 553715, 3694377; 553887, 3694351; 554023, 3694355; 554142, 3694434; 554191, 3694491; 554164, 3694601; 554120, 3694681; 554142, 3694747; 554067, 3694777; 554032, 3694817; 554081, 3694881; 554230, 3694835; 554283, 3694672; 554375, 3694601; 554380, 3694456; 554296, 3694315; 554402, 3694126; 554547, 3694029; 554520, 3693841; 554555, 3693720; 554604, 3693624; 554666, 3693541; 554710, 3693396; 554780, 3693272; 554882, 3693167; 554930, 3693118; thence returning to 555093, 3693168.

(iv) *Note:* Map of subunit 4b for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:


Critical Habitat for the Pecos Sunflower
Subunit 4b
DETAIL MAP
Hondo River
2nd St
Hagerman Canal
CR 223
River Rd
Seminole Rd
Bitter Lake NWR
Farm Subunit 4b
Miami Rd
Rio Hondo
Chaves
County
Pecos River
New Mexico
DETAIL MAP
Chaves
County
Critical Habitat
Roads
Rivers/Lakes
0
2,000
4,000
Feet
Meters
0
500
1,000
N

* * * * *

(vi) *Note:* Map of subunit 4c for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

(viii) *Note:* Map of subunit 4d for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

(x) *Note:* Map of subunit 4e for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

(10) * * *

(ii) *Note:* Map of unit 5 for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

Dated: November 30, 2007.

Mitchell Butler,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–5973 Filed 12–10–07; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV07; 1018–AV04

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for the San Bernardino Kangaroo Rat (Dipodomys merriami parvus), Poa atropurpurea (San Bernardino bluegrass), and Taraxacum californicum (California taraxacum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment periods, and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the scheduling of public hearings on the proposed rule to revise critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and on the proposed rule to designate critical habitat for *Poa atropurpurea* (San Bernardino bluegrass) and *Taraxacum californicum* (California taraxacum) under the Endangered Species Act of 1973, as amended (Act). The reopened comment periods will provide the public; Federal, State, and local agencies; and Tribes with an additional opportunity to submit written comments on these proposed rules. Comments previously submitted for the proposed critical habitat designations for the San Bernardino kangaroo rat, *P. atropurpurea,* or *T. californicum* need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decisions.

DATES: *Written Comments:* We will accept comments and information until January 25, 2008, or at the public hearing. Any comments received after the closing date may not be considered in the final decisions on the designations of critical habitat.

Public Hearings: The public hearings will take place on January 10, 2008, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in San Bernardino, California.

ADDRESSES: *Written Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV07 or 1018–AV04; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will accept written comments at the public hearing. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public Hearings: The public hearings will be held at the Clarion Hotel and Convention Center, 295 North E Street, San Bernardino, CA 92401.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–9624. If you use a telecommunications device for the deaf (TDD), call the Federal Information relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final actions resulting from these proposals will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions on these proposed rules from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the proposed rules. We particularly seek comments on the proposed revised critical habitat designation for the San Bernardino kangaroo rat, and the proposed critical habitat designations for *Poa atropurpurea* and *Taraxacum californicum* concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation is outweighed by the threats to each species caused by their respective designations such that the designation of critical habitat is prudent;

(2) Specific information on:

- The amount and distribution of habitat for each species;
- What areas that were occupied at the time of listing and that contain the features essential for the conservation of the species should be included in their respective designations and why; and
- What areas not occupied at the time of listing are essential to the conservation of each species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat for each species;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed revised designation for the San Bernardino kangaroo rat, and proposed critical habitat for *Poa atropurpurea* and *Taraxacum californicum* and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way as to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

In addition, we seek the following specific comments on the proposed revised designation of critical habitat for the San Bernardino kangaroo rat:

(1a) Specific information on dispersal areas important for habitat connectivity, their role in the conservation and recovery of the subspecies, and reasons why such areas should or should not be included in the critical habitat designation;

(2a) Our proposed exclusions totaling 2,544 acres (ac) (1,029 hectares (ha)) of San Bernardino kangaroo rat habitat and whether the benefits of excluding these areas would outweigh the benefits of their inclusion under section 4(b)(2) of the Act. If the Secretary determines that the benefits of including these lands are not outweighed by the benefits of excluding them, they will not be excluded from final critical habitat;

(3a) Any proposed critical habitat areas covered by existing or proposed conservation or management plans that

we should consider for exclusion from the final designation under section 4(b)(2) of the Act. We specifically request information on any operative or draft habitat conservation plans for the San Bernardino kangaroo rat that have been prepared under section 10(a)(1)(B) of the Act, as well as any other management or conservation plan or agreement that benefits the kangaroo rat or its primary constituent elements; and

(4a) Specific information regarding the current status of plan implementation for the following management plans: the Woolly-Star Preserve Area Management Plans; the Former Norton Air Force Base Conservation Management Plan; the Cajon Creek Habitat Conservation Management Area, Habitat Enhancement and Management Plan; and Western Riverside Multiple Species Conservation Plan.

We also seek the following specific comments on the proposed critical habitat designations for *Poa atropurpurea* and *Taraxacum californicum*:

(1b) Any proposed critical habitat areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request information on any operative or draft habitat conservation plans that include *Poa atropurpurea* or *Taraxacum californicum* as covered species that have been prepared under section 10(a)(1)(B) of the Act, or any other management or other conservation plan or agreement that benefits either plant or its primary constituent elements; and

(2b) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

You may submit your comments and materials concerning the proposed rules by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax. We will accept written comments at the public hearing. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rules, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–9624.

Comments and information submitted during the initial comment periods on the proposed rules need not be resubmitted as they will be incorporated into the public records as part of those comment periods and will be fully considered in preparation of the final rules.

Background

On June 19, 2007, we published a proposed rule in the **Federal Register** (72 FR 33808) to revise critical habitat for the San Bernardino kangaroo rat. Currently, 33,295 ac (13,485 ha) are designated as critical habitat for the San Bernardino kangaroo rat in San Bernardino and Riverside counties, California. Under the proposal, approximately 9,079 ac (3,674 ha) of land located in San Bernardino and Riverside counties, California, would fall within the boundaries of the revised critical habitat designation. Further, of the 9,079 ac (3,674 ha) of revised critical habitat, we are proposing to exclude 2,544 ac (1,029 ha) of land from the revised final designation under section 4(b)(2) of the Act (see the Exclusions Under Section 4(b)(2) of the Act section of the June 19, 2007, revised proposed rule [72 FR 33808] for a detailed discussion of this proposed exclusion).

On August 7, 2007, we published a proposed rule in the **Federal Register** (72 FR 44232) to designate critical habitat for *Poa atropurpurea* and *Taraxacum californicum*. We propose approximately 3,014 ac (1,221 ha) of land in San Bernardino and San Diego Counties, California, as critical habitat for P. atropurpurea, and approximately 1,930 ac (782 ha) of land in San Bernardino County, California, as critical habitat for T. californicum.

Economic analyses identifying estimated impacts associated with the proposed critical habitat designations for the San Bernardino kangaroo rat, *Poa atropurpurea*, and *Taraxacum californicum* are still in development. When these analyses are completed, we will provide a separate notice informing the public of their availability and providing an opportunity for public comment.

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time of listing in accordance with the Act, on which are found those physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time of listing if the Secretary determines that those areas are essential for the conservation of the species.

For each species, if the proposed critical habitat designation is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration economic, national security, and any other relevant impacts of specifying any particular area as critical habitat.

Public Hearings

Section 4(b)(5)(E) of the Act requires a public hearing be held if any person requests it within 45 days of the publication of a proposed rule. In response to requests from the public, the Service will conduct public hearings for these two critical habitat proposals on the date and at the address and times identified in the **DATES** and **ADDRESSES** sections above.

Persons wishing to make an oral statement for the record are encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Dixie Ward, Carlsbad Fish and Wildlife Office, at 760–431–9440 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this notice is

available in alternative formats upon request.

Author

The author of this document is the staff of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–23842 Filed 12–10–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 697

[Docket No. 070717337–7338–01]

RIN 0648–AV78

General Provisions for Domestic Fisheries; Specifications for Boarding Ladders

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to require domestic fishing vessel operators to provide a U.S. Coast Guard-approved pilot ladder as a safer and more enforceable means for authorized personnel to board certain domestic fishing vessels in carrying out their duties under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act, and other applicable fisheries laws and treaties. This action is necessary to provide for the safety of personnel boarding domestic fishing vessels, as current standards have proven to be inadequate. The proposed regulations would establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation.

DATES: Comments must be received at the following address by January 10, 2008.

ADDRESSES: You may submit comments, identified by ''RIN 0648–AV78,'' by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 301–713–1175, Attn: William D. Chappell.
- Mail: Alan Risenhoover, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Boarding Ladder Rule.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Initial Regulatory Flexibility Analysis/Regulatory Impact Review (IRFA/RIR) may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, 301–713–2337.

SUPPLEMENTARY INFORMATION:

The Magnuson-Stevens Act established U.S. jurisdiction over the fishery resources in the exclusive economic zone (EEZ). NMFS is responsible for implementation of the Magnuson-Stevens Act and the Fishery Management Plans (FMPs) prepared by eight Regional Fishery Management Councils (Councils) and for the FMP governing Atlantic Highly Migratory Species. While each Council prepares FMPs for those fishery resources within the Council's area of authority that require conservation, NMFS implements certain requirements common to all fisheries, such as facilitation of enforcement. Associated regulations are codified at 50 CFR parts 600 through 697.

These general regulations to facilitate enforcement also apply to U.S. fishing vessels fishing under the requirements of other fisheries laws and treaties. For example, they apply to fishing activities subject to the Atlantic Coastal Fisheries Cooperative Management Act regulations at 50 CFR part 697. In addition, there are several international fisheries regimes in which U.S. fishing vessels participate, such as the Atlantic fisheries under conservation and management measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and implemented domestically by the Atlantic Tunas Convention Act and regulations at 50 CFR part 635. U.S. fishing vessels are regulated on the high seas and under other international fishing regimes, including the High Seas Fishing Compliance Act of 1995, the Tuna Conventions Act of 1950, the South Pacific Tuna Act of 1988, the North Pacific Halibut Act of 1982, the Pacific Salmon Treaty Act of 1985, the Antarctic Marine Living Resources Convention Act of 1984, and a number of international treaties, including the 1972 Treaty Between the Government of the United States of America and the Government of the Republic of Columbia Concerning the Status of Quita Sueno, Roncador and Serrana, and the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

Current regulations at § 600.730(c)(3) require a fishing vessel to ''provide a safe ladder'' to be used for boarding purposes by authorized personnel including authorized officers (e.g., Coast Guard personnel, and Enforcement Agents), observers, and scientists enforcing regulations and documenting fishing effort at sea. However, a ''safe boarding ladder'' is not defined in regulations for domestic fishing vessels. This has led to fishing vessel operators providing a variety of ladders for boarding.

Safety is compromised when authorized personnel use ladders that are inadequate. Within the last few years, several boarding officers fell into the water when the ladders provided for boarding failed or when they were inadequate to allow the boarding officer to maintain a grip on the ladder. This is a highly dangerous situation. Colliding with the fishing vessel, the small boat delivering the boarding party, and even the ladder itself can injure or kill a falling person or one in the water. In addition, especially in Alaskan and Northwestern Atlantic waters, cold water temperature can cause shock and the quick onset of hypothermia, which quickly becomes life threatening. Although boarding parties wear flotation gear, the threat of drowning through unconsciousness or entanglement in a ladder or other gear from the vessel are concerns.

Some vessels have provided ladders wholly unsuited to boarding a vessel at sea, such as swimming pool ladders,

aluminum step ladders, rigid wooden ladders, or metal rungs welded to the side of the vessel. While U.S. Coast Guard boarding parties can sometimes provide their own ladder, the process of rigging the ladder to the fishing vessel is slow and the ladder is bulky and hazardous to carry on board a small boat. In addition, observers transferring from one fishing vessel to another at sea cannot take a boarding ladder with them.

NMFS proposes to require the use of a pilot ladder on all fishing vessels with a freeboard of 4 ft (1.25 m) or greater in order to provide an easily identifiable and obtainable ladder to provide safe means for personnel to embark and disembark vessels at sea.

In addition to defining and requiring the use of a pilot ladder, this proposed rule would define the term ''freeboard'' with regard to this rule. This change would clarify the requirements of existing and proposed regulations. In some cases the term freeboard has been interpreted as the height of the lowest deck open to the weather (weather deck) from the water's surface. In other cases it has been considered as the height of the gunwale (railing around the weather deck bulwarks) from the water's surface. The difference between these two measurements can be from a few inches to over 6 feet (1.8 m). In order to make the regulations more useful and consistent, NMFS proposes to define freeboard as the working distance between the top rail of the gunwale of a vessel to the water's surface. Because some vessels have openings in the bulwarks specifically for embarking and debarking personnel, NMFS proposes that, where cut-outs are provided in the bulwarks for the sole purpose of personnel boarding, freeboard means the distance between the top of the lowest portion of the structure to the water's surface.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Small Entities Affected

In determining the number of vessels that might be affected by this rule, NMFS and the Coast Guard first determined that vessels 65 ft (20.0 m) or greater in length have a freeboard (defined as the working distance between the top rail of the gunwale to the water's surface) of 4 ft (1.25 m) or greater. While some vessels 65 ft (20.0 m) or greater in length may have a freeboard of less than 4 ft (1.25 m), NMFS assumed for purposes of this analysis that all of these vessels, as well as an unknown number of smaller vessels, would be required to carry a pilot ladder if this proposed rule were implemented. According to U.S. Coast Guard vessel documentation records, 6,050 documented fishing vessels are 65 ft (20 m) long or longer and could be affected by this requirement. Because some vessels already have ladders that would meet the new requirements, it is unlikely that all of the identified fishing vessels would need to purchase a ladder. Except for some large catcher-processor vessels, mostly engaged in the Alaska fisheries, these vessels are all considered small entities for the purpose of this rule.

Reporting and Recordkeeping Requirements

This rule has no reporting or recordkeeping requirements.

Duplicating, Overlapping or Conflicting Federal Rules

This rule refers to 46 CFR subpart 163.003, which provides standards and approval and production tests for pilot ladders that would be required by this proposed rule. There are no conflicting rules.

Alternatives Considered

This action considered 5 alternatives including the preferred alternative and the status quo. The proposed alternative (proposed action) is to require the operators of all fishing vessels with a freeboard of over 4 feet (1.25 m) to provide a U.S. Coast Guard-approved pilot ladder for boarding parties, observers and other officials required to board the vessel. The term ''pilot ladder'' would replace the currently required ''safe boarding ladder.'' That term has been undefined and, as a result, fishing vessel operators have provided ladders that have been both inadequate and unsafe. Approved boarding ladders come in several approved versions and vary in cost. Typically, vessels would need a 10- or 12–foot (3.0 or 3.7 m) ladder that costs approximately $517-$620 for a wooden rung ladder, and $1,160-$1,392 for a synthetic rung ladder. The largest vessels may have to buy a longer ladder at a proportionate increase (approximately $50-$60 per foot) in cost. NMFS estimates the total cost to fishing vessel owners of this rule to be from $3,127,850 ($517 x 6,050 vessels) to $8,421,600 ($1,392 x 6,050 vessels).

The second alternative is the status quo, or no change to the regulations. The status quo does not meet the objectives of the action. This alternative would not increase costs to fishermen; however, neither would it provide any increased safety to persons attempting to board fishing vessels at sea. The regulations would continue to be ambiguous and vessel operators may continue to provide unsafe ladders, resulting in delayed boardings and accidents, some of which could be serious or fatal.

A third alternative considered would limit this requirement to Alaskan and Northwestern Atlantic waters where cold water and rough seas are common. This alternative does not meet the objectives of the action. The limitation would reduce the cost to fishermen, but would not reduce the hazard to boarding parties in the areas that are not subject to the requirements, since boardings are conducted in rough seas off all coasts and during all periods of the year. Therefore, limiting the extent of this requirement would compromise the safety of boarding parties in any areas of the EEZ that are not subject to the requirements.

A fourth alternative would require vessels with a freeboard of 3 feet (0.9 m) or more to provide a ladder. Some reports from U.S. Coast Guard boarding parties indicate that ladders would facilitate boarding operations in those cases. NMFS rejected this alternative because of the marginal benefit in safety and the relative difficulty in determining the number of vessels that would have to obtain ladders.

A fifth alternative would allow fishing vessel owners or operators to make their own ladders according to specifications found at 46 CFR subpart 163.003, without going through the procedures for CG approval. While fishermen could potentially make such ladders cheaper than buying them, the ladders would not be approved and there would be no assurance that they would actually perform as required. Therefore, this alternative was not adopted.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 697

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 4, 2007.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 697 are proposed to be amended as follows.

CHAPTER III

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 773 *et seq.*, 16 U.S.C. 951–961 and 971 *et seq.*, 16 U.S.C. 973–973r, 16 U.S.C. 2431 *et seq.*, 16 U.S.C. 3371–3378, 16 U.S.C. 3636(b), 16 U.S.C. 5501 *et seq.*, and 16 U.S.C. 1801 *et seq.*

2. In § 300.2, add definitions for ''freeboard'' and ''pilot ladder'' in alphabetical order to read as follows:

§ 300.2 Definitions.

* * * * *

Freeboard means the working distance between the top rail of the gunwale of a vessel and the water's surface. Where cut-outs are provided in the bulwarks for the purpose of personnel boarding, freeboard means the distance between the top of the lowest portion of the cut-out and the water's surface.

* * * * *

Pilot ladder means a flexible ladder constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

* * * * *

3. In § 300.5, paragraphs (c)(3) and (4) are revised to read as follows:

§ 300.5 Facilitation of enforcement.

* * * * *

(c) * * *

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by an authorized officer or CCAMLR inspector, a pilot ladder capable of being used for the purpose of enabling the authorized officer or CCAMLR inspector to embark and disembark the vessel safely. The pilot ladder must be maintained in good condition and kept clean.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or CCAMLR inspector, provide a manrope or safety line, and illumination for the pilot ladder.

* * * * *

CHAPTER VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

4. The authority citation for part 600 continues to read as follows:

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

5. In § 600.10, add definitions for ''freeboard'' and ''pilot ladder'' in alphabetical order to read as follows:

§ 600.10 Definitions.

* * * * *

Freeboard means the working distance between the top rail of the gunwale of a vessel and the water's surface. Where cut-outs are provided in the bulwarks for the purpose of personnel boarding, freeboard means the distance between the top of the lowest portion of the cut-out and the water's surface.

* * * * *

Pilot ladder means a flexible ladder constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

* * * * *

6. In § 600.730, paragraphs (c)(3) and (4) are revised to read as follows:

§ 600.730 Facilitation of enforcement.

* * * * *

(c) * * *

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by authorized officer or observer personnel, a pilot ladder capable of being used for the purpose of enabling personnel to embark and disembark the vessel safely. The pilot ladder must be maintained in good condition and kept clean.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope or safety line, and illumination for the pilot ladder.

* * * * *

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

7. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 1501 *et seq.*

8. In § 697.9, paragraph (a) is revised to read as follows:

§ 697.9 Facilitation of enforcement.

(a) *General.* See § 600.730 of this chapter.

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[FR Doc. E7–24008 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 237

Tuesday, December 11, 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

December 6, 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) 720–8958.

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.

Animal and Plant Health Inspection Service

Title: Voluntary Bovine Johne's Disease Control Program.

OMB Control Number: 0579–NEW.

Summary of Collection: The Animal Health Protection Act of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The regulations in Title 9, Chapter 1, Subchapter C of the Code of Federal Regulations, govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States. Supplementing the regulations is the Uniform Program Standards for the Voluntary Bovine Johne's Disease Control Program that outlines the minimal national standards of the program providing specifics on administration of the program, program elements and procedures, and laboratory procedures.

Need and Use of the Information: The objective of this program is to provide minimum national standards for the control of Johne's disease. The program consists of three basic elements: (1) Education, to inform producers about the cost of Johne's disease and to provide information about management strategies to prevent, control, and eliminate it; (2) management, to work with producers to establish good management strategies on their farms; and (3) herd testing and classification, to help separate test-positive herds from test-negative herds. Failing to collect this information would greatly hinder the control of Johne's disease and possibly lead to increased prevalence.

Description of Respondents: State, Local or Tribal Government; Farms; Business or other for-profit

Number of Respondents: 50,602.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 70,515.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–23937 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 6, 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) 720–8958.

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.

Food and Nutrition Service

Title: Enhancing Food Stamps: Food Stamp Modernization Efforts.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food Stamp Program (FSP) provides low-income individuals and families with

assistance to purchase eligible food items for the home consumption through state-operated programs. Over the past decade, increased awareness of the importance of the FSP as a basic nutritional safety net, as well as a critical work support, has led to a variety of federal and state efforts to increase program access and participation. Congress has allocated funds for the purpose of evaluating and collecting data on the FSP as part of Section 17(a)(1) of the Food Stamp Act of 1977, as amended through Public Law 106–171, February 11, 2000. The Food and Nutrition Service (FNS) plans to systematically examine the range of efforts States are undertaking to enhance food stamp certification and modernize the FSP.

Need and Use of the Information: FNS will initiate a comprehensive study to: (1) Develop a national inventory of FSP modernization efforts across states; (2) document key features and outcomes associated with food stamp modernization; (3) systematically describe and compare techniques states are using to modernize the FSP; and (4) identify promising practices. Without this study, FNS and state food stamp agencies will have to rely on the information that is provided for individual modernization initiatives.

Description of Respondents: Individual or households; Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,107.

Frequency of Responses: Reporting: Other (one time only).

Total Burden Hours: 1,869.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–23938 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revision of Systems of Records and Proposed New Routine Uses

AGENCY: Department of Agriculture (USDA).

ACTION: Notice of revisions to Privacy Act Systems of Records.

SUMMARY: Pursuant to the Privacy Act (5 U.S.C. 552a), the United States Department of Agriculture (USDA) gives notice that it proposes to amend five Privacy Act Systems of Records maintained by the Risk Management Agency (RMA).

EFFECTIVE DATE: The revised systems notices and the proposed routine uses will become effective 40 days after publication, unless modified by a subsequent notice to incorporate public comments. Comments on this notice must be received on or before January 10, 2008 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Pam Bollinger, Chief, Underwriting Standards Branch, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, telephone (816) 926–7176, electronic mail *pam.bollinger@usda.gov.*

SUPPLEMENTARY INFORMATION: USDA and RMA propose to amend the five Privacy Act Systems of Records listed below to add a single new routine use to each:

(1) USDA/FCIC–2, Compliance Review Cases, which was last published in full at 67 FR 68559, on November 12, 2002;

(2) USDA/FCIC–8, List of Ineligible Producers, which was last published in full at 72 FR 523, on January 5, 2007;

(3) USDA/FCIC–9, Agent, which was last published in full at 68 FR 55362, on September 25, 2003;

(4) USDA/FCIC–10, Policyholder, which was last published in full at 67 FR 68086, on November 8, 2002; and

(5) USDA/FCIC–11, Loss Adjuster, which was last published in full at 68 FR 15426, on March 31, 2003.

The Risk Management Agency, a component of USDA that administers programs of the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation, maintains these systems. Each of the systems listed is being revised to add two additional new routine uses. The first new routine use permits disclosure of certain electronic records which have been incorporated in electronic format into this system through the Comprehensive Information Management System (CIMS) in accordance with the Farm Security and Rural Investment Act of 2002, section 10706.

CIMS is a system of computer programs and databases, physically located in Kansas City, Missouri, that is jointly maintained by the Farm Service Agency (FSA) and RMA utilizing the services of an information technology contractor. CIMS contains producer, program, and land information from FSA, RMA, and approved insurance providers (AIPs), as defined in section 502(b) of the Federal Crop Insurance Act (7 U.S.C. 1502(b)). CIMS acts as a repository of data and also combines, reconciles, defines, translates, and formats data in such a manner so it can be used by entities that have authorized access to CIMS.

CIMS will be used to help RMA and FSA administer their programs by allowing the agencies to discover and correct errors in reporting and assist the producers in providing consistent information to FSA, RMA, and AIPs.

The electronic information collected in CIMS will be disclosed to FSA and AIPs under contract with RMA and further disclosed to the AIP's insurance agents and loss adjusters. The electronic information may also be disclosed to any contractor engaged in the development or maintenance of CIMS. Such disclosures are necessary to administer and enforce requirements of the Federal crop insurance programs, an integral part of the USDA farm program system. To ensure that AIPs, and their insurance agents and loss adjusters, are only receiving information related to their specific insureds, all requests for information provided through CIMS will be automatically validated by CIMS software. Validation is accomplished by checking producer information provided directly to CIMS by data requestors against an RMA-maintained database of accepted policies incorporated into CIMS. AIPs will be required to sign a non-disclosure statement before accessing CIMS to preclude them from using the information for an unauthorized purpose or releasing the information to an unauthorized person or the public.

FSA and any contractor engaged in the development or maintenance of CIMS will have access to all RMA data incorporated into CIMS. RMA data in CIMS will only be disclosed to the AIPs, their insurance agents and loss adjusters, for information associated with their insured producers and only with regard to such producers' farming operations contained in counties covered by their policies. The RMA data disclosed through access to CIMS data consist of: (1) Standardized records containing identifying information on entities such as the name, address, tax identification number (social security number or employer identification number) and entity type; (2) the name, address, and tax identification number of individuals having a substantial beneficial interest in an ineligible individual or legal entity; and (3) information related to ineligibility such as date and cause of ineligibility, date of notification letter, and current status.

RMA may also be releasing FSA data through CIMS to contractors, the AIPs, their insurance agents and loss adjusters, for information associated with their insured producers and only with regard to such producers' farming operations contained in counties covered by their policies. The FSA data

provided by CIMS will include: (1) Electronic Producer and Member Entity Information, including a common producer name, address, tax identifier, identity type, and entity file; (2) current and prior crop year electronic report acreage information reported to FSA by producers, and acreage determined by FSA, as applicable, and farm and producer identifiers; (3) electronic production data/information used by both FSA and RMA to establish program benefits; (4) The farm/tract/field numbers associated with the common land units (CLUs) through the unique CLU identifier. A CLU is an electronic representation of the boundaries of a piece of land, represented in latitudes and longitudes. It is the smallest unit of land that has a permanent, contiguous boundary; common land cover and land management; common owner; and common producer association; and (5) digital imagery and geospatial data layer containing common land unit boundaries, calculated acres, State and county codes, and unique identifier, calculated acres and State and county codes for States the AIPs have contracted with RMA to sell crop insurance.

USDA is adding the second new routine pursuant to instruction from the Office of Management and Budget, in its May 22, 2007, Memorandum for the Heads of Executive Departments and Agencies, M–07–16, on the subject of Safeguarding Against and Responding to the Breach of Personally Identifiable Information. This second new routine use will permit release of information to described types of persons and entities for the purpose of remediation of a breach of confidentiality.

A ''Report on New System,'' required by 5 U.S.C. 552a (r) as implemented by the Office of Management and Budget Circular A–130, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Government Reform, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Dated: December 3, 2007.

Charles F. Conner,

Acting Secretary.

USDA/FCIC–2

SYSTEM NAME: COMPLIANCE REVIEW CASES, USDA/FCIC–2.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

(8) Disclosure to the Comprehensive Information Management System (CIMS) authorized under the Farm Security and Rural Investment Act of 2002, Section 10706. All information disclosed to CIMS may be further disclosed to any contractor engaged in the development or maintenance of CIMS and to the Farm Service Agency (FSA) and approved insurance providers as necessary to carry out the tasks referred to in routine uses (6) and (7). Such disclosure may include not only the RMA information contained in this system of records, it may also include FSA data provided to CIMS, which includes: (1) Electronic Producer and Member Entity Information, including a common producer name, address, tax identifier, identity type, and entity file; (2) current and prior crop year electronic report acreage information reported to FSA by producers, and acreage determined by FSA, as applicable, and farm and producer identifiers; (3) electronic production data/information used by both FSA and RMA to establish program benefits; (4) The farm/tract/field numbers associated with the common land units (CLUs) through the unique CLU identifier—(A CLU is an electronic representation of the boundaries of a piece of land, demarcated in latitudes and longitudes. It is the smallest unit of land that has a permanent, contiguous boundary; common land cover and land management; common owner; and common producer association); and (5) digital imagery and geospatial data layer containing common land unit boundaries, calculated acres, State and county codes, and unique identifier, calculated acres and State and county codes for States the approved insurance providers have contracted with RMA to sell crop insurance.

(9) To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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USDA/FCIC–8

SYSTEM NAME: USDA/FCIC–8, LIST OF INELIGIBLE PRODUCERS:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

(10) Disclosure to the Comprehensive Information Management System (CIMS) authorized under the Farm Security and Rural Investment Act of 2002, Section 10706. All information disclosed to CIMS may be further disclosed to the Farm Service Agency (FSA) and any contractor engaged in the development or maintenance of CIMS and to approved insurance providers, their insurance agents and loss adjusters, for information associated with their insured producers and only with regard to such producers' farming operations contained in counties covered by their policies. Such disclosure would include not only the RMA information contained in this system of records, it may also include FSA data provided to CIMS, which includes: (1) Electronic Producer and Member Entity information, including a common producer name, address, tax identifier, identity type, and entity file; (2) current and prior crop year electronic report acreage information reported to FSA by producers, and acreage determined by FSA, as applicable, and farm and producer identifiers: (3) Electronic production data/information used by both FSA and RMA to establish program benefits; (4) The farm/tract/field numbers associated with the common land units (CLUs) through the unique CLU identifier—(A CLU is an electronic representation of the boundaries of a piece of land, demarcated in latitudes and longitudes. It is the smallest unit of land that has a permanent, contiguous boundary; common land cover and land management; common owner; and common producer association); and (5) digital imagery and geospatial data layer containing common land unit boundaries, calculated acres, State and county codes, and unique identifier, calculated acres and State and county codes for States the approved insurance providers have contracted with RMA to sell crop insurance.

(11) To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been

compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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USDA/FCIC–9

SYSTEM NAME: AGENT, USDA/FCIC–9:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

* * * * *

(10) Disclosure to the Comprehensive Information Management System (CIMS) authorized under the Farm Security and Rural Investment Act of 2002, Section 10706. All information disclosed to CIMS may be further disclosed to any contractor engaged in the development or maintenance of CIMS and to the Farm Service Agency (FSA) and approved insurance providers the agent contact information (name, address, telephone number, e-mail address) with respect to particular producers, and access to all agent data to approved insurance providers with respect to the agents employed or contracted by the approved insurance provider and the policies insured by the approved insurance provider. Such disclosure may include not only the RMA information contained in this system of records, it may also include FSA data provided to CIMS, which includes: (1) Electronic Producer and Member Entity information, including a common producer name, address, tax identifier, identity type, and entity file: (2) Current and prior crop year electronic report, acreage, information reported to FSA by producers, and acreage determined by FSA, as applicable, and farm and producer identifiers: (3) Electronic production data/information used by both FSA and RMA to establish program benefits; (4) The farm/tract/field numbers associated with the common land units (CLUs) through the unique CLU identifier—(A CLU is an electronic representation of the boundaries of a piece of land, represented in latitudes and longitudes. It is the smallest unit of land that has a permanent, contiguous boundary; common land cover and land management; common owner; and common producer association); and (5) digital imagery and geospatial data layer containing common land unit boundaries, calculated acres, State and county codes, and unique identifier, calculated acres and State and county codes for States the approved insurance providers have contracted with RMA to sell crop insurance.

(11) To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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USDA/FCIC–10

SYSTEM NAME: POLICYHOLDER, USDA/FCIC–10:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

(8) Disclosure to the Comprehensive Information Management System (CIMS) authorized under the Farm Security and Rural Investment Act of 2002, Section 10706. All information disclosed to CIMS may be further disclosed to any contractor engaged in the development or maintenance of CIMS, to the Farm Service Agency (FSA) and to approved insurance providers, their insurance agents and loss adjusters, for information associated with their insured producers and only with regard to such producers' farming operations contained in counties covered by their policies. Such disclosure would include not only the RMA information contained in this system of records, it may also include FSA data provided to CIMS, which includes: (1) Electronic Producer and Member Entity Information, including a common producer name, address, tax identifier, identity type, and entity file; (2) current and prior crop year electronic report acreage information reported to FSA by producers, and acreage determined by FSA, as applicable, and farm and producer identifiers; (3) electronic production data/information used by both FSA and RMA to establish program benefits; (4) The farm/tract/field numbers associated with the common land units (CLUs) through the unique CLU identifier—(A CLU is an electronic representation of the boundaries of a piece of land, represented in latitudes and longitudes. It is the smallest unit of land that has a permanent, contiguous boundary; common land cover and land management; common owner; and common producer association); and (5) digital imagery and geospatial data layer containing common land unit boundaries, calculated acres, State and county codes, and unique identifier, calculated acres and State and county codes for States the approved insurance providers have contracted with RMA to sell crop insurance.

(9) To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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USDA/FCIC–11

SYSTEM NAME: LOSS ADJUSTER:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

(8) Disclosure to the Comprehensive Information Management System (CIMS) authorized under the Farm Security and Rural Investment Act of 2002, Section 10706. All information disclosed to CIMS may be further disclosed to any contractor engaged in the development or maintenance of CIMS, the Farm Service Agency (FSA), or to approved insurance providers.

Disclosed information may include loss adjuster contact information (name, address, telephone number, e-mail address) with respect to particular producers. In addition, all loss adjuster data may be disclosed to the approved insurance provider that has employed or contracted with the particular loss adjuster with respect to the claims insured by the approved insurance provider. Such disclosure would include not only the RMA information contained in this system of records, it may also include FSA data provided to CIMS, which includes: (1) Electronic Producer and Member Entity Information, including a common producer name, address, tax identifier, identity type, and entity file; (2) current and prior crop year electronic report acreage information reported to FSA by producers, and acreage determined by FSA, as applicable, and farm and producer identifiers; (3) electronic production data/information used by both FSA and RMA to establish program benefits; (4) The farm/tract/field numbers associated with the common land units (CLUs) through the unique CLU identifier—(A CLU is an electronic representation of the boundaries of a piece of land, represented in latitudes and longitudes. It is the smallest unit of land that has a permanent, contiguous boundary; common land cover and land management; common owner; and common producer association); and (5) digital imagery and geospatial data layer containing common land unit boundaries, calculated acres, State and county codes, and unique identifier, calculated acres and State and county codes for States the approved insurance providers have contracted with RMA to sell crop insurance.

(9) To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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[FR Doc. E7–23974 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sheppard Creek Post-Fire Project, Flathead National Forest, Flathead and Lincoln Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for a proposal to salvage merchantable timber affected by the Brush Creek wildland fire on the Tally Lake Ranger District of the Flathead National Forest. This fire burned a total of approximately 30,000 acres on the Flathead and Kootenai National Forests from July to September of 2007. Approximately 25,000 acres burned on the Tally Lake Ranger District where this project is proposed. The Kootenai National Forest will be preparing a separate salvage proposal. The city of Whitefish, Montana is located about twenty air miles to the east of the central portion of the project area.

DATES: Comments concerning the scope of the analysis should be received in writing on or before January 15, 2008. A public scoping meeting will be held in the city of Kalispell, Montana on January 9, 2008. The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency and made available for public review in April of 2008. No date has yet been determined for filing the final environmental impact statement (FEIS).

ADDRESSES: Send written comments to Lisa Timchak, Tally Lake District Ranger. The mailing address is Tally Lake Ranger District, 650 Wolfpack Way, Kalispell, Montana 59901. Electronic comments may be e-mailed to *comments-northern-flathead-tally-lake@fs.fed.use* with ''Sheppard Creek Post-Fire Project'' in the subject line and must be submitted in MSWord (*.doc) or rich text format (*.rtf). Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Bryan Donner, Planning Team Leader, Tally Lake Ranger District, 650 Wolfpack Way, Kalispell, Montana 59901 or call at (406) 758–0408.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the action is to recover merchantable wood fiber affected by the Brush Creek Fire in a timely manner to support local communities and contribute to the long-term yield of forest products.

Fire-killed trees do not typically maintain their merchantability as wood products for more than one to three years, depending on their species and size. Sapwood staining, checking, woodborer damage, and decay will deleteriously reduce timber volume after that time. Smaller-diameter trees typically will not be merchantable within a year. Larger-diameter trees can retain their merchantability as wood products for a longer period, but merchantability will deteriorate as time goes on. While considering ecological needs, salvage harvesting an appropriate amount of fire-affected trees in a timely manner to ensure their economic utilization and starting the reforestation process in the burned area will help facilitate meeting desired conditions within the area of the Brush Creek Fire.

Proposed Action

The proposed action includes salvage of trees from approximately 6500 acres, which represents about 30 percent of the area that burned in the 2007 Brush Creek Fire on the Flathead National Forest. Approximately 17 miles of road reconstruction are proposed to access burned trees. This reconstruction on existing road templates would allow use of the road during salvage operations and would later close them after salvage operations are completed. In addition, new temporary road construction is proposed on approximately 9 miles to access burned trees. No salvage or road building is proposed within inventoried roadless lands. Planting conifer seedlings and ensuring that Best Management Practices would be maintained on roads used for the salvage would also be included in this project.

More detailed scoping information and maps can be accessed on the Flathead National Forest internet site at *http://www.fs.fed.us/rl/flathead/*.

Possible Alternatives

Alternative A is the no-action alternative. Alternative B, the proposed action described above, was developed by the interdisciplinary team to respond to the purpose and need for action and to comply with the Flathead Forest Plan. At least one additional action

alternative will be developed by modifying the proposed action to respond to the significant issues identified during the public involvement and scoping process.

Responsible Official

The Responsible Official is the Forest Supervisor of the Flathead National Forest, 650 Wolfpack Way, Kalispell, Montana 59901. The Forest Supervisor will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision.

Nature of the Decision To Be Made

An environmental analysis for the Sheppard Creek Post-Fire Project will evaluate site-specific issues, consider management alternatives, and analyze the potential effects of the proposed action and alternatives. The scope of the project is limited to decisions concerning activities within the Sheppard Creek Post-Fire Project Area that meet the Purpose and Need, as well as desired conditions. An environmental impact statement will provide the Responsible Official with the information needed to decide which actions, if any, to approve.

This EIS will tier to the Flathead National Forest Land and Resource Management Plan and EIS of January 1986, and its subsequent amendments, which provide overall guidance for land management activities on the Flathead National Forest.

Scoping Process

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to the proposed action. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Input provided by interested and/or affected individuals, organizations, and government agencies will be used to identify resource issues that will be analyzed in the draft EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe project design features, and/or analyze environmental effects.

Preliminary Issues

Preliminary issues and concerns include effects of treatments on the following: Soils, old growth and mature tree wildlife habitat, cavity nesting wildlife habitat, threatened and endangered species habitat, and potential bark beetle epidemics.

Comment Requested

The comment period on the draft 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 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 environmental impact statement stage but that are not raised until after completion of the final 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the atlernatives 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.

Dated: December 4, 2007.

Cathy Barbouletos,

Forest Supervisor, Flathead National Forest.

[FR Doc. 07–6012 Filed 12–10–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Certain Automotive Replacement Glass Windshields from the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order Pursuant to Court Decision

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

EFFECTIVE DATE: December 11, 2007

SUMMARY: On August 3, 2007, the United States Court of International Trade (''CIT'' or ''Court'') entered a final judgment sustaining the *Final Results of Redetermination Pursuant to Court Remand, Fuyao Glass Industry Group Co., v. United States* (''*Fourth Remand Redetermination*'') made by the Department of Commerce (''the Department'') pursuant to the CIT's remand of the final determination of the less–than-fair–value investigation of certain automotive replacement glass windshields from the People's Republic of China (''PRC'') in *Changchun Pilkington Safety Glass Co., Ltd., et. al. v. United States*, Consol. Court No. 02–00312, Slip Op. 07–118 (August 3, 2007). As there is now a final and conclusive court decision in this case, the Department is amending the final determination and antidumping duty order of this investigation.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 2002, the Department published its *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) (''*Final Determination*''), and accompanying Issues and Decision Memorandum, as amended, 67 FR 11670 (March 15, 2002), covering U.S. sales of subject merchandise during the period of investigation (''POI''), July 1, 2000, through December 31, 2000. In its *Final Determination*, the Department calculated individual rates for two mandatory respondents, Fuyao Glass Industry Group Co., Ltd. (''Fuyao'') and

Xinyi Automotive Glass (Shenzhen) Co., Ltd. (''Xinyi''). The Department then assigned a separate rate to the companies that demonstrated an absence of government control over their export activities, and this rate was based on the weighted average of the rates assigned to Fuyao and Xinyi. *See* Section 735(c)(5) of the Tariff Act of 1930, as amended (''the Act''). Shenzhen Benxun Automotive Glass Co., Ltd. (''Benxun''), and Changchun Pilkington Safety Glass, Co., Ltd, Guilin Pilkington Safety Glass Co., Ltd., and Wuhan Yaohua Pilkington Safety Glass Co., Ltd. (collectively ''Pilkington'') were among the companies that received separate rates during the investigation.

In separate actions, plaintiffs, Fuyao, Xinyi, Pilkington, and Benxun[1] contested several aspects of the *Final Determination*, including the Department's decision to disregard certain market economy inputs.[2] On August 2, 2002, the Court consolidated these actions into Court No. 02–00282. On February 15, 2006, while the cases were consolidated, the Court remanded the Department's decision regarding certain market economy inputs to the Department. *See Fuyao Glass Industry Group Co., Ltd. v. United States*, Consol. Court No. 02–00282, 2006 Ct. Int'l Trade Lexis 21, Slip Op. 2006–21 (CIT February 15, 2006). As a result of its remand determination, the Department calculated zero margins for both Fuyao and Xinyi.

In *Fuyao Glass Industry Group Co. v. United States*, Consol. Court No. 02–00282, (Orders of November 2, 2006, and December 19, 2006), the Court then granted the Department's request for a voluntary remand and instructed the Department to devise a reasonable methodology to calculate an antidumping margin for Pilkington and Benxun, taking into consideration the zero margins assigned to Fuyao and Xinyi. On January 8, 2007, the Court severed Fuyao's and Xinyi's actions, Court Nos. 02–00282 and 02–00321, from the consolidated action, and designated Pilkington's action, Court No. 02–00312, as the lead case, under which Court Nos. 02–00319 and 02–00320 were consolidated.

On April 16, 2007, the Department filed its remand results with the Court. In its fourth remand results, the Department devised a reasonable methodology to calculate an antidumping margin for Pilkington and Benxun, taking into consideration the zero margins assigned to Fuyao and Xinyi. Specifically, on remand, the Department identified the control numbers (''CONNUM'') shared by Pilkington, Benxun, Fuyao and Xinyi, as reported in their questionnaire responses, and imputed Fuyao's and Xinyi's CONNUM–specific margins to the matching CONNUMs of Pilkington and Benxun. The Department then weight–averaged those CONNUM–specific margins, which resulted in the *de minimis* antidumping margin of 1.47 percent for Pilkington and Benxun.

On May 10, 2007, and June 28, 2007, respectively, the Court issued final judgments in Court Nos. 02–00282 and 02–00321, wherein it affirmed the Department's third remand results with respect to Fuyao's and Xinyi's actions. On August 3, 2007, the Court issued a final judgement, wherein it affirmed the Department's fourth remand results with respect to Pilkington and Benxun.

On November 7, 2007, the Department notified the public that the CIT's final judgment was not in harmony with the Department's *Final Determination*. *See Certain Automotive Replacement Glass Windshields from the People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony*, 72 FR 62812 (November 7, 2007). No party appealed the CIT's decision. As there is now a final and conclusive court decision in this case, we are amending our *Final Determination*.

Amended Final Determination

As the litigation in this case has concluded, the Department is amending the *Final Determination*. The revised dumping margin in the amended final determination is as follows:

Exporter	Margin
Changchun Pilkington Safety Glass, Co., Ltd,.	
Guilin Pilkington Safety Glass Co., Ltd.,.	
Wuhan Yaohua Pilkington Safety Glass Co., Ltd.	1.47 percent
Shenzhen Benxun Automotive Glass Co., Ltd.	1.47 percent

The PRC–wide rate continues to be 124.5 percent as determined in the Department's Final Determination. The Department intends to issue instructions to U.S. Customs and Border Protection fifteen days after publication of this notice, to revise the cash deposit rates for the companies listed above, effective as of the publication date of this notice.

This notice is published in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 3, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–23961 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] On July 20, 2004, the Department determined that Shenzhen CSG Autoglass Co., Ltd. (≥CSG≥) is the successor-in-interest to Benxun. The amended final results of this segment of the proceeding will apply to entries made by CSG on or subsequent to July 20, 2004.

[2] Court Nos. 02-00282, 02-00312, 02-00320 and 02-00321.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile

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

SUMMARY: On August 7, 2007, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain individually quick frozen red raspberries from Chile. The review covers seven producers/exporters of subject merchandise. We gave interested parties an opportunity to comment on the preliminary results. We have noted the changes made since the preliminary results below in the ''Changes Since the Preliminary Results'' section. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: December 11, 2007.

FOR FURTHER INFORMATION CONTACT: David Layton or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0371 and (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2007, the Department of Commerce (''the Department'') published the *Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Certain Individually Quick Frozen Red Raspberries from Chile*, 72 FR 44112 (August 7, 2007) (*Preliminary Results*) in the **Federal Register**.

On August 30, 2007, September 6, 2007, September 10, 2007 and September 12, 2007, we requested that Arlavan S.A. (Arlavan) and certain suppliers of Arlavan and Valles Andinos S.A. (Valles Andinos) respond to supplemental questionnaires regarding their respective costs of production. We received timely responses to these requests for cost information from all of the parties.

On August 23, 2007, we extended the deadline for parties to submit comments on the preliminary results until October 15, 2007, and we extended the deadline for parties to submit rebuttal comments until October 22, 2007. *See* Memorandum from David Layton to File, ''*Fourth Administrative Review of Certain Individually Quick Frozen Red Raspberries from Chile, Briefing and Hearing Schedules*,'' dated August 23, 2007. No comments were received. For Alimentos Naturales Vitafoods S.A. (Vitafoods), Fruticola Olmue S.A. (Olmue) and Sociedad Agroindustrial Valle Frio Ltda. (Valle Frio),[1] and Vital Berry Marketing S.A. (VBM),[2] we made no changes to the calculations from the preliminary results. For Arlavan and Valles Andinos, we have revised our calculation of constructed value (''CV''), based on additional cost information we obtained after the preliminary results. These changes are discussed in the ''Changes Since the Preliminary Results'' section below.

Scope of the Order

The products covered by this order are imports of IQF whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.*, organic or not), the size of the container in which packed, or the method of packing. The scope of the order excludes fresh red raspberries and block frozen red raspberries (*i.e.*, puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this order is currently classifiable under subheading 0811.20.2020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Period of Review

The period of review (''POR'') is July 1, 2005, through June 30, 2006.

Determination to Revoke In Part

The Department may revoke, in whole or part an antidumping order upon completion of a review under section 751 of the Tariff Act of 1930 (as amended) (''the Act''). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222(b). In determining whether to revoke an antidumping duty order in part, the Secretary will consider: (A) whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value (''NV'') for a period of at least three consecutive years; (B) whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than NV, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV; and (C) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i)(A)-(C).

The Department's regulations require, *inter alia*, that a company requesting revocation submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the receipt of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. *See* 19 CFR 351.222(e)(1)(i)-(iii). *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, 743 (January 6, 2000).

On July 31, 2006, pursuant to 19 CFR 351.222(e)(1), Olmue and VBM requested revocation of the antidumping duty order as it pertains to them. With their requests for revocation, Olmue and VBM provided each of the certifications required under 19 CFR 351.222(e). Consistent with the preliminary results, we continue to find that the requests from Olmue and VBM meet all of the criteria under 19 CFR 351.222(e)(1).

As explained in the preliminary results and affirmed in these final results, our calculations show that Olmue and VBM sold IQF red raspberries at not less than NV during the current review period. In addition, Olmue and VBM sold IQF red raspberries at not less than NV during the 2004–2005 and 2003–2004 review periods (*i.e.*, the dumping margins for Olmue and VBM were zero or *de minimis*). *See Individually Quick Frozen Red Raspberries from Chile: Notice of Final Results of Antidumping Duty Administrative Review*, 72 FR 6524 (February 12, 2007), covering the period July 1, 2004, through June 30, 2005; see also Individually Quick Frozen Red Raspberries from Chile: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 72788 (Dec. 7, 2005), covering the period July 1, 2003, through June 30, 2004.

Moreover, based on our examination of the sales data submitted by Olmue and VBM, we find that Olmue and VBM sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Olmue and VBM to support their requests for revocation. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, ''*Preliminary Determination to Revoke in Part the Antidumping Duty Order on Individually Quick Frozen Red Raspberries from Chile for Fruticola Olmué S.A. and Vital Berry Marketing S.A.*,'' dated July 31, 2007, which is on file in room B–099 of the CRU.

Finally, we find that application of the antidumping order to Olmue and VBM is no longer warranted for the following reasons: (1) as noted above, the companies had zero or *de minimis* margins for a period of at least three consecutive years; (2) the companies have agreed to immediate reinstatement of the order if the Department finds that they have resumed making sales at less than NV; and (3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we determine that Olmue and VBM qualify for revocation of the

[1] In the third administrative review, the Department collapsed Valle Frio with its affiliated producer, Agricola Framparque (Framparque). *See* Memorandum to Susan Kuhbach, Director, ''*Collapsing of Sociedad Agroindustrial Valle Frio Ltda.*,'' dated July 31, 2006. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Certain Individually Quick Frozen Red Raspberries from Chile* (unchanged in final) (Third Administrative Review of Raspberries from Chile), 71 FR 45000, 45001 (Aug. 8, 2006). There have been no facts presented in this review which would require us to revisit the collapsing decision. Therefore, for the instant administrative review, we are continuing to treat Valle Frio and Framparque as a single entity.

[2] These six companies were also included in the petitioners' July 31, 2006, request for review of 60 companies.

order on IQF red raspberries pursuant to 19 CFR 351.222(b)(2) and that the order, with respect to subject merchandise exported by Olmue and VBM, should be revoked. In accordance with 19 CFR 351.222(f)(3), we are terminating the suspension of liquidation for subject merchandise exported by Olmue and VBM that was entered, or withdrawn from warehouse, for consumption on or after July 1, 2006, and will instruct U.S. Customs and Border Protection (''CBP'') to refund with interest any cash deposits for such entries.

Use of Facts Otherwise Available

As discussed in the preliminary results, we continue to find that use of facts otherwise available with an adverse inference is appropriate for Antillal, a supplier of Arlavan. *See* Section 776 of the Act. Antillal is an interested party because it is a producer of the subject merchandise. *See* section 771(9)(A) and section 771(28) of the Act. Antillal did not respond to the Department's questionnaire. Thus, Antillal withheld information necessary to the calculation of a dumping margin and failed to act to the best of its ability. No party commented on our application of adverse facts available to Antillal in the preliminary results.

Also as discussed in the *Preliminary Results*, the Department did not receive constructed value information for Valles Andinos' organic raspberry products. Because this information is necessary to the calculation of Valles Andinos' CV, the Department must rely on facts otherwise available under section 776 of the Act. The Department continues to find that this information is unavailable because the suppliers from which we requested constructed value information were not among the suppliers that provided Valles Andinos with organic raspberry products during the POR. Thus, the unavailability of this information is not the result of Valles Andinos' lack of cooperation or the result of any failure to cooperate on the part of any producer of subject merchandise, and adverse inferences under section 776(b) of the Act are not warranted.

Changes Since the Preliminary Results

Based on additional information obtained after the preliminary results for Arlavan and Arlavan's and Valles Andinos' suppliers, we have made adjustments to the calculation methodologies for the final dumping margins in this proceeding. The company–specific changes are discussed below.

Arlavan

We adjusted direct material cost and variable overhead for Arlavan to account for certain production quantity changes. As a result, we recalculated per–unit general and administrative (G&A) and interest expenses (INTEX) for Arlavan. For Arlavan's cost respondent, San Antonio, we adjusted fixed overhead by employing data from the POR, and we adjusted G&A, and INTEX for San Antonio by employing data from 2005, consistent with our cost calculations for other respondents.

As we did in the preliminary results, we calculated a weighted–average CV for Arlavan using: 1) the COP of Arlavan's one responding supplier (San Antonio) for purchases from San Antonio; 2) Arlavan's own reported COP, as adjusted; and 3) the weighted average of the two highest COPs of all respondents' reported COP information as AFA for Antillal's COP. To the extent any of our adjustments to COP data in these final results affect the highest COPs, we have adjusted the AFA value for Antillal's COP. We then recalculated the overall average CV for Arlavan based on the above changes. For further discussion, *see* Memorandum to the File, ''*Final Results Calculation Memorandum for Arlavan S.A.,*'' dated December 4, 2007 (*Arlavan Final Calculation Memorandum*), which is on file in the CRU.

Valles Andinos

We adjusted direct material costs, G&A, and interest for Valles Andinos' cost respondent, Punsin, to account for certain corrections to the calculations. We also adjusted direct material costs for Valles Andinos' other cost respondent, Peheunche, to exclude a raw material price related to non–subject merchandise. As a result, we recalculated Pehuenche's per unit G&A and INTEX. We recalculated the overall average CV for Valles Andinos based on the above changes. For further discussion, *see* Memorandum to the File, ''*Final Results Calculation Memorandum for Valles Andinos, S.A.*'' dated December 4, 2007 (*Valles Andinos Final Calculation Memorandum*), which is on file in the CRU.

Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. These sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because we examined below–cost sales occurring during the entire POR. Because we compared prices to POR–average costs, we also determined that these sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

For Olmue, we found that, for certain products, more than 20 percent of comparison market sales were at prices less than the COP and the below–cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Final Results of Review

As a result of our review, we determine that the following weighted–average margins exist for the period of July 1, 2005, through June 30, 2006:

Exporter/manufacturer	Weighted–average margin percentage
Alimentos Naturales Vitafoods S.A.	3.19
Arlavan S.A.	0.20 (*de minimis*)
Fruticola Olmue S.A.	0.05 (*de minimis*)
Sociedad Agroindustrial Valle Frio Ltda./ Agricola Framparque	0.00
Valles Andinos S.A.	1.14
Vital Berry Marketing, S.A.	0.12 (*de minimis*)

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for all sales made by respondents for which they have reported the importer of record and the entered value of the U.S. sales, we have calculated importer–specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Where the respondents did not report the entered value for U.S. sales, we have calculated importer–specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each

importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate of 6.33 percent[3] if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

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

Cash Deposit Requirements

On July 20, 2007, the Department published a **Federal Register** notice that, *inter alia*, revoked this order, effective July 9, 2007. *See IQF Red Raspberries from Chile: Final Results of Sunset Review and Revocation of Order*, 72 FR 39793 (July 20, 2007). As a result, CBP is no longer suspending liquidation for entries of subject merchandise occurring after the revocation. Therefore, there is no need to issue new cash deposit instructions pursuant to the final results of this administrative review.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 4, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–23963 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–DS–S

[3] The ''all others'' rate was established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile*, 67 FR 40270, 40271 (June 12, 2002).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy: Notice of Final Results of the Tenth Administrative Review and Partial Rescission of Review

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

SUMMARY: On August 7, 2007, the Department of Commerce (''the Department'') published the preliminary results and partial rescission of the tenth administrative review for the antidumping duty order on certain pasta from Italy. The review covers one manufacturer/ exporter, Rummo S.p.A. Molino e Pastificio (''Rummo''). The period of review (''POR'') is July 1, 2005, through June 30, 2006. Further, requests for review of the antidumping duty order for the following companies were withdrawn: Industria Alimentare Colavita S.p.A. (''Indalco'') and Corticella Molini e Pastifici S.p.A. and its affiliate Pasta Combattenti S.p.A. (collectively, ''Corticella/Combattenti''). We rescinded the review with respect to Indalco and Corticella/Combattenti on July 12, 2007. In addition we are rescinding the review with respect to Atar, S.r.L. (''Atar'').As a result of our analysis of the comments received, these final results differ from the preliminary results.

EFFECTIVE DATE: December 11, 2007.

FOR FURTHER INFORMATION CONTACT: Dennis McClure (Atar) and Chris Hargett (Rummo), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5973 and (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2007, the Department published the preliminary results of the tenth administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Tenth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 44082 (August 7, 2007) (''*Preliminary Results*'').

Atar and Rummo submitted briefs on September 6, 2007. The petitioners submitted their rebuttal brief to Atar on September 14, 2007. A public hearing was held on October 11, 2007.

Scope of the Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale (''ICEA'') are also excluded from this order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled ''Recognition of Instituto per la Certificazione Etica e Ambientale (''ICEA'') as a Public Authority for Certifying Organic Pasta from Italy'' which is on file in the Department's Central Records Unit (''CRU'').

The merchandise subject to this order is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). The merchandise subject to this order is also classifiable under item 1901.90.9095. *See* Memorandum from Dennis McClure to James Terpstra, RE: Request for AD/CVD Module Update with the Addition of *HTSUS* Number for Pasta from Italy (A–475–818), November 1, 2006. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Rescission of Review

In the *Preliminary Results*, we stated that we were preliminarily rescinding the review with respect to Atar because we determined that it was not a manufacturer of subject merchandise. Since our preliminary results were published, the Department received comments regarding the preliminary decision to rescind this review for Atar, in accordance with 19 CFR 351.401(h). In the *Issues and Decision Memorandum* accompanying this notice, we discuss the Department's decision to rescind this review for Atar.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum*, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Final Results of Review

We determine that the following weighted–average margin exists for the period July 1, 2005, through June 30, 2006:

Manufacturer/exporter	Margin (percent)
Rummo	1.41

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Rummo will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.45 percent, the all–others rate established in the implementation of the findings of the WTO Panel in *US Zeroing (EC)*. *See Implementation of the Findings of the WTO Panel in US Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007). These deposit requirements shall remain in effect until further notice.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing these final results of review and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 4, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Issues and Decision Memorandum

Rummo S.p.A. Molino e Pastificio

Comment 1: Application of the Countervailing Duty (''CVD'') offset in calculating Rummo's dumping margin

Atar, S.r.L.

Comment 2: Analysis of Atar's Status as a Manufacturer
Comment 3: Treatment of Atar as a Reseller/Exporter
Comment 4: Legal Authority for Terminating Review with Respect to Atar

[FR Doc. E7–23968 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–834]

Purified Carboxymethylcellulose from Mexico: Final Results of the Antidumping Duty Administrative Review

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

SUMMARY: On August 7, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Mexico. *See Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 44095 (August 7, 2007) (Preliminary Results). The review covers exports of the subject merchandise to the United States produced and exported by Quimica Amtex S.A. de C.V. (Amtex). We invited interested parties to comment on the preliminary results. Based upon our analysis of the comments received from parties, we have made changes in the margin calculation for the final results of this review. The final weighted–average margin is listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: December 11, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2007, the Department published the preliminary results of the administrative review and invited interested parties to comment. *See* Preliminary Results. On September 6, 2007, respondent Amtex filed a case brief in which the company alleges a ministerial error in our margin calculation. Also on September 6, 2007, petitioner The Aqualon Company, a division of Hercules, Inc. (Aqualon), filed a ''Demonstration of Programming Errors in Lieu of Case Brief'' in which the company alleges two ministerial errors in the calculation.

Period of Review

The period of review (POR) is December 27, 2004, through June 30, 2006.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Changes Since the Preliminary Results

SG&A and Interest Expense

In accordance with section 773(a)(4) of the Tariff Act of 1930 (the Tariff Act), we base normal value (NV) on constructed value (CV) if we are unable to find a contemporaneous comparison market match of such or similar merchandise for the U.S. sale. Section 773(e) of the Tariff Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, SG&A expenses, profit, and U.S. packing costs. Since there was no cost allegation in this administrative review, no section D questionnaire was issued to Amtex. Therefore, we relied upon the costs of materials and fabrication as reported by Amtex in its sections A, B, and C responses and supplemental response to calculate CV (for those sales which were not matched to home market sales). However, Amtex's responses did not provide all the data necessary for us to compute CV profit. For the preliminary results, we calculated a CV profit using Amtex's 2001–2002 and 2005 audited financial statements, as submitted in the most recent segment of these proceedings. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005); *see also Frozen Concentrated Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 51008 (October 5, 2001) and the accompanying Issues and Decision Memorandum at Comment 3.

On August 24, 2007, Amtex submitted its audited 2006 financial statement. Therefore, we have used Amtex's 2006 cost data for SG&A and net interest expenses in order to derive CV for these final results. *See* Analysis Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Carboxymethylcellulose from Mexico dated December 5, 2007 (Final Results Analysis Memorandum), at 3–4.; *see also* Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Carboxymethylcellulose from Mexico dated July 31, 2007 (Preliminary Results Analysis Memorandum), at 10–13. Public versions of these memoranda are on file in the Department's Central Records Unit (CRU) located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Conversion Error in Calculation of DIFMER

In accordance with section 19 C.F.R. 351.411, we make a reasonable allowance for merchandise sold in the United States that does not have the same physical characteristics as the merchandise sold in the foreign market if we determine that the difference has an effect on prices when computing NV.

This is reflected in the programming as difference in merchandise (DIFMER). In its case brief, Amtex contends that the Department failed to convert DIFMER adjustments to a per–pound basis in calculating the foreign unit price in dollars (FUPDOL). As all comparisons in this review are made on a per–pound basis, we therefore agree with Amtex and have made the conversion for the final results. *See* Final Results Analysis Memorandum at 2.

Subtraction Error in Calculating FUPDOL

In its ''Demonstration of Programming Errors in Lieu of Case Brief,'' Aqualon contends that the Department inadvertently added rather than subtracted DIFMER in the FUPDOL calculation as would be appropriate. We agree with Aqualon, and have, in keeping with the Department's standard programming language, subtracted DIFMER in the FUPDOL calculation for the final results. *See* Final Results Analysis Memorandum at 2–3. However, we have used programming language that is different from that suggested by Aqualon because Aqualon's language would add rather than subtract any level of trade adjustment (LOTADJMT) from comparison market net price (CMNETPRI).[1]

CEPICCU and CEPINDU Adjustments

Also in its ''Demonstration of Programming Errors in Lieu of Case Brief,'' Aqualon contends that the Department inadvertently set constructed export price imputed inventory carrying costs (CEPICCU) and indirect selling expenses incurred in the United States (CEPINDU) to zero. We agree with Aqualon, and have set CEPICCU to equal inventory carrying costs (INVCARU) and set CEPINDU to equal U.S. indirect selling expenses (INDIRSU) in keeping with long–standing Department practice. See Final Results Analysis Memorandum at 3.

Final Results of Review

As a result of our review, we determine that the following weighted–average dumping margin exists for the period December 27, 2004 through June 30, 2006:

Producer	POR	Weighted–Average Margin (percent)
Quimica Amtex, S.A. de C.V.	12/27/04 - 06/30/06	2.51

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will issue importer–specific assessment instructions for entries of subject merchandise during the period of review. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by Amtex for which it did not know that the merchandise sold to the intermediary was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of CMC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(1) of the Tariff Act: (1) the cash–deposit rate for Amtex will be 2.51 percent; (2) if the exporter is not a firm covered in this review or the less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (3) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be 12.61 percent, the all–others rate for this proceeding published in the final less–than-fair–value investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. *See also* 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 3, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–23969 Filed 12–10–07; 8:45 am]

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[1] Section 773(a)(7)(A) of the Tariff Act allows the Department to add or subtract any level of trade adjustment (LOTADJ). The Department's standard programming language subtracts the LOTADJ from home market price. In this administrative review, there is no LOTADJ; therefore, it is mathematically irrelevant whether the zero value is added or subtracted. We have determined, however, to keep the FUPDOL string consistent with the standard programming language.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2005–2006 Administrative Review

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

SUMMARY: On October 4, 2007, the Department of Commerce (''Department'') published in the **Federal Register** the final results and partial rescission of the 19th administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China (''PRC''). *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007) (''*Final Results*''), and accompanying Issues and Decision Memorandum (September 24, 2007). The period of review (''POR'') covered June 1, 2005, through May 31, 2006. We are amending our *Final Results* to correct a ministerial error made in the ''Scope of Order'' section therein, pursuant to section 751(h) of the Tariff Act of 1930, as amended (''Act'').

EFFECTIVE DATE: December 11, 2007.

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

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2007, pursuant to 19 CFR 351.224(c)(2), Petitioner[1] filed a timely ministerial error allegation with respect to the ''Scope of Order'' section in the *Final Results*. No interested party filed rebuttal comments.

Scope of Order

Imports covered by this order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, HTSUS 8482.99.15, HTSUS 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Ministerial Errors

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

On October 1, 2007, Petitioner filed a ministerial error allegation with the Department requesting that we correct the narrative description in the ''Scope of Order'' section of our *Final Results*. In the *Final Results*, the Department inadvertently omitted the words ''and parts thereof, finished and unfinished'' from the first line of the scope description stated in the ''Scope of Order'' section therein.

After analyzing Petitioner's comment, we have determined, in accordance with 19 CFR 351.224(e), that a ministerial error existed with respect to the description of merchandise covered by the antidumping duty order as stated in the ''Scope of Order'' section of the *Final Results*. The Department inadvertently omitted the words ''and parts thereof, finished and unfinished'' from the first line of the scope description stated in the ''Scope of Order'' section therein. The correct scope description is stated in the ''Scope of Order'' section of this notice, above. Correction of this error does not result in a change to final antidumping duty margins, deposit rates, or assessment rates. In addition, the rate for the PRC–wide entity remains unchanged.

Amended Final Results of Review

We determine that the following dumping margin exists for the period June 1, 2005, through May 31, 2006:

TRBs FROM THE PRC

Exporter	Weighted–Average Margin (Percent)
PRC–Entity	60.95

Assessment Rates

The Department will determine and the U.S. Bureau of Customs and Border Protection (''CBP'') shall assess antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of these amended final results of review.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the amended final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for previously investigated or reviewed PRC and non–PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding) will continue to be the rate assigned in that segment of the proceeding; (2) the cash deposit rate for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 60.95 percent; and (3) the cash deposit rate for all non–PRC exporters of subject merchandise which have not received their own rate, will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance

[1] The Timken Company.

with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: November 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23964 Filed 12–10–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administrastion

[C–570–921]

Lightweight Thermal Paper from the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

EFFECTIVE DATE: December 11, 2007.

FOR FURTHER INFORMATION CONTACT: David Neubacher or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5823 and (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2007, the Department of Commerce (the Department) initiated the countervailing duty investigation of lightweight thermal paper (LWTP) from the People's Republic of China (PRC). *See Notice of Initiation of Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China*, 72 FR 62209 (November 2, 2007). Currently, the preliminary determination is due no later than January 2, 2008.

Postponement of Due Date for Preliminary Determination

On November 20, 2007, Appleton Papers Inc. (petitioner) requested that the Department postpone the preliminary determination of the countervailing duty investigation of LWTP from the PRC. Under section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until not later than the 130th day after the date on which the administering authority initiates an investigation if the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b) (section 703(b) of the Act). Pursuant to section 351.205(e) of the Department's regulations, the petitioners' request for postponement of the preliminary determination was made 25 days or more before the scheduled date of the preliminary determination. Accordingly, we are extending the due date for the preliminary determination by 65 days to no later than March 7, 2008.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: December 4, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–23958 Filed 12–10–07; 8:45 am]

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DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 071205803–7804–01]

Solicitation of Applications for the Minority Business Opportunity Center (MBOC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with 15 U.S.C. Section 1512 and Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate a Minority Business Opportunity Center (MBOC) in the locations and geographical service areas specified in this notice. The MBOC operates through the use of business consultants and provides business assistance and brokering services directly to eligible minority-owned businesses. The MBOC Program's primary evaluation criterion is the dollar value of contracts and financial transactions awarded to eligible minority business enterprises (MBEs). Responsibility for ensuring that applications in response to this competitive solicitation are complete and received by MBDA on time is the sole responsibility of the applicant. Applications submitted must be to operate an MBOC and to provide business assistance and brokering services to eligible clients. Applications that do not meet these requirements will be rejected. This is not a grant program to help start or to further an individual business.

DATES: The closing date for receipt of applications is January 18, 2008 at 5 p.m. Eastern Standard Time (EST). Completed applications must be received by MBDA at the address below for paper submissions or at *www.Grants.gov* for electronic submissions. The due date and time is the same for electronic submissions as it is for paper submissions. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing is sixty (60) days from the close of the competition period. MBDA anticipates that awards under this notice will be made with a start date of April 1, 2008.

Pre-Application Conference: In connection with this solicitation, a pre-application teleconference will be held on December 18, 2007 at 1 p.m. (EST). Participants must register at least 24 hours in advance of the teleconference and may participate in person or by telephone. Please visit the MBDA Internet Portal at *http://www.mbda.gov* (MBDA Portal) or contact an MBDA representative listed below for registration instructions.

ADDRESSES: (1a) *Paper Submission—If Mailed*: If the application is sent by postal mail or overnight delivery service by the applicant or its representative, one (1) signed original, plus two (2) copies of the application must be submitted. Applicants are encouraged to also submit an electronic copy of the proposal, budget and budget narrative on a CD–ROM to facilitate the processing of applications. Completed application packages must be mailed to: Office of Business Development—MBOC Program, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants are advised that MBDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may

therefore wish to use a guaranteed overnight delivery service. Department of Commerce delivery policies for overnight delivery services require all packages to be sent to the address above.

(1b) *Paper Submission—If Hand-Delivered:* If the application is hand-delivered by the applicant or by its representative, one (1) signed original, plus two (2) copies of the application must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—MBOC Program (extension 1940), HCHB—Room 1874, Entrance #10, 15th Street, NW. (between Pennsylvania and Constitution Avenues), Washington, DC. Applicants are encouraged to also submit an electronic copy of the proposal, budget and budget narrative on a CD–ROM to facilitate the processing of applications.

MBDA will not accept applications that are submitted by the deadline, but that are rejected due to the applicant's failure to adhere to Department of Commerce protocol for hand-deliveries.

(2) *Electronic Submission:* Applicants are encouraged to submit their proposal electronically at *http://www.Grants.gov*. Electronic submissions should be made in accordance with the instructions available at Grants.gov (see *http://www.grants.gov/forapplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov as, in some cases, the process for completing an online application may require 3–5 working days.

FOR FURTHER INFORMATION CONTACT: For further information or for an application package, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov*. Paper applications may also be obtained by contacting the MBDA Office of Business Development or the MBDA National Enterprise Center (NEC) in the region in which the MBOC will be located (see below Agency Contacts). In addition, Standard Forms (SF) may be obtained by accessing *www.whitehouse.gov/omb/grants* or *www.grants.gov*. and Department of Commerce (CD) forms may be accessed at *www.doc.gov/forms*.

Agency Contacts:

1. MBDA Office of Business Development, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. *Contact:* Efrain Gonzalez, Chief, 202–482–1940.

2. MBDA Atlanta National Enterprise Center (ANEC), 401 Peachtree Street, NW., Suite 1715, Atlanta, Georgia 30308. This region covers the states and territories of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee and the U.S. Virgin Islands. *Contact:* John Iglehart, Acting Regional Director, 404–730–3313 or 214–767–8001.

3. MBDA Chicago National Enterprise Center (CNEC), 55 E. Monroe Street, Suite 2810, Chicago, Illinois, 60603. This region covers the states of Illinois Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin. *Contact*: Eric Dobyne, Regional Director, 312–353–0182.

4. MBDA Dallas National Enterprise Center (DNEC), 1100 Commerce Street, Room 726, Dallas, Texas 75242. This region covers the states of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. *Contact*: John F. Iglehart, Regional Director, 214–767–8001.

5. MBDA New York National Enterprise Center (NYNEC), 26 Federal Plaza, Room 3720, New York, New York 10278. This region covers the states of Connecticut, Delaware, District of Columbia, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. *Contact:* Mr. Heyward Davenport, Regional Director, 212–264–3262.

6. MBDA San Francisco National Enterprise Center (SFNEC), 221 Main Street, Room 1280, San Francisco, California 94105. This region covers the states and territories of Alaska, American Samoa, Arizona, California, Hawaii, Idaho, Nevada, Oregon and Washington. *Contact:* Linda M. Marmolejo, Regional Director, 415–744–3001.

SUPPLEMENTARY INFORMATION:

Background: The MBOC Program is a key component of MBDA's overall minority business development assistance program and promotes the growth and competitiveness of eligible minority-owned businesses. MBDA currently funds a network of eight (8) MBOC projects located throughout the United States. MBOC operators provide business assistance and brokering services to eligible MBEs, with an emphasis on firms with $500,000 or more in annual revenues or firms with ''rapid growth potential'' (collectively, the ''Strategic Growth Initiative'' or ''SGI'' firms). In addition, MBOC operators provide access to procurement and financing opportunities within the public and private sectors. Pursuant to this notice, competitive applications for new three-year awards are being solicited for the eight (8) MBOC projects set forth below.

Locations and Geographical Service Areas: MBDA is soliciting competitive applications from eligible organizations to operate an MBOC in the following locations and geographical service areas:

Name of MBOC	Location of MBOC	MBOC geographical service area
Alabama MBOC	Mobile, AL	State of Alabama.
Chicago MBOC	Chicago, IL	State of Illinois.
Florida MBOC	Orlando, FL	State of Florida.
Gary MBOC	Gary, IN	State of Indiana.
Los Angeles MBOC	Los Angeles, CA	County of Los Angeles, CA.
New Orleans MBOC	New Orleans, LA	New Orleans-Metairie-Kenner, LA MSA.**
Washington, DC MBOC	Washington-Arlington-Alexandria, DC-VA-MD-WV MSA**.	Washington-Arlington-Alexandria, DC-VA-MD-WV MSA.**
Wisconsin MBOC	Milwaukee, WI	State of Wisconsin.

** Metropolitan Statistical Area, please see OMB Bulletin No. 07–01, Update of Statistical Area Definitions and Guidance on Their Uses (December 18, 2006) at *http://www.whitehouse.gov/omb/bulletins*.

Electronic Access: A link to the full text of the Announcement of Federal Funding Opportunity (FFO) for this solicitation may be accessed at: *http://www.Grants.gov, http://www.mbda.gov*, or by contacting the appropriate MBDA representative identified above. The FFO contains a full and complete description of the requirements under the MBOC Program. In order to receive proper consideration, applicants must comply with all information and requirements contained in the FFO. Applicants will be able to access, download and submit electronic grant applications for the MBOC Program through *http://www.Grants.gov*. MBDA strongly recommends that applicants

not wait until the application deadline date to begin the application process through Grants.gov as in some cases the process for completing an online application may require additional time (e.g., 3–5 working days). The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered.

Funding Priorities: Preference may be given during the selection process to applications which address the following MBDA funding priorities:

(a) Proposals that include performance goals that exceed by 10% or more the minimum performance goal requirements set forth in the FFO;

(b) Applicants who are headquartered and demonstrate an exceptional ability and leadership in identifying and working towards the elimination of barriers which limit the access of minority businesses to markets and capital in the applicable MBOC geographical service area;

(c) Applicants who demonstrate an exceptional ability to identify and work with minority firms seeking to obtain large-scale contracts and/or insertion into supply chains with institutional customers;

(d) Proposals that utilize fee for service models and those that use innovative approaches to charging and collecting fees from clients;

(e) Proposals that take a regional approach in providing services to eligible clients;

(f) Proposals from applicants with an existing client base in the applicable MBOC geographic service area that exceeds by 50% or more the applicable performance goal for the minimum number of clients served; or

(g) Proposals that demonstrate an ability to establish an MBOC that has an industry specific focus and that demonstrate the leveraging of one or more economic clusters, including but not limited to aerospace, manufacturing, construction, financial services, information technology and automotive industries.

Funding Availability: MBDA anticipates that a total of approximately $1,750,000 will be available in each of FYs 2008 through 2010 to fund financial assistance awards for the eight (8) MBOC projects referenced in this competitive solicitation. The total award period for awards made under this competitive solicitation is anticipated to be three years and all awards are expected to be made with a start date of April 1, 2008. The anticipated amount of the financial assistance award for each MBOC project (including the minimum 20% non-federal cost share) is as follows:

Project name	April 1, 2008 through March 31, 2009			April 1, 2009 through March 31, 2010			April 1, 2010 through March 31, 2011		
	Total cost ($)	Federal share ($)	Non-federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-federal share ($) (20% min.)
Alabama MBOC	162,500	130,000	32,500	162,500	130,000	32,500	162,500	130,000	32,500
Chicago MBOC	375,000	300,000	75,000	375,000	300,000	75,000	375,000	300,000	75,000
Florida MBOC	250,000	200,000	50,000	250,000	200,000	50,000	250,000	200,000	50,000
Gary MBOC	162,500	130,000	32,500	162,500	130,000	32,500	162,500	130,000	32,500
Los Angeles MBOC	375,000	300,000	75,000	375,000	300,000	75,000	375,000	300,000	75,000
Louisiana MBOC	325,000	260,000	65,000	325,000	260,000	65,000	325,000	260,000	65,000
Washington, DC MBOC	375,000	300,000	75,000	375,000	300,000	75,000	375,000	300,000	75,000
Wisconsin MBOC	162,500	130,000	32,500	162,500	130,000	32,500	162,500	130,000	32,500

Applicants must submit project plans and budgets for each of the three (3) program years under the award (April 1, 2008–March 31, 2009, April 1, 2009–March 31, 2010 and April 1, 2010–March 31, 2011). Projects will be funded for no more than one year at a time. Project operators will not compete for funding in subsequent program years within the approved award period. However, operators that fail to achieve a ''satisfactory'' or better performance rating for the preceding program year may be denied second- or third-year funding (as the case may be). Recommendations for second- and third-year funding are generally evaluated by MBDA based on a mid-year performance rating and/or combination of mid-year and cumulative third quarter performance ratings. In making such funding recommendations, MBDA and the Department of Commerce will consider the facts and circumstances of each case, such as but not limited to market conditions, most recent performance of the operator and other mitigating circumstances.

Applicants are hereby given notice that FY 2008 funds have not yet been appropriated for the MBOC program. Accordingly, MBDA issues this notice subject to the appropriations made available under the current continuing resolution, H.J. Res. 52, ''Making continuing appropriations for the fiscal year 2008, and for other purposes,'' Public Law 110–92, as amended by H.R. 3222, Public Law 110–116. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other MBDA or Department of Commerce priorities.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Catalog of Federal Domestic Assistance (CFDA): 11.803, Minority Business Opportunity Center Program.

Eligibility: For-profit entities (including but not limited to sole-proprietorships, partnerships, and corporations), non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate an MBOC.

Program Description: MBDA is soliciting competitive applications from organizations to operate a Minority Business Opportunity Center (MBOC) (formerly the Minority Business Opportunity Committee Program). The MBOC will operate through the use of trained professional business consultants who will assist eligible minority entrepreneurs through direct client engagements. The MBOC is supported by a volunteer advisory committee that assists the MBOC operator in implementing program

requirements and providing contract and financing opportunities to eligible minority entrepreneurs.

Minority entrepreneurs eligible for assistance under the MBOC Program are African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Native Americans (including Alaska Natives, Alaska Native Corporations and tribal entities), Eskimos, Asian Indians and Hasidic Jews. No service may be denied to any member of the eligible groups listed above.

The MBOC Program generally requires project staff to provide standardized business assistance and brokering services directly to eligible MBE clients, with an emphasis on those firms with $500,000 or more in annual revenues or those eligible firms with ''rapid growth potential'' (''Strategic Growth Initiative'' or ''SGI'' firms); to develop and maintain a network of strategic partnerships; to provide collaborative consulting services with MBDA and other MBDA funded programs and strategic partners; and to provide referral services (as necessary) for client transactions. MBOC operators will assist MBE clients in accessing federal and non-federal contracting and financing opportunities that result in demonstrable client outcomes. The MBOC Program's primary evaluation criterion is the dollar value of contracts and financial transactions awarded to MBEs. MBOCs also provide business assistance services including but not limited to assessing client capabilities and needs, and assisting the client in developing a course of action to successfully obtain contracts and financial transactions. Specific work requirements and performance metrics are used by MBDA to evaluate each project and are a key component of the MBOC program and are fully set forth in the FFO.

The MBOC Program also incorporates an entrepreneurial approach to building market stability and improving quality of services delivered. This strategy expands the reach of the MBOCs by requiring project operators to develop and build upon strategic alliances with public and private sector partners, as a means of serving minority-owned firms within each MBOC's geographical service area. This entrepreneurial strategy expands the reach of the MBOCs by requiring project operators to develop and build upon its advisory committee and strategic alliances with public and private sector partners as a means of serving minority-owned firms within each MBOC's geographical service area. The MBOC Program is also designed to leverage MBDA resources including but not limited to: MBDA Office of Business Development; MBDA National Enterprise Centers; MBDA Business Internet Portal; and MBDA's network of Native American Business Enterprise Centers (NABECs), Minority Business Enterprise Centers (MBECs), and other MBOCs. MBOC operators are required to attend a variety of MBDA training programs designed to increase operational efficiencies and the provision of value-added client services.

MBOC operators are generally required to provide the following three client services: (1) Facilitate the Award of Contract and Financial Transactions—this involves providing business assistance and brokering services to minority-owned businesses, including the identification of public and private sector contract and financing opportunities; (2) MBOC Advisory Committee and Subcommittees—this involves the establishment and operation of an advisory committee consisting of public and private sector executives and key decision makers that assists the MBOC operator in implementing its program and in identifying upcoming contract and financing opportunities for MBEs; and (3) Program Promotion and Advocacy—the MBOC operator is required to promote its activities within the minority business community and to advocate the use of minority businesses with respect to contracting and financing opportunities.

Please refer to the FFO pertaining to this competitive solicitation for a full and complete description of the application and programmatic requirements under the MBOC Program.

Match Requirements: The MBOC Program requires a minimum non-federal cost share of 20%, which must be reflected in the proposed project budget. Non-federal cost share is the portion of the project cost not borne by the Federal Government. Applicants must satisfy the non-federal cost sharing requirements in one or more of the following four means or in any combination thereof: (1) Client fees; (2) applicant cash contributions; (3) applicant in-kind (i.e., non-cash) contributions; or (4) third-party in-kind contributions. The MBOC operator may but is not required to charge client fees for services rendered, although MBDA encourages the applicant to implement a fee-for-service program. Client fees (if imposed) must be used towards meeting non-federal cost share requirements and must be used in furtherance of the program objectives. Applicants will be awarded up to five bonus points to the extent that the proposed project budget includes a non-federal cost share contribution, measured as a percentage of the overall project budget, exceeding 20% (see Evaluation Criterion below).

Evaluation Criterion: Proposals will be evaluated and applicants will be selected based on the below evaluation criterion. The maximum total number of points that an application may receive is 105, including the bonus points for exceeding the minimum required non-federal cost sharing, except when oral presentations are made by applicants. If oral presentations are made (see below: Oral Presentation—Optional), the maximum total of points that can be earned is 115. The number of points assigned to each evaluation criterion will be determined on a competitive basis by the MBDA review panel based on the quality of the application with respect to each evaluation criterion.

1. Applicant Capability (40 Points)

Proposals will be evaluated with respect to the applicant's experience and expertise in providing the work requirements listed. Specifically, proposals will be evaluated as follows:

(a) *Community*—Experience in and knowledge of the minority community, minority business sector and strategies for enhancing its growth and expansion; particular emphasis shall be on expanding SGI firms. Consideration will be given as to whether the applicant has an ''established presence'' in the applicable MBOC geographical service area at the time of its application. For this purpose, ''established presence'' means that the applicant has had an office in the applicable MBOC geographical service area for at least three (3) years preceding the date of this FFO and has established working relationships with purchasing and financing organizations in such area (4 points);

(b) *Business Consulting (Brokering)*—Experience in and knowledge of brokering procurements and financial transaction with respect to minority firms, with an emphasis on SGI firms in the applicable MBOC geographical service area (5 points);

(c) *Financing*—Experience in and knowledge of the preparation and formulation of successful financial transactions, with an emphasis on the applicable MBOC geographical service area (5 points);

(d) *Procurements and Contracting*—Experience in and knowledge of the public and private sector contracting opportunities for minority businesses, as well as demonstrated expertise in assisting clients into supply chains (5 points);

(e) *Financing Networks*—Resources and professional relationships within

the corporate, banking and investment community that may be beneficial to minority-owned firms (5 points);

(f) *Establishment of a Self-Sustainable Service Model*—Summary plan to establish a self-sustainable model for continued services to the MBE community beyond the three-year MBDA award period (3 points);

(g) *MBE Advocacy*—Experience and expertise in advocating on behalf of minority communities and minority businesses, both as to specific transactions in which a minority business seeks to engage and as to broad market advocacy for the benefit of the minority community at large (3 points); and

(h) *Key Staff*—Assessment of the qualifications, experience and proposed role of staff that will operate the MBOC. In particular, an assessment will be made to determine whether proposed key staff possesses the expertise in utilizing information systems and the ability to successfully deliver program services. At a minimum the applicant must identify a proposed project director (10 points).

2. Resources (20 Points)

The applicant's proposal will be evaluated as followed:

(a) *Resources*—Resources (not included as part of the non-federal cost share) that will be used in implementing the program, including but not limited to existing prior and/or current data lists that will serve in fostering immediate success for the MBOC (8 points);

(b) *Location*—Assessment of the applicant's strategic rationale for the proposed physical location of the MBOC. Applicant is encouraged to establish a location for the MBOC that is in a building which is separate and apart from any of the applicant's existing offices in the geographical service area (2 points);

(c) *Partners*—How the applicant plans to establish and maintain the network of strategic partners and the manner in which these partners will support the MBOC in meeting program performance goals (5 points); and

(d) *Equipment*—How the applicant plans to satisfy the MBOC information technology requirements, including computer hardware, software requirements and network map (5 points).

3. Techniques and Methodologies (20 Points)

The applicant's proposal will be evaluated as follows:

(a) *Performance Measures*—For each program year, the manner in which the applicant relates each performance measure to the financial information and market resources available in the applicable MBOC geographical service area (including existing client list); how the applicant will create MBOC brand recognition (marketing plan); and how the applicant will satisfy program performance goals. In particular, emphasis may be placed on the manner in which the applicant matches MBOC performance goals with client service hours and how it accounts for existing market conditions in its strategy to achieve such goals (10 points);

(b) *Start-up Phase*—How the applicant will commence MBOC operations within the initial 30-day period. The MBOC shall have thirty (30) days to become fully operational after an award is made (3 points); and

(c) *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently staff time will be used to achieve the work requirements, particularly with respect to periods beyond the start-up phase (7 points).

4. Proposed Budget and Budget Narrative (20 Points)

The applicant's proposal will be evaluated as follows:

(a) *Reasonableness, Allowability and Allocability of Proposed Program Costs.* All of the proposed program costs expenditures should be discussed and the budget line-item narrative must match the proposed budget. Fringe benefits and other percentage item calculations should match the proposed budget line-item and narrative (5 points);

(b) *Non-Federal Cost Share.* The required 20% non-Federal share must be adequately addressed and properly documented, including but not limited to how client fees (if proposed) will be used by the applicant in meeting the non-federal cost-share (5 points); and

(c) *Performance-Based Budgeting.* The extent to which the line-item budget and budget narrative relate to the accomplishment of the MBOC work requirements and performance measures (i.e., performance-based budgeting) (10 points).

Bonus for Non-Federal Cost Sharing (maximum of 5 points): Proposals with non-federal cost sharing exceeding 20% of the total project costs will be awarded bonus points on the following scale: more than 20%—less than 25% = 1 point; 25% or more—less than 30% = 2 points; 30% or more—less than 35% = 3 points; 35% or more—less than 40% = 4 points; and 40% or more = 5 points. Non-federal cost sharing of at least 20% is required under the MBOC Program. Non-federal cost sharing is the portion of the total project cost not borne by the Federal Government and may be met by the applicant in any one or more of the following four means (or in a combination thereof): (1) Client fees (if proposed); (2) cash contributions; (3) non-cash applicant contributions; or (4) third party in-kind contributions.

5. Oral Presentation—Optional (10 Points)

Oral presentations are optional and held only when requested by MBDA. This action may be initiated for the top two (2) ranked applications for each project and will be applied on a consistent basis for each project competition. Oral presentations will be used to establish a final evaluation and ranking.

The applicant's presentation will be evaluated as to the extent to which the presentation demonstrates:

(a) How the applicant will effectively and efficiently assist MBDA in the accomplishment of its mission (2 points);

(b) Business operating priorities designed to manage a successful MBOC (2 points);

(c) A management philosophy that achieves an effective balance between micromanagement and complete autonomy for its Project Director (2 points);

(d) Robust search criteria for the identification of a Project Director (1 point);

(e) Effective employee recruitment and retention policies and procedures (1 point); and

(f) A competitive and innovative approach to exceeding performance requirements (2 points).

Review and Selection Process:

1. Initial Screening

Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. An application will be considered non-responsive and will not be evaluated by the review panel if it is received after the closing date for receipt of applications, the applicant fails to submit an original, signed Form SF–424 by the application closing date (paper applications only), or the application does not provide for the operation of an MBOC. Other application deficiencies may be accounted for through point deductions during panel review.

2. Panel Review

Each application will receive an independent, objective review by a panel qualified to evaluate the

applications submitted. The review panel will consist of at least 3 persons, all of whom will be full-time federal employees and at least one of whom will be an MBDA employee, who will review the applications for a specified project based on the above evaluation criterion. Each reviewer shall evaluate and provide a score for each proposal. Each project review panel (through the panel Chairperson) shall provide the MBDA National Director (Recommending Official) with a ranking of the applications based on the average of the reviewers' scores and shall also provide a recommendation regarding funding of the highest scoring application.

3. Oral Presentation—Upon MBDA Request

MBDA may invite the two (2) top-ranked applicants for each project competition to develop and provide an oral presentation. If an oral presentation is requested, the affected applicants will receive a formal communication (via standard mail, e-mail or fax) from MBDA indicating the time and date for the presentation. In-person presentations are not mandatory but are encouraged; telephonic presentations are acceptable. Applicants will be asked to submit a PowerPoint presentation (or equivalent) to MBDA that addresses the oral presentation criteria set forth above. The presentation must be submitted at least 24 hours before the scheduled date and time of the presentation. The presentation will be made to the MBDA National Director (or his/her designee) and up to three senior MBDA staff who did not serve on the original review panel. The oral panel members may ask follow-up questions after the presentation. MBDA will provide the teleconference dial-in number and pass code. Each applicant will present to MBDA staff only; competitors are not permitted to listen (and/or watch) other presentations.

All costs pertaining to this presentation shall be borne by the applicant. MBOC award funds may not be used as a reimbursement for this presentation. MBDA will not accept any requests or petitions for reimbursement.

The oral panel members shall score each presentation in accordance with the oral presentation criterion provided above. An average score shall be compiled and added to the score of the original panel review.

4. Final Recommendation

The MBDA National Director makes the final recommendation to the Grants Officer regarding the funding of applications under this competitive solicitation. MBDA expects to recommend for funding the highest ranking application for each project, as evaluated and recommended by the review panel and taking into account oral presentations (as applicable). However, the MBDA National Director may not make any selection, or he may select an application out of rank order for the following reasons:

(a) A determination that an application better addresses one or more of the funding priorities for this competition. The National Director (or his/her designee) reserves the right to conduct one or more site visits (subject to the availability of funding), in order to make a better assessment of an applicant's capability to achieve the funding priorities; or

(b) The availability of MBDA funding.

Prior to making a final recommendation to the Grants Officer, MBDA may request that the apparent winner of the competition provide written clarifications (as necessary) regarding its application.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other MBDA or Department of Commerce priorities. All funding periods are subject to the availability of funds to support the continuation of the project and the Department of Commerce and MBDA priorities. Publication of this notice does not obligate the Department of Commerce or MBDA to award any specific cooperative agreement or to obligate all or any part of available funds.

Universal Identifier: Applicants should be aware that they will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. See the June 27, 2003 **Federal Register** notice (68 FR 38402) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by accessing the Grants.gov Web site at *http://www.Grants.gov.*

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Executive Order 12866: This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, or contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: December 6, 2007.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. E7–23990 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Cordell Bank National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Research Primary, Research Alternate, Marin County Community-at-Large Alternate,

Sonoma County Community-at-Large Primary. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two 3-year terms pursuant to the council's Charter.

DATES: Applications are due by January 30, 2008.

ADDRESSES: Application kits may be obtained on the Cordell Bank Web site at: *http://cordellbank.noaa.gov*, and from Cordell Bank National Marine Sanctuary, Rowena Forest, P.O. Box 159, Olema, CA 94950. Completed applications should be sent to the above mailing address or faxed to (415) 663–0315.

FOR FURTHER INFORMATION CONTACT: Rowena Forest/CBNMS, *Rowena.forest@noaa.gov*, P.O. Box 159, Olema, CA 94950, (415) 663–0314 x105.

SUPPLEMENTARY INFORMATION: The Advisory Council for Cordell Bank was established in 2002 to support the joint management plan review process currently underway for the CBNMS and its neighboring sanctuaries, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries. The Council has members representing education, research, conservation, maritime activity, and community-at-large. The government seats are held by representatives from the National Marine Fisheries Service, the United States Coast Guard, and the managers of the Gulf of the Farallones, Monterey Bay and Channel Islands National Marine Sanctuaries. The Council holds four regular meetings per year, and one annual retreat.

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 4, 2007.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 07–5999 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Membership Solicitation

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

ACTION: Notice of Membership Solicitation for Hydrographic Services Review Panel.

SUMMARY: This notice responds to the Hydrographic Services Improvement Act Amendments of 2002, Public Law 107–372, which requires the Under Secretary of Commerce for Oceans and Atmosphere to solicit nominations for membership on the Hydrographic Services Review Panel (the Panel). This advisory committee will advise the Under Secretary on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, (the Act) and such other appropriate matters as the Under Secretary refers to the Panel for review and advice.

DATES: Resumes should be sent to the address, e-mail, or fax specified and must be received by March 15, 2008.

ADDRESSES: Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910, fax: 301–713–4019, e-mail: *Hydroservices.panel@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Captain Steven Barnum, Director, Office of Coast Survey, NOS/NOAA, 301–713–2770 x134, fax 301–713–4019, e-mail: *steven.barnum@noaa.gov.*

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 883a, *et seq.,* NOAA's National Ocean Service (NOS) is responsible for providing nautical charts and related information for safe navigation. NOS collects and compiles hydrographic, tidal and current, geodetic, and a variety of other data in order to fulfill this responsibility. The Hydrographic Services Review Panel provides advice on topics such as ''NOAA's Hydrographic Survey Priorities,'' technologies relating to operations, research and development, and dissemination of data pertaining to:

(a) Hydrographic surveying;
(b) Nautical charting;
(c) Water level measurements;
(d) Current measurements;
(e) Geodetic measurements; and
(f) Geospatial measurements.

The Panel comprises fifteen voting members appointed by the Under Secretary in accordance with section 105 of the Act. Members are selected on a standardized basis, in accordance with applicable Department of Commerce guidance. The Co-Director of the Joint Hydrographic Center and two other employees of the National Oceanic and Atmospheric Administration serve as nonvoting members of the Panel. The Director, Office of Coast Survey, serves as the Designated Federal Official (DFO).

This solicitation is to obtain candidates to replace voting members who might resign during 2008. Voting members are individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more disciplines relating to hydrographic surveying, tides, currents, geodetic and geospatial measurements, marine transportation, port administration, vessel pilotage, and coastal or fishery management. An individual may not be appointed as a voting member of the Panel if the individual is a full-time officer or employee of the United States. Any voting member of the Panel who is an applicant for, or beneficiary of (as determined by the Under Secretary) any assistance under the Act shall disclose to the Panel that relationship, and may not vote on any matter pertaining to that assistance.

Voting members of the Panel serve a four-year term, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy. Members serve at the discretion of the Under Secretary and are subject to government ethics standards. Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve until his or her successor has taken office. The Panel selects one voting member to serve as the Chair and another to serve as the Vice Chair. The Vice Chair acts as Chair in the absence or incapacity of the Chair but will not automatically become the Chair if the Chair resigns.

Meetings occur at least twice a year, and at the call of the Chair or upon the request of a majority of the voting members or of the Under Secretary. Voting members receive compensation at a rate established by the Under Secretary, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when actually engaged in performing duties for the Panel, and members are reimbursed for actual and reasonable expenses incurred in performing such duties.

Dated: December 4, 2007.

William Corso,

Deputy Assistant Admininstrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. E7–23906 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS or sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (council): (1) *Diving* (Member and Alternate); (2) *Maritime Heritage* (Member and Alternate). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 2–3 year terms, pursuant to the council's Charter.

DATES: Applications are due by January 10, 2008.

ADDRESSES: Application kits may be obtained from *Elizabeth.Stokes@noaa.gov*, SBNMS, 175 Edward Foster Road, Scituate, MA 02066. Tel: 781–545–8026 X 201. Completed applications should be sent to the same address.

SUPPLEMENTARY INFORMATION: For further questions contact: *Nathalie.Ward@noaa.gov*, External Affairs Coordinator. Telephone: 781–545–8026, X 206.

SUPPLEMENTARY INFORMATION: The Stellwagen Bank National Marine Sanctuary Advisory Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Advisory Council's 23 members represent a variety of local user groups, as well as the general public, plus seven local, state and federal government agencies. Since its establishment, the council has played a vital role in advising the Sanctuary and NOAA on critical issues and is currently focused on the sanctuary's new five-year Management Plan.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 30, 2007.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 07–6000 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC58

Marine Mammals; File No. 1039–1916

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

ACTION: Notice; denial of permit.

SUMMARY: Notice is hereby given that a request for a scientific research permit [File No. 1039–1916] submitted by Ann Zoidis, Cetos Research Organization, 11 Des Isle Avenue, Bar Harbor, Maine has been denied.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 17, 2007, a notice was published in the **Federal Register** (72 FR 52862) that an application had been filed by the above named individual. The requested permit has been denied subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requested authorization to conduct multiple activities, including suction-cup tagging, on cetaceans in Hawaiian waters and the Gulf of Maine. The purpose of the research would have been to determine abundance, distribution, habitat use, and foraging and social behavior of ESA and non-ESA listed species. Overall, the scope of the proposed research was too broad to determine if the objectives could be met by the applicant and if the manner in which the research would be conducted was consistent with the MMPA and ESA.

Dated: December 4, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–23956 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD79

Incidental Takes of Marine Mammals During Specified Activities; Black Abalone Research Surveys at San Nicolas Island, Ventura County, CA

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from Dr. Glenn VanBlaricom (Dr. VanBlaricom) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the

assessment of black abalone populations at San Nicolas Island (SNI), CA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposed IHA for these activities.

DATES: Comments and information must be received no later than January 10, 2008.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *PR1.101706E@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361, *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (I) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 5, 2007, NMFS received a letter from Dr. VanBlaricom, of the Washington Cooperative Fish and Wildlife Research Unit, requesting renewal of an IHA that was first issued to him on September 23, 2003 (68 FR 57427, October 3, 2003), and was last reissued on December 1, 2006 (71 FR 71136, December 8, 2006). The requested IHA would authorize the take, by harassment, of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsi*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends in black abalone (*Haliotis cracherodii*) populations at SNI, Ventura County, California. The proposed research consists of 2 researchers, on foot, counting abalone at nine permanent sites (1 m^2 each) on SNI twice a year, with one brief additional visit to each site for maintenance.

Population trend data for black abalone populations have become important in a conservation context because of: (a) The reintroduction of sea otters to SNI in 1987, raising the possibility of conflict between otter conservation and abalone populations (abalones are often significant prey for sea otters); (b) the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992, resulting in dramatically increased rates of abalone mortality at the Island; and, (c) the recent designation of California populations of black abalones as a species of concern in the context of the Endangered Species Act (ESA). Research is done under the auspices of the Washington Cooperative Fish and Wildlife Research Unit, the University of Washington, and the U.S. Navy (owner of SNI), with additional logistical support from the University of California, Santa Cruz. Since the abalone are not handled or removed in the course of the research, neither a state nor Federal permit is needed.

Additional information on the research is contained in the application, which is available upon request (see **ADDRESSES**).

Project Description

Nine permanent abalone research study areas are located in rocky intertidal habitats on SNI in Ventura County, CA. The applicant has made 111 separate field trips to SNI from September 1979 through October 2007, participating in abalone survey work on 591 different days at nine permanent study sites. Under the latest authorization, Dr. VanBlaricom made five different trips to the island (but no more than 2 research and 1 maintenance visits to most sites with pinnipeds; sites without pinnipeds may be visited more often) and conducted work for 27 total days in the one year period.

Quantitative abalone surveys on SNI began in 1981, at which point permanent research sites were chosen based on the presence of dense patches of abalone in order to monitor changes over time in dense abalone aggregations. Research is conducted by counting black abalone in plots of 1 m^2 (3.3 ft^2) along permanent transect lines in rocky intertidal habitats at each of the nine study sites on the island. Permanent transect lines are demarcated by stainless steel eye-bolts embedded in the rock substrata and secured with marine epoxy compound. Lines are placed temporarily between bolts during surveys and are removed once surveys are completed. Survey work is done by two field biologists working on foot (sites are accessed by hiking to water from vehicle parked inland) and monitoring of black abalone populations at SNI can be done only during periods of extreme low tides. The exact date of a visit to any given site is difficult to predict because variation in surf height

and sea conditions can influence the safety of field biologists as well as the quality of data collected. In most years survey work is done during the months of January, February, March, July, November, and December because of optimal availability of low tides. All work is done during daylight hours due to safety considerations.

During the year, each of the nine permanent study sites at SNI will be visited three times. Abalone surveys, which take no more than 4 hours at each site, are conducted during two of the three visits to each of the nine sites. The third, and final, visit is a maintenance visit, which takes less than half of an hour at each site and is used to take measurements and make necessary repairs to plots and is conducted in a month when smaller numbers of pinnipeds are present.

The affected marine mammal populations at SNI, especially California sea lions and northern elephant seals, have grown substantially since the beginning of abalone research in 1979 and have occupied an expanded distribution on the island due to population growth. Sites previously accessible with no risk of marine mammal harassment are now being utilized by marine mammals at levels such that approach without the possibility of harassment is difficult. An IHA is warranted for this study because of the nine study sites used for the abalone surveys, only two sites can be occupied without the possibility of disturbing at least one species of pinniped.

Description of Habitat and Marine Mammals in the Activity Area

San Nicolas is one of the eight Channel Islands, located in the Santa Barbara Channel off Southern California. Nine miles long (14.5 km) and about three and a half miles (5.6 km) across at its widest point, it is the farthest island from the mainland, more than 60 miles (96.6 km) offshore and about 85 miles (136.8 km) southwest of Los Angeles, California. SNI is owned and operated by the U.S. Navy and is off-limits to civilians without specific permission.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds. On SNI, three pinniped species (northern elephant seal, Pacific harbor seal, and California sea lion) can be expected to occur on land in the vicinity of abalone research sites either regularly or in large numbers during certain times of the year. In addition, a single adult male Guadalupe fur seal (*Arctocephalus townsendi*) (federally listed as threatened under the Endangered Species Act) was seen at one abalone research site on two occasions during the summer months in the mid-1980's. However, none have been seen since those original sightings.

Further information on the biology and distribution of these species and others in the region can be found in Dr. VanBlaricom's application, which is available upon request (see **ADDRESSES**), and the Marine Mammal Stock Assessment Reports, which are available online at *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/individual_sars.html.*

California Sea Lions

The U.S. stock of California sea lions extends from the U.S./Mexico border north into Canada. Breeding areas of the sea lion are on islands located in southern California, western Baja California, and the Gulf of California and they primarily use the central California area to feed during the non-breeding season. Population estimates for the U.S. stock of California sea lions, which are based on counts conducted in 2001 and extrapolations from the number of pups, range from a minimum of 138,881 to an average of 244,000 animals, with a current growth rate of 5.4 to 6.1 percent per year (Carretta, *et al.*, 2005). The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted under the MMPA.

California sea lions haul out at many sites on SNI and are by far the most common pinniped on the island. Over the course of a year, up to 100,000 sea lions may use SNI. Numbers of sea lions at SNI increased by about 21 percent per year between 1983 and 1995 (NMFS 2003) and sea lions have recently started occupying areas that were not formerly used. Pupping occurs on the beaches of SNI from mid-June to mid-July. Females nurse their pups for about eight days and then begin an alternating pattern of foraging at sea vs. attending and nursing the pup on land, which lasts for about eight months, and sometimes up to a year. California sea lions also haul out at SNI during the molting period in September, and smaller numbers of females and juveniles haul out during most of the year.

Pacific Harbor Seals

Harbor seals are widely distributed in the North Atlantic and North Pacific. In California, approximately 400–600 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan, 1996; Lowery, *et al.*, 2005). A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. Based on the most recent harbor seal counts (2004 and 2005) and including a correction factor for the above, the estimated population of harbor seals in California is 34,233 (Carretta, *et al.*, 2005), with an estimated minimum population of 31,600 for the California stock of harbor seals. Counts of harbor seals in California showed a rapid increase from 1972 to 1990, but since 1990 there has been no net population growth along the mainland or the Channel Islands. Though no formal determination of Optimal Sustainable Population (OSP) has been made, the decrease in the growth rate may indicate that the population has reached its carrying capacity. The harbor seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

Harbor seals haul out at various sandy, cobble, and gravel beaches around SNI and pupping occurs on the beaches from late February to early April, with nursing of pups extending into May. Harbor seals may also haul out during molting period in late Spring, and smaller numbers haul out at other times of year. Harbor seal abundance increased at SNI from the 1960s until 1981, but since then average counts have not changed significantly. From 1982 to 1994, numbers of harbor seals have fluctuated between 139 and 700 harbor seals based on both peak ground counts and annual photographic survey photos. The most recent aerial count on SNI was of 457 harbor seals in 1994.

Northern Elephant Seals

Northern elephant seals breed and give birth in California (U.S.) and Baja California primarily on offshore islands, from December to March (Stewart, *et al.*, 1994). The California breeding stock, which includes the animals on SNI, is now demographically separated from the Baja California population. Based on trends in pup counts, northern elephant seal colonies appeared to be increasing in California through 2001. The population size of northern elephant seals in California is estimated to be 101,000 animals, with a minimum population estimate of 60,547 (Carretta, *et al.*, 2005). A continuous average growth rate (though it has declined a bit in recent years) of 8.3 percent has seen

numbers of this species increase from 100 in 1900 to the current population size (Carretta *et al.*, 2005). The northern elephant seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

Increasing numbers of elephant seals haul out at various sites around SNI. Based on a pup count in 1995 that found 6,575 pups, scientists estimated that over 23,000 elephant seals may use SNI in a year (NMFS 2003). From 1988 to 1995 the pup counts on SNI increased at an average rate of 15.4 percent per year, however, the growth rate of the population as a whole seems to have declined in recent years (NMFS 2003). Pupping occurs on the beaches of SNI from January to early February, with nursing of pups extending into March. Northern elephant seals also haul out during the molting periods in the spring and summer, and smaller numbers haul out at other times of the year.

Potential Effects of Activities on Marine Mammal

Variable numbers of sea lions, harbor seals, and elephant seals typically haul out near seven of the nine study sites used for abalone research, with breeding activity occurring at four of these seven sites. Pinnipeds likely to be affected by abalone research activity are those that are hauled out on land at or near study sites.

Incidental harassment may result if hauled animals move away from the abalone researchers. For the purpose of estimating numbers of pinnipeds taken by these activities, NMFS assumes that pinnipeds that move or change the direction of their movement in response to the presence of researchers are taken by Level B Harassment. Animals that merely raise their head and look at the researcher are not considered to have been taken. Although marine mammals will not be deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out directly upon the permanent abalone study plots. In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of injury or death to hauled animals is very low.

The risk of marine mammal injury or mortality associated with abalone research increases somewhat if disturbances occur during breeding season, as it is possible that mothers and dependent pups could become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups (through starvation) may increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury or death of pups. However, NMFS proposes to include time of year restrictions to limit the presence of researchers to months that California sea lion and harbor seal dependent pups are not present at the survey sites. Additionally, though elephant seal pups are occasionally present at abalone surveys, risk of pup mortalities are very low because elephant seals are far less reactive to researcher presence than the other two species (an estimated 32 total elephant seals have been disturbed in the last four years out of 2,074 present around the study site). Last, researchers use great care approaching sites; and pups are on the sand while the permanent study sites are on rocks, which leaves the two always separated by at least 50 m (164 ft). Because of the circumstances and the proposed IHA requirements discussed above, NMFS believes it highly unlikely that the proposed activities would result in the injury or mortality of pinnipeds (and none have been recorded in the 28 years that the researcher has been conducting this research).

The results of Dr. VanBlaricom's monitoring under the previous IHA are summarized in Table 1, which shows the numbers of each species present at Dr. VanBlaricom's survey sites as well as the numbers disturbed during his visits in the last year. As part of the required monitoring, Dr. VanBlaricom records the numbers of disturbed animals that flush into the water, the number that move more than 1 m, but do not enter the water, and the number that become alert and move, but do not move more than 1 m (see the application for these numbers). Animals that raised their head and looked at the researcher without moving were not considered disturbed (or harassed pursuant to the MMPA). For the purposes of estimating take in the IHA, NMFS estimates take as the total of all three categories of disturbed behavior recorded.

As indicated in Table 1, approximately 50 percent of the total animals considered harassed by this activity in 2007 responded by flushing into the water (671 sea lions, 68 harbor seals, and 0 elephant seals) and the rest responded to a lesser degree by moving some distance on land when the researchers approached. Though the researchers have not stayed to find how soon pinnipeds return after flushing (leaving as soon as possible minimizes the effects), increasing numbers at some of the sites and pinniped presence at sites where they were not present before suggest that the research is not having any long-term detrimental effects on the population of any of these three species. Older, weaned sea lion pups and juveniles were seen and disturbed at site 8, and a small number (5) were flushed into the water, but none were known to be injured in any way.

Year	Month	Date	Site #	California sea lions		Pacific harbor seals		Northern elephant seals	
				Present at site	Disturbed	Present at site	Disturbed	Present at site	Disturbed
2007	January	19	1	61	50	0	0	6	1
2007	January	20	1	58	51	0	0	6	0
2007	October	27	1	88	76	0	0	0	0
2007	January	6	2	0	0	0	0	0	0
2007	January	7	2	0	0	0	0	0	0
2007	February	3	2	0	0	0	0	0	0
2007	February	17	2	0	0	0	0	0	0
2007	October	26	2	0	0	0	0	0	0
2007	January	18	3	0	0	0	0	0	0
2007	January	29	3	0	0	0	0	0	0
2007	February	1	3	0	0	0	0	0	0
2007	February	2	3	0	0	0	0	0	0
2007	February	16	3	0	0	0	0	0	0
2007	October	26	3	0	0	0	0	0	0

Year	Month	Date	Site #	California sea lions		Pacific harbor seals		Northern elephant seals	
				Present at site	Disturbed	Present at site	Disturbed	Present at site	Disturbed
2007	October	28	3	0	0	0	0	0	0
2007	January	21	4	0	0	0	0	0	0
2007	February	1	4	2	2	0	0	0	0
2007	February	4	4	0	0	0	0	0	0
2007	October	25	4	0	0	0	0	0	0
2007	January	30	5	79	43	33	15	42	0
2007	January	4	6	306	161	53	31	57	0
2007	January	30	6	271	130	39	22	291	0
2007	February	14	7	130	94	8	0	41	0
2007	February	15	7	237	226	0	0	8	0
2007	January	17	8	168	131	0	0	8	0
2007	January	31	8	330	225	0	0	9	0
2007	October	24	8	103	92	0	0	0	0
2007	February	18	8	65	35	0	0	0	0
2007	January	3	9	0	0	0	0	3	1
2007	January	5	9	1	1	0	0	3	0
2007	February	16	9	0	0	0	0	6	0
Totals				1899	1317	133	68	480	2
# that flushed into water					671 (51%)		68 (100%)		0
# moved > 1m, but not into water					458 (35%)		0		2 (100%)
# came alert, but did not move > 1 m					188 (14%)		0		0

Table 1. Results from 2006–2007 monitoring. Number of ''disturbed'' animals indicates total of the three categories of recorded reactions, which include: Animals that flushed into the water; animals that moved more than 1 m, but did not enter the water; and, animals that moved or changed direction, but did not move more than 1 m.

Proposed Mitigation

Several mitigation measures to reduce the potential for harassment from population assessment research surveys would be (or are proposed to be implemented) implemented as part of the SNI abalone research activities. Primarily, mitigation of the risk of disturbance to pinnipeds requires that researchers are judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be re-occupied by any hauled marine mammals that may have been disturbed by the presence of abalone researchers.

The potential risk of injury or mortality would be avoided with the following proposed measures. Disturbances to females with dependent pups (in the cases of California sea lions and Pacific harbor seals) will be mitigated to the greatest extent practicable by avoiding visits to the four black abalone study sites with resident pinnipeds during periods of breeding and lactation from mid-February through mid-October. During this period, abalone research would be confined to the other five sites where pinniped breeding and post-partum nursing does not occur. Limiting visits to the four breeding and lactation sites (5, 6, 7, and 8) to periods when these activities do not occur (second half of October, November, December, January, and the first half of February) will reduce the possibility of incidental harassment and the potential for injury or mortality of dependent California sea lion pups and Pacific harbor seal pups to near zero.

Northern elephant seal pups are present at four sites during winter months. Risks of injury or mortality of elephant seal pups by mother/pup separation or trampling are limited to the period from January through March when pups are born, nursed, and weaned, ending about 30 days post-weaning when pups depart land for foraging areas at sea. However, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. Also, elephant seal pupping typically occurs on the sandy beaches at SNI, approximately 50 m (164 ft) or more away from the abalone study sites. Possible take of northern elephant seal pups will be minimized by using a very careful approach to the study sites and avoiding the proximity of hauled seals and any seal pups during collection of abalone population data.

One individual Guadalupe fur seal was seen at study site 8 on two separate occasions during the summer months in the mid-1980's. Since the original sightings, no individuals of this species have been seen during abalone research. However, to ensure that Guadalupe fur seals are not affected by these activities and that authorization is not needed pursuant to the MMPA or the ESA, researchers will only visit site 8 from mid-October through mid-February with a single proposed visit in July, and work will be immediately suspended and researchers vacated if an individual is seen. Guadalupe fur seals are distinctive in appearance and behavior, and can be readily identified at a distance without any disturbance.

Sea otters, which are federally listed as threatened under the ESA and managed by the U.S. Fish and Wildlife Service (USFWS), are not expected ashore during the time periods when the research activities would be conducted. However, if sea otters are sighted ashore during the abalone research, Dr. VanBlaricom would follow similar procedures in place for fur seals to avoid impacts, suspending research activities in any areas California sea otters are occupying.

Proposed Monitoring

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), U.S. Navy. The U.S. Navy owns SNI and closely regulates all civilian access to, and activity on, the island, including biological research. Therefore,

monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center (SWFSC). Also, long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Proposed monitoring requirements in relation to Dr. VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Information recorded will include species counts (with numbers of pups), numbers of observed disturbances, and descriptions of the disturbance behaviors during the abalone surveys. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD and NMFS.

If at any time injury or death of any marine mammal occurs that may be a result of the proposed abalone research, Dr. VanBlaricom will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Proposed Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the year-long field season or 60 days prior to the start of the next field season if a new IHA will be pursued. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Dr. VanBlaricom has already submitted the final report required by the current IHA and it may be viewed on the NMFS website (see **ADDRESSES**).

Numbers of Marine Mammals Expected To Be Harassed

NMFS has determined that these are small numbers, relative to population estimates, of California sea lions, Pacific harbor seals, and northern elephant seals (1.3, 0.2, and .04 percent of the minimum population, respectively).

The distribution of pinnipeds hauled out on beaches is not even between sites or at different times of the year. The number of marine mammals disturbed will vary by month and location, and, compared to animals hauled out on the beach farther away from survey activity, only those animals hauled out closest to the actual survey transect plots contained within each research site are likely to be disturbed by the presence of researchers and alter their behavior or attempt to move out of the way.

Table 2 depicts the total numbers of animals encountered and disturbed by Level B Harassment in Dr. VanBlaricom's 2004, 2005, 2006, and 2007 abalone survey field seasons. As discussed earlier, NMFS considers an animal to have been harassed if it moved any distance in response to the researcher's presence or if the animal was already moving and changed direction. Animals that raised their head and looked at the researcher without moving were not considered disturbed. Based on past observations and assuming a maximum level of incidental harassment of marine mammals at each site during periods of visitation, NMFS estimates that the maximum total possible numbers of individuals that will be incidentally harassed during the effective dates of the proposed IHA would be 1610 California sea lions, 100 Pacific harbor seals, and 20 northern elephant seals may be taken by harassment as a result of this activity.

Year	California sea lions		Pacific harbor seals		Northern elephant seals	
	Present round site	Est. harassed	Present round site	Est. harassed	Present round site	Est. harassed
2004	2239	1472	108	99	562	7
2005	1383	983	99	88	409	9
2006	1564	1045	57	50	623	14
2007	1899	1317	133	68	480	2

Table 2. Estimated number of each species harassed over the last three years of abalone research. Minimum population estimates for California sea lions, Pacific harbor seals, and Northern elephant seals are 138881, 31600, and 60547, respectively.

Potential Effects of Activities on Marine Mammal Habitat

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around each of the nine study sites less desirable as haul-out sites for a total of 8.5 hours per year. Three visits to each site are anticipated during the year-long validity of the IHA.

ESA

For the reasons already described in this **Federal Register** Notice, NMFS has determined that the described abalone research and the accompanying IHA will have no effect on species or critical habitat protected under the ESA (specifically, the Guadalupe fur seal). Therefore, consultation under Section 7 is not required.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) of the Issuance of an IHA to Take Marine Mammals, by Harassment, During Black Abalone Research at SNI, California, which analyzed the issuance of multiple IHAs over several years for these activities, and subsequently issued a Finding of No Significant Impact (FONSI) on November 21, 2005. The proposed 2008 action is the same as was analyzed in the 2005 EA and the EA remains applicable. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Conclusions

Based on Dr. VanBlaricom's application and monitoring reports for previous field seasons, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described abalone research at SNI will result, at most, in a temporary modification in behavior by small numbers of California sea lions, Pacific harbor seals, and northern elephant seals, in the form of head alerts, movement away from the researchers and/or flushing from the

beach. In addition, no take by injury or death is anticipated, and take by harassment will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. NMFS has further preliminarily determined that the anticipated takes will have a negligible impact on the affected species.

Proposed Authorization

NMFS proposes to issue an IHA to Dr. Glenn R. VanBlaricom for the harassment of California sea lions, Pacific harbor seals, and northern elephant seals incidental to black abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 5, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–23995 Filed 12–10–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Property Suitable for Exchange

AGENCY: Department of the Air Force, Air Force Real Property Agency.

ACTION: Notice of intent.

Authority: Title 10, United States Code, Section 2869(d)(1).

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property under the administrative jurisdiction of the United States Air Force that the Air Force intends to exchange for property beneficial to the Air Force.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Conesa, Air Force Real Property Agency (AFRPA), 143 Billy Mitchell Blvd, Suite 1, San Antonio, TX 78226–1816; telephone (210) 925–1131, (this telephone number is not toll-free).

SUPPLEMENTARY INFORMATION: In accordance with 10 U.S.C. Section 2869 (d)(2), the Air Force is publishing this Notice to identify Federal real property that the Air Force has reviewed for suitability to dispose of in exchange for property beneficial to the Air Force. The property was screened within the Department of Defense (DoD) and no DoD agencies have expressed an interest in the property.

The Air Force reviewed the property:

Norwalk Defense Fuel Support Point, Norwalk, CA

Property Number:

Status: Excess

Comments: Approximately 50 acres of real property located at 15306 Norwalk Blvd, Norwalk, CA 90650.

And will exchange this property for:

Military construction projects to be constructed at March Air Reserve Base, Riverside, CA

Dated: December 3, 2007.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–24012 Filed 12–10–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRP)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority and definitions.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services, the Assistant Secretary for Vocational and Adult Education, and the Assistant Secretary for Postsecondary Education jointly propose a priority and definitions for a center on postsecondary education for students with intellectual disabilities under the DRRP program administered by NIDRR. The Assistant Secretary for Special Education and Rehabilitative Services may use this priority for competitions in fiscal year (FY) 2008 and later years. We take this action to focus attention on an area of national need. We intend this priority to improve postsecondary education and other outcomes for individuals with intellectual disabilities.

DATES: We must receive your comments on or before January 10, 2008.

ADDRESSES: Address all comments about this proposed priority and definitions to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, Potomac Center Plaza (PCP), Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

You must include the term ''Intellectual Disability Center Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. *Telephone:* (202) 245–7462 or by *e-mail: donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: This notice of proposed priority and definitions is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Invitation to Comment

We invite you to submit comments regarding the proposed priority and definitions in this notice. To ensure that your comments have maximum effect in developing the notice of final priority and definitions, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the priority and definitions proposed in this notice. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and definitions in this notice in room 6029, 550 12th Street, SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the priority and definitions proposed in this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priority and definitions in a notice in the **Federal Register**. We will determine the final priority and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities or definitions, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use the priority proposed in this notice, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priority

Background

The Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (20 U.S.C. 6300) and the 2004 amendments to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) have expanded educational opportunities for all students, including those with intellectual disabilities. More and more students with intellectual disabilities are enrolling in postsecondary education programs, including community colleges, vocational-technical schools, four-year colleges, and specialized programs on college campuses that promote independence and improve employment options. A small number of two- and four-year colleges (approximately 15) provide individualized supports so that students with intellectual disabilities, such as students with Down syndrome, can participate in regular college credit courses. More common are two-year colleges that enroll individuals with intellectual disabilities in programs that are separate from the traditional academic programs of those institutions. The majority of these programs are dual enrollment programs for students ages 18 through 21 who receive special education services and who are still enrolled in high school and take courses on college campuses that focus on academic and personal skill building (*e.g.*, social skills, life skills) as part of their individualized education program under IDEA.

Despite the growing interest in postsecondary education programs for students with intellectual disabilities, there are relatively little data on: (a) The participation rates of students with intellectual disabilities in postsecondary education; (b) the types of programs and services provided for students with intellectual disabilities in these programs; and (c) the outcomes for students with intellectual disabilities who participate in different types of postsecondary education programs.

Individuals with intellectual disabilities face significant barriers to successful participation in postsecondary education and vocational-technical programs. According to the President's Committee for People with Intellectual Disabilities (2004), fewer than 15 percent of young adults with intellectual disabilities participate in postsecondary education programs. The Committee also reported that approximately 90 percent of adults with intellectual disabilities are not employed.

Research on postsecondary education for students with intellectual disabilities is limited. However, there is some evidence to suggest that independent living and employment outcomes may improve for students with intellectual disabilities who participate in college-based programs (Hart *et al.*, 2006; Wagner et al., 2006). In two studies, students with intellectual disabilities who attended postsecondary education courses and programs had higher levels of self-esteem, better vocational outcomes, and greater personal success when compared to their peers who did not attend postsecondary education programs (Hart et al., 2004, 2006).

To address the gaps in knowledge about the participation of individuals with intellectual disabilities in postsecondary education programs, NIDRR seeks to establish a center that will conduct research and disseminate information on scientifically based

approaches for improving long-term independent living and employment opportunities for individuals with intellectual disabilities through the participation of such individuals in postsecondary education programs.

References

Hart, D., Pasternack, R.H., Mele-McCarthy, J., Zimbrich, K., & Parker, D.R. (2004). ''Community College: A Pathway to Success for Youth with Learning, Cognitive, and Intellectual Disabilities in Secondary Settings.'' Education and Training in Developmental Disabilities, Volume 39, Number 4: 54–66.

Hart, D., Grigal, M., Sax, C., Martinez, D., & Will, M. (2006). ''Postsecondary Education Options for Students with Intellectual Disabilities.'' Research to Practice, Issue # 45. Accessed online October 21, 2007 at: *http://www.communityinclusion.org/article.php?article_id=178&staff_id=19.*

President's Committee for People with Intellectual Disabilities (2004). A Charge We Have To Keep. A Road Map to Personal and Economic Freedom for People with Intellectual Disabilities in the 21st Century. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families.

Wagner, M., Newman, L., Cameto, R., & Levine, P. (2006). The Academic Achievement and Functional Performance of Youth With Disabilities. A Report From the National Longitudinal Transition Study—2 (NLTS2). (NCSER 2006–3000). Menlo Park, CA: SRI International.

Proposed Priority—Center on Postsecondary Education for Students with Intellectual Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services, the Assistant Secretary for Vocational and Adult Education, and the Assistant Secretary for Postsecondary Education jointly propose a priority for a DRRP—the Center on Postsecondary Education for Students with Intellectual Disabilities (Center). In order to meet this priority, the Center must—

(a) Identify key characteristics and promising practices of postsecondary education programs that currently serve students with intellectual disabilities, including collecting information on—

(1) How students with intellectual disabilities are recruited and retained in these programs;

(2) The extent to which students with intellectual disabilities are enrolled in academic courses as part of these programs; and

(3) The types and extent of accommodations provided to students with intellectual disabilities in order to ensure their active participation in these programs;

(b) Conduct scientifically based research (as defined in 20 U.S.C. 7801(37)) to determine whether variation in educational, vocational, and independent living outcomes for students with intellectual disabilities is associated with participation in different types of postsecondary education programs. To fulfill this requirement, the Center must conduct a longitudinal study or secondary analyses of existing national and State longitudinal datasets. At a minimum, the Center must analyze data from the National Longitudinal Transition Study-2 (NLTS–2) and the Florida K–20 Education Data Warehouse. The NLTS–2 can be accessed at: *http://www.nlts2.org.*

The Florida K–20 Education Data Warehouse can be accessed at: *http://www.edwapp.doe.state.fl.us/doe/.*

(c) Compile existing technical assistance materials and develop new materials, as needed, including information on promising practices that can be replicated, for postsecondary education institutions that are developing new programs or expanding existing programs to provide activities for students with intellectual disabilities. Technical assistance materials must be informed by knowledge acquired through the Center's research program, as the knowledge becomes available;

(d) Partner with existing training and technical assistance providers for the purpose of disseminating technical assistance materials to postsecondary education programs interested in developing new programs or expanding existing programs for students with intellectual disabilities. To the extent possible, technical assistance and other informational materials should be disseminated to interested students with intellectual disabilities and their families;

(e) Provide technical assistance information and materials to appropriate NIDRR research and dissemination centers, including the National Center for the Dissemination of Disability Research and the Research Utilization Support and Help (RUSH) Project at the Southwest Educational Development Laboratory, and the Center for International Rehabilitation Research Information and Exchange at the State University of New York at Buffalo;

(f) Establish an advisory committee of researchers, vocational rehabilitation providers, transition planners, secondary and postsecondary educators, individuals with intellectual disabilities, and parents of individuals with intellectual disabilities to provide the Center, on an ongoing basis, with guidance on the Center's research and technical assistance activities;

(g) Conduct a formative evaluation of the Center's activities, using clear performance objectives to ensure continuous improvement in the operation of the Center, including objective measures of progress in implementing the project and ensuring the quality of products and services; and

(h) To the extent possible, consult with the sponsors of activities that are similar or related to the Center's activities, especially, existing training and technical assistance resources that have been established by relevant offices within the U.S. Department of Education, including the Rehabilitation Service Administration's Rehabilitation Continuing Education Programs; the Office of Special Education Programs' Technical Assistance and Dissemination Network, and Technical Assistance Communities of Practice; the Office of Vocational and Adult Education's National Research Center for Career and Technical Education; and the NIDRR network of Knowledge Translation grantees. This consultation must be designed to avoid duplication of efforts and to facilitate the exchange of information, pool resources, and improve the overall effectiveness of the Center's activities.

Definitions

The Assistant Secretary for Special Education and Rehabilitative Services, the Assistant Secretary for Vocational and Adult Education, and the Assistant Secretary for Postsecondary Education jointly propose to establish the following definitions for the purpose of the *Center on Postsecondary Education for Students with Intellectual Disabilities* priority:

(1) *Adaptive skill areas,* as used in the definition of *students with intellectual disabilities,* means the basic skills needed for everyday life, such as communication, self-care, home living, social skills, leisure, health and safety, self-direction, functional academics (reading, writing, basic math), and work.

(2) *Postsecondary education programs* means programs and activities at community colleges, vocational-technical schools, four-year colleges, and specialized programs on college campuses that are intended to promote independence and improve employment outcomes for students with intellectual disabilities.

(3) *Scientifically based research* has the meaning given the term in 20 U.S.C. 7801(37): Research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs. It includes research that—

(a) employs systematic, empirical methods that draw on observation or experiment;

(b) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(c) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(d) utilizes experimental or quasi-experimental designs in which individual entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(e) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(f) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(4) *Students with intellectual disabilities* means—

(a) individuals between the ages of 16 and 24 whose intellectual functioning levels require significant changes in instructional methods and modifications to the curriculum in order to participate in postsecondary educational activities;

(b) individuals who have significant limitations in adaptive skill areas as expressed in conceptual, social, and practical adaptive skills; and

(c) individuals whose disabilities originated before the age of 18.

Executive Order 12866

This notice of proposed priority and definitions has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this notice of proposed priority and definitions are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority and definitions, we have determined that the benefits of the proposed priority and definitions justify the costs.

Summary of potential costs and benefits

The benefits of the DRRP programs have been well established over the years in that other DRRP projects have been completed successfully. The priority and definitions proposed in this notice will generate new knowledge through research, development, dissemination, utilization, and technical assistance.

Another benefit of the proposed priority and definitions is that establishing a new DRRP will support the President's NFI and improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with intellectual disabilities to achieve improved education, employment, and independent living outcomes.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers 84.133A Disability Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: December 5, 2007.

Raymond Simon,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–23975 Filed 12–10–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

December 4, 2007.

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

Docket Numbers: ER05–1232–006.
Applicants: JPMorgan Ventures Energy Corporation.
Description: JP Morgan Ventures Energy Corp submits a revised market based rate tariff designated as First Revised Rate Schedule 1 in Accordance with Order 697.
Filed Date: 11/30/2007.
Accession Number: 20071203–0192.
Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER05–283–001.
Applicants: JPMorgan Chase Bank, N.A.
Description: JPMorgan Chase Bank, NA submits a revised market-based rate tariff, designated as Second Revised Rate Schedule 1 in compliance with Order 697.
Filed Date: 11/30/2007.
Accession Number: 20071203–0200.
Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER07–1125–004.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corporation dba National Grid submits Service Agreement 1154 and 1158 with updated effective dates.
Filed Date: 11/30/2007.
Accession Number: 20071203–0079.
Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–75–001.
Applicants: DEL LIGHT Inc.
Description: DEL LIGHT Inc requests its Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority designated as FERC Electric Tariff, Original Volume 1.
Filed Date: 11/26/2007.
Accession Number: 20071130–0069.
Comment Date: 5 p.m. Eastern Time on Monday, December 17, 2007.

Docket Numbers: ER08–213–001.
Applicants: Round Rock Energy, LP.
Description: Round Rock Energy, LP submits a supplemental filing to Sheet

1, FERC Electric Tariff, Original Volume 1.

Filed Date: 11/30/2007.

Accession Number: 20071203–0193.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–268–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co submits a Firm Transmission Service Agreement with the Municipal Energy Agency of Nebraska for Service to the City of Rockford, Iowa.

Filed Date: 11/30/2007.

Accession Number: 20071203–0198.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–269–000.

Applicants: Midwest Independent Transmission System.

Description: Michigan Electric Transmission Co, LLC et al submits a Second Amendment to the Second Amended and Restated Settlement Agreement etc.

Filed Date: 11/30/2007.

Accession Number: 20071203–0197.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–270–000.

Applicants: Westar Energy, Inc.

Description: Kansas Gas and Electric Co and Westar Energy, Inc submits Notice of Cancellation of an Agreement for Wholesale Electric Service with City of Mount Hope, Kansas.

Filed Date: 11/30/2007.

Accession Number: 20071203–0196.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–271–000.

Applicants: Consolidated Edison Co. of New York, Inc.

Description: Consolidated Edison Company of New York, Inc submits amendments to their Delivery Service Rate Schedule 96 and 92.

Filed Date: 11/30/2007.

Accession Number: 20071203–0195.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–272–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits a Large Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service for the McGrath Beach Peaker Project.

Filed Date: 11/30/2007.

Accession Number: 20071203–0194.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–273–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits an executed Service Agreement 262 with Georgia Transmission Corporation that provides for 5 megawatts of firm point-to-point transmission service for the period 1/1/08 through 12/31/08.

Filed Date: 11/30/2007.

Accession Number: 20071203–0080.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–274–000.

Applicants: Citadel Energy Strategies, LLC.

Description: Citadel Energy Strategies LLC submits its Petition for Acceptance of Initial Rate Schedule, Waiver and Blanket Authorization designated as Rate Schedule FERC 1.

Filed Date: 11/30/2007.

Accession Number: 20071203–0081.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–275–000.

Applicants: Santa Maria Cogen Inc.

Description: Santa Maria Cogen Inc submits its proposed market-based rate tariff, entitled FERC Electric Tariff 1 for its cogeneration facility located in Santa Maria, CA.

Filed Date: 11/30/2007.

Accession Number: 20071203–0082.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–276–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company dba Progress Energy Carolinas Inc submits a cost of based power sales agreement with the Town of Stantonsburg, NC.

Filed Date: 11/30/2007.

Accession Number: 20071203–0083.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–277–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company dba Progress Energy Carolinas Inc submits a cost-based power sales agreement with the Town of Sharpsburg, NC.

Filed Date: 11/30/2007.

Accession Number: 20071203–0084.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–278–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company dba Progress Energy Carolinas Inc submits a cost of based power sales agreement with the Town of Lucama, NC.

Filed Date: 11/30/2007.

Accession Number: 20071203–0085.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–279–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company dba Progress Energy Carolinas Inc submits a cost-based power sales agreement with the Town of Black Creek, North Carolina.

Filed Date: 11/30/2007.

Accession Number: 20071203–0078.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–280–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits Fourth Revised Sheet 8A *et al* to its PJM Open Access Transmission Tariff.

Filed Date: 11/30/2007.

Accession Number: 20071203–0086.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER08–48–001.

Applicants: Florida Power Corporation.

Description: Florida Power Corp dba Progress Energy Florida, Inc submits an amendment to their 10/11/07 filing of a Standard Large Generator Interconnection Agreement with Vandohl Power Co.

Filed Date: 11/30/2007.

Accession Number: 20071203–0199.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7–23931 Filed 12–10–07; 8: 45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 4, 2007.

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

Docket Numbers: EC08–18–000.

Applicants: Lowell Cogeneration Company Limited Part, Delta Power Company, LLC, Pedricktown Plant Holdings, LLC.

Description: Application for authorization for disposition of jurisdictional facilities and requests for expedited action re Lowell Cogeneration Company Limited Partnership.

Filed Date: 11/28/2007.

Accession Number: 20071130–0077.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 2007.

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

Docket Numbers: ER01–1385–031; ER01–3155–022; ER04–230–032.

Applicants: Consolidated Edison Company of New York; New York Independent System Operator, Inc.

Description: New York Independent System Operator's Filing of Twelfth Quarterly Combined Cycle Modeling Report *et al.*

Filed Date: 11/30/2007.

Accession Number: 20071130–5065.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER05–1232–000; ER05–283–000.

Applicants: JPMorgan Ventures Energy Corporation; JPMorgan Chase Bank, N.A.

Description: Notice of Non-Material Change in Status Regarding Market-Based Rate Authority of JPMorgan Chase Bank, N.A., *et al.*

Filed Date: 11/30/2007.

Accession Number: 20071130–5121.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER06–1308–004.

Applicants: Midwest ISO.

Description: Midwest ISO, Inc submits its Withdrawal Fee Recalculation Agreement with E. ON US, LLC and proposed compliance revisions to Schedules 10 *et al.* of their FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 11/21/2007.

Accession Number: 20071130–0070.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: ER06–1399–004.

Applicants: Sunbury Generation LP.

Description: Supplement to Notice of Change in Status of Sunbury Generation, *et al.*

Filed Date: 11/28/2007.

Accession Number: 20071128–5078.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 2007.

Docket Numbers: ER07–525–003.

Applicants: Entergy Services Inc.

Description: Entergy Services Inc submits its refund report paid to America Electric Power Service Corporation issued on 10/18/07.

Filed Date: 11/29/2007.

Accession Number: 20071203–0031.

Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER07–539–004.

Applicants: Niagara Mohawk Power Corporation.

Description: Electric Refund Report (Compliance Only) of Niagara Mohawk Power Corporation.

Filed Date: 11/29/2007.

Accession Number: 20071129–5074.

Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER07–540–003.

Applicants: Niagara Mohawk Power Corporation.

Description: Electric Refund Report (Compliance Only) of Niagara Mohawk Power Corporation.

Filed Date: 11/29/2007.

Accession Number: 20071129–5080.

Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER07–541–003.

Applicants: Entergy Services Inc.

Description: Entergy Services Inc submits its refund report paid to NRG Power Marketing Inc.

Filed Date: 11/29/2007.

Accession Number: 20071203–0030.

Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER07–1019–004; ER07–1020–003; ER07–1021–003.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp submits an amended interconnection agreement to Alliance Energy *et al.*

Filed Date: 11/29/2007.

Accession Number: 20071130–0128.

Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER07–1094–002.

Applicants: Niagara Mohawk Power Corporation.

Description: Electric Refund Report (Compliance Only) of Niagara Mohawk Power Corporation.

Filed Date: 11/30/2007.

Accession Number: 20071130–5068.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER07–1103–002.

Applicants: Niagara Mohawk Power Corporation.

Description: Electric Refund Report (Compliance Only) of Niagara Mohawk Power Corporation *et al.*

Filed Date: 11/30/2007.

Accession Number: 20071130–5070.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER07–1125–003.

Applicants: Niagara Mohawk Power Corporation.

Description: Electric Refund Report (Compliance Only) of Niagara Mohawk Power Corporation.

Filed Date: 11/30/2007.

Accession Number: 20071130–5071.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER07–1126–003.

Applicants: Niagara Mohawk Power Corporation.

Description: Electric Refund Report (Compliance Only) of Niagara Mohawk Power Corporation.

Filed Date: 11/30/2007.

Accession Number: 20071130–5073.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER07–1289–003.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits its 11/14/07 informational report, pursuant to FERC's 10/29/07 Order.

Filed Date: 11/28/2007.

Accession Number: 20071130–0067.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 2007.

Docket Numbers: ER07–1311–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits their response to FERC's 10/29/07 letter that requested additional information.

Filed Date: 11/28/2007.

Accession Number: 20071130–0068.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 2007.

Docket Numbers: ER07–1396–001.

Applicants: American Electric Power Service Corp.

Description: Ohio Power Co and Columbus Southern Power Co submits the Third Revised Repair and Maintenance Agreement—Exhibit A–10 with American Municipal Power-Ohio, Inc.

Filed Date: 11/28/2007.

Accession Number: 20071129–0026.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 2007.

Docket Numbers: ER08–256–000.

Applicants: Northern States Power Company.

Description: Xcel Energy Services, Inc *et al.* submit a jointly executed Joint Pricing Zone Revenue Allocation Agreement.

Filed Date: 11/27/200.

Accession Number: 20071129–0025.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 18, 2007.

Docket Numbers: ER08–257–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits tariff revisions to the Restated Power Service Agreement with Ontonagon County Rural Electrification Association.

Filed Date: 11/27/2007.

Accession Number: 20071129–0024.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 18, 2007.

Docket Numbers: ER08–258–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits tariff revisions to the Restated Power Service Agreement with Alger Delta Cooperative Electric Association.

Filed Date: 11/27/2007.

Accession Number: 20071129–0023.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 18, 2007.

Docket Numbers: ER08–259–000.

Applicants: Duquesne Light Company.

Description: Notice of Change in Status and Compliance Filings of Duquesne Light Company, Duquesne Power, L.P., Duquesne Keystone LLC, and Duquesne Conemaugh LLC.

Filed Date: 11/21/2007.

Accession Number: 20071121–5131.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: ER08–260–000.

Applicants: Duquesne Conemaugh, LLC.

Description: Notice of Change in Status and Compliance Filings of Duquesne Light Company, Duquesne Power, L.P., Duquesne Keystone LLC, and Duquesne Conemaugh LLC.

Filed Date: 11/21/2007.

Accession Number: 20071121–5131.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: ER08–261–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its Sixth Revised Sheet 1 and 4 to its First Revised Rate Schedule 233, an Electric Power Supply Agreement with City of Robinson, Kansas under ER08–261.

Filed Date: 11/28/2007.

Accession Number: 20071130–0074.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 2007.

Docket Numbers: ER08–262–000.

Applicants: Indiana Michigan Power Company.

Description: Indiana Michigan Power Co submits First Revised Sheet 15 and 53 *et al* to FERC Electric Rate Schedule 103.

Filed Date: 11/28/2007.

Accession Number: 20071130–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 2007.

Docket Numbers: ER08–263–000.

Applicants: American Electric Power Service Corp.

Description: AEP Operating Companies submits the Second Revised Interconnection and Local Delivery Service Agreement with the Town of Avilla, Indiana.

Filed Date: 11/28/2007.

Accession Number: 20071130–0072.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 2007.

Docket Numbers: ER08–264–000.

Applicants: CP Power Sales Twelve, L.L.C.

Description: CP Power Sales Twelve, LLC submits a Notice of Cancellation of its FERC Electric Tariff, First Revised Volume 1.

Filed Date: 11/29/2007.

Accession Number: 20071130–0071.

Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER08–265–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits revisions to the New Brunswick System Operator Coordination Agreement.

Filed Date: 11/29/2007.

Accession Number: 20071130–0130.

Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER08–266–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Notices of Cancellation of the vintage service agreements under its Open Access Transmission Tariff *et al.*

Filed Date: 11/29/2007.

Accession Number: 20071130–0129.

Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER08–267–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits Rate Schedules 77, 88, 91, 136, 143 and Open Access Transmission Tariff, First Revised Volume 12.

Filed Date: 11/30/2007.

Accession Number: 20071203–0057.

Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH08–9–000.

Applicants: Alinda Capital Partners LLC.

Description: FERC Form 65 A Exemption Notification of Alinda Capital Partners, LLC under PH08–9.

Filed Date: 11/28/2007.

Accession Number: 20071130–0075.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 19, 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7–23932 Filed 12–10–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007; FRL –8503–9]

2007 Water Efficiency Leader Awards—Winners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the winning applications for U.S. EPA's second annual Water Efficiency Leader Awards. The awards recognize those organizations and individuals that provide leadership and innovation in water efficient products and practices. These awards are intended to help foster a nationwide ethic of water efficiency, as well as to inspire, motivate, and recognize efforts to improve water efficiency. The six winners for 2007 are; Intel Corporation, Ocotillo Campus (Chandler, AZ); Santa Clara Valley Water District (San Jose, CA); Frito-Lay (Plano, TX); Lackland Air Force Base (Lackland, TX); Kentucky Pollution Prevention Center (KPPC) at the University of Louisville (Louisville, KY); Allan Dietemann Seattle Public Utilities (Seattle, WA). More information can be found at *www.epa.gov/water/wel.*

FOR FURTHER INFORMATION CONTACT: Bob Rose, Telephone: (202) 564–0322. E-mail: *rose.bob@epa.gov.*

Dated: December 4, 2007.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E7–23945 Filed 12–10–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 4, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before February 11, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0669.

Title: Section 76.946, Advertising of Rates.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 8,250.

Estimated Time per Response: 30 minutes.

Total Annual Burden to Respondents: 4,125 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.946 states that cable operators that advertise for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures, may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a ''fee plus'' rate that indicates the core rate plus the range of possible additions, depending upon the particular location of the subscriber. The Commission has set forth this disclosure requirement to ensure consumer awareness of all fees associated with basic service and cable programming service tier rates.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–23939 Filed 12–10–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

December 4, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 10, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Sections 225 and 255, Interconnected Voice over Internet Protocol Services (VoIP).

Form Number: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,711.

Estimated Time per Response: 1–20 hours.

Frequency of Response: Annual and on-occasion reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 149,576 hours.

Total Annual Cost: $5,711,000.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.''

Privacy Impact Assessment: Yes. The Privacy Impact Assessment was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html*.

Needs and Uses: On June 15, 2007, the Commission released a *Report and Order*, In the Matters of IP-Enabled Services; Implementation of sections 225 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; the Use of N11 Codes and Other Abbreviated Dialing Arrangements, FCC 07–110. FCC 07–110 extends the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended (the Act), to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services. In addition, the Commission extends to interconnected VoIP providers the Telecommunications Relay Services requirements contained in its regulations, pursuant to section 225(b)(1) of the Act. As applied to interconnected VoIP providers and to manufacturers of specialized VoIP equipment, several requirements adopted by FCC 07–110 contain new or modified information collection requirements that have not been approved by OMB, and on which the Commission must seek comment under the PRA. For example, several rules that FCC 07–110 extends to interconnected VoIP providers and/or equipment manufacturers contain procedures governing a provider or manufacturer's obligation to respond to an informal consumer complaint. Other rules detail VoIP providers' and VoIP equipment manufacturers' duty to make available to the public certain information concerning their respective services or products. In particular, the following rules, as applied to interconnected VoIP providers and to manufacturers of specialized VoIP equipment and customer premises equipment, contain new or modified information collection requirements: 47 CFR 6.11(a), 6.11(b), 6.18(b), 6.19, 64.604(a)(5), 64.604(c)(1)(i), 64.604(c)(1)(ii), 64.604(c)(2), 64.604(c)(3), 64.604(c)(5)(iii)(C), 64.604(c)(5)(iii)(E), 64.604(c)(5)(iii)(G), 64.604(c)(6)(v)(A)(3), 64.604(c)(6)(v)(G), 64.604(c)(7), and 64.606(b) of the Commission's rules. The Commission will publish a separate document in the **Federal Register** announcing the effective date of those rules upon OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–23940 Filed 12–10–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (Eastern Time), December 17, 2007.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 19, 2007 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Monthly Investment Performance Report.
   c. Legislative Report.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 7, 2007.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 07–6024 Filed 12–7–07; 12:11 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement (OCSE); Privacy Act of 1974, as Amended; Computer Matching Program

AGENCY: Office of Child Support Enforcement, HHS.

ACTION: Notice of a Computer Matching Program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of Child Support Enforcement (OCSE) is publishing notice of a computer matching program between OCSE and state agencies administering an unemployment compensation (UC) program under Federal or state law.

DATES: As required by the Privacy Act, HHS will file a report of the matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as of the dates indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447, (202) 401–5439.

SUPPLEMENTARY INFORMATION: The Privacy Act (5 U.S.C. 552a), as amended, provides for certain protections for individuals applying for and receiving Federal benefits. The law governs the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state or local government records.

The Privacy Act requires agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agency or agencies participating in the matching programs;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify information produced by such matching program before reducing, making a final denial of, suspending, or terminating an individual's benefits or payments;
4. Publish notice of the computer matching program in the **Federal Register**;
5. Furnish reports about the matching program to Congress and OMB; and
6. Obtain the approval of the matching agreement by the Data Integrity Board of any Federal agency participating in a matching program.

This matching program meets the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

Dated: December 4, 2007.

Margot Bean,

Commissioner, Office of Child Support Enforcement.

Notice of Computer Matching Program

A. PARTICIPATING AGENCIES

The participating agencies are OCSE, which is the ''recipient agency,'' and state agencies administering unemployment compensation (UC) programs, which are the ''source agencies.''

B. PURPOSE OF THE MATCHING PROGRAM

The purpose of the matching program is to assist state agencies in the administration of the UC program by providing to them new hire, unemployment insurance (UI), and quarterly wage (QW) information from OCSE's National Directory of New Hires (NDNH) pertaining to individuals for whom the state agencies have transmitted names and Social Security numbers (SSN).

C. AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM

The authority for conducting the matching program is contained in section 453(j)(8) of the Social Security Act (42 U.S.C. 653(j)(8)).

D. CATEGORIES OF INDIVIDUALS INVOLVED AND IDENTIFICATION OF RECORDS USED IN THE MATCHING PROGRAM

The categories of individuals involved in the matching program include applicants and recipients of benefits under UC programs administered by state agencies. The system of records maintained by OCSE under the Privacy Act from which records will be disclosed for the purpose of this matching program is the ''Location and Collection System'' (LCS), No. 09–90–0074, last published in the **Federal Register** at 72 FR 51446 on September 7, 2007. The LCS includes the NDNH, which contains new hire, QW, and UI information. The disclosure to the state agencies is a routine use under the LCS. Records resulting from the matching program and which are disclosed to the state agencies administering the UC program include names, SSNs, and employment information.

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The matching agreement will be effective and matching activity may commence on the later of the following dates: (1) January 1, 2008; (2) at least 30 days after this Notice is published in the **Federal Register**; or (3) at least 40 days after OCSE sends a report of the matching program to OMB and the Congressional committees of jurisdiction under 5 U.S.C. 552a(o)(2)(A), unless OMB disapproves the agreement within the 40-day review period or grants a waiver of 10 days of the 40-day review period. The matching agreement will remain in effect for 18 months from its effective date, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement. The agreement is subject to renewal by the HHS Data Integrity Board for 12 additional months if the matching program will be conducted without any change and each party to the agreement certifies to the Board in writing that the

program has been conducted in compliance with the agreement.

[FR Doc. E7–23928 Filed 12–10–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement (OCSE); Privacy Act of 1974, as Amended; Computer Matching Program

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of a Computer Matching Program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, OCSE is publishing notice of a computer matching program between OCSE and state agencies administering the Temporary Assistance for Needy Families (TANF) program (state TANF agencies).

DATES: As required by the Privacy Act, HHS will file a report of the matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as of the dates indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone Number (202) 401–5439.

SUPPLEMENTARY INFORMATION: The Privacy Act (5 U.S.C. 552a), as amended, provides for certain protections for individuals applying for and receiving Federal benefits. The law governs the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state or local government records.

The Privacy Act requires agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agency or agencies participating in the matching programs;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify information produced by such matching program before reducing, making a final denial of, suspending, or terminating an individual's benefits or payments;
4. Publish notice of the computer matching program in the **Federal Register**;
5. Furnish reports about the matching program to Congress and OMB; and
6. Obtain the approval of the matching agreement by the Data Integrity Board of any Federal agency participating in a matching program.

This matching program meets the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

Dated: December 4, 2007.

Margot Bean,

Commissioner, Office of Child Support Enforcement.

NOTICE OF COMPUTER MATCHING PROGRAM

A. PARTICIPATING AGENCIES

The participating agencies are OCSE, which is the ''recipient agency,'' and state TANF agencies, which are the ''source agencies.''

B. PURPOSE OF THE MATCHING PROGRAM

The purpose of the matching program is to provide new hire, unemployment insurance (UI), and quarterly wage (QW) information from OCSE's National Directory of New Hires (NDNH) database to the state TANF agencies for the purpose of verifying the eligibility of adult TANF recipients residing in the state and, if ineligible, to take such action as may be authorized by law and regulation. The state TANF agencies may also use the NDNH information for the purpose of updating the recipients' reported participation in work activities and updating contact information maintained by the state TANF agencies of recipients and their employers.

C. AUTHORITY FOR CONDUCTING THE MATCH

The authority for conducting the matching program is contained in section 453(j)(3) of the Social Security Act (42 U.S.C. 653(j)(3)).

D. CATEGORIES OF INDIVIDUALS INVOLVED AND IDENTIFICATION OF RECORDS USED IN THE MATCHING PROGRAM

The categories of individuals involved in the matching program are adult applicants and recipients of benefits under the state TANF programs. The system of records maintained by OCSE from which records will be disclosed for the purpose of this matching program is the ''Location and Collection System''(LCS), No. 09–90–0074, last published in the **Federal Register** at 72 FR 51446 on September 7, 2007. The LCS contains the NDNH, which contains new hire, QW, and UI information. Disclosures of NDNH information to the state TANF agencies is a ''routine use'' under this system of records. Records resulting from the matching program and which are disclosed to state TANF agencies include names, Social Security numbers, home addresses, and employment information.

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The matching agreement will be effective and matching activity may commence the later of the following:

(1) January 1, 2008; (2) at least 30 days after this Notice is published in the **Federal Register**, or (3) at least 40 days after OCSE sends a report of a matching program to the Congressional committees of jurisdiction under 5 U.S.C. 552a(o)(2)(A); and to OMB, unless OMB disapproves the agreement within the 40-day review period or grants a waiver of 10 days of the 40-day review period. The matching agreement will remain in effect for 18 months from its effective date, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement. The agreement is subject to renewal by the HHS Data Integrity Board for 12 additional months if the matching program will be conducted without any change and each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

[FR Doc. E7–23929 Filed 12–10–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0460]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for reports of corrections and removal.

DATES: Submit written or electronic comments on the collection of information by February 11, 2008.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reports of Corrections and Removals—21 CFR Part 806; (OMB Control Number 0910–0359)—Extension

The collection of information required under the reports of corrections and removals, part 806 (21 CFR part 806), implements section 519(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(f)), as amended by the Food and Drug Modernization Act of 1997 (FDAMA) (21 U.S.C. 301) (Public Law 105–115). Each device manufacturer or importer under § 806.10 shall submit a written report to FDA of any action initiated to correct or remove a device to reduce a risk to health posed by the device, or to remedy a violation of the act caused by the device which may present a risk to health, within 10 working days of initiating such correction or removal. Each device manufacturer or importer of a device who initiates a correction or removal of a device that is not required to be reported to FDA under § 806.20 shall keep a record of such correction or removal.

The information collected in the reports of corrections and removals will be used by FDA to identify marketed devices that have serious problems and to ensure that defective devices are removed from the market. This will assure that FDA has current and complete information regarding these corrections and removals and to determine whether recall action is adequate.

Respondents to this collection of information are manufacturers and importers of medical devices.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
806.10	488	1	488	10	4,880
TOTAL					4,880

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
806.20	132	1	132	10	1,320
TOTAL					1,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In preparing the previous clearances for approval of the information collection requirements under §§ 806.10 and 806.20, FDA reviewed the reports of corrections and removals submitted for the previous 3 years under part 7 (21 CFR part 7), the agency's recall provisions. FDA has determined that estimates of the reporting burden in § 806.10 should be revised to reflect a 1.2 percent increase for reports and records submitted under 21 CFR part 7 due to a decrease in class I and class II recall actions. FDA also estimates the reporting burden in § 806.20 should be revised to reflect a reduction of 8 percent for reports and records submitted under 21 CFR part 7 due to a decrease in class III recall actions. The time needed to collect information has not been changed.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

Dated: December 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23962 Filed 12–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0461]

Agency Information Collection Activities; Proposed Collection; Comment Request; Mental Models Study of Communicating With Health Care Providers About the Risks and Benefits of Prescription Drug Use for Pregnant and Nursing Women With Chronic Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Mental Models Study of Communicating With Health Care Providers About the Risks and Benefits of Prescription Drug Use for Pregnant and Nursing Women With Chronic Conditions. Together with other information being collected, the results from this study will be used to help inform FDA about how health care providers use prescription drug labeling and other available information in making treatment decisions and how that use differs from how agency experts believe such information is used. It will also contribute to FDA's ability to plan internal and external communications activities that address any misperceptions and gaps in understanding about prescription drug labeling.

DATES: Submit written or electronic comments on the collection of information by February 11, 2008.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezutto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Mental Models Study of Communicating With Health Care Providers About the Risks and Benefits of Prescription Drug Use for Pregnant and Nursing Women With Chronic Conditions

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

The proposed information collection will help FDA advance public health by identifying misperceptions and knowledge gaps about how health care providers use information to make decisions about the use of prescription drugs for the targeted patient groups. Knowledge of these misperceptions and gaps provides opportunities for FDA to target its communications more precisely to such gaps and areas of misperception in health care providers' mental models regarding treatment decisions.

FDA engages in various communication activities to ensure that patients and health care providers have the information they need to make informed decisions about treatment options, including the use of prescription drugs. FDA regulations (21 CFR § 201.57) describe the content of required product labeling, and FDA reviewers ensure that labeling contains accurate and complete information about the known risks and benefits of each drug. This data collection and analysis is designed to identify knowledge gaps that FDA could then address, which would ultimately improve decision making and potentially improve health outcomes.

The project will use ''mental modeling,'' a qualitative research method that compares a model of the decision-making processes of a group or groups to a model of the same decision-

making processes developed from expert knowledge and experience. In this study, the decision models of certain health care providers concerning treatment options for pregnant and nursing women will be compared to a decision model concerning such treatment options that was derived from the knowledge and experience of FDA reviewers responsible for product labeling. FDA will use telephone interviews to determine from the health care providers the factors that influence their treatment decisions for pregnant and nursing women with chronic conditions. A comparison between expert and health care provider models based on the collected information may identify consequential knowledge gaps that can be redressed through messages or information campaigns designed by FDA.

Using a protocol derived from the research that resulted in the ''expert model,'' trained interviewers will conduct one-on-one telephone discussions with about 25 members of 2 categories of health care providers (described below) who provide health care services to pregnant or nursing women.

The two categories of health care providers are:

(1) Those who directly care for pregnant and nursing women, including obstetricians, OB/GYNs (obstetrician/gynecologists), nurse midwives, and general practitioners.

(2) Those who directly care for women of reproductive age with significant chronic health conditions (e.g., allergists, psychiatrists, or cardiologists).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
54	1	1	1.0	54.0
TOTAL				54.0

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The study will involve about 54 respondents and take approximately 1 hour each to complete. These estimates are based on the contractor's extensive experience with mental models research. FDA conducted pretests of the mental models protocol with three health care providers. These resulted in the current protocol.

Dated: December 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23976 Filed 12–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0337]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Radioactive Drug Research Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 10, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0053. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Radioactive Drug Research Committees—(OMB Control Number 0910–0053)—Extension

Under sections 201, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 355, and 371), FDA has the authority to issue regulations governing the use of radioactive drugs for basic scientific research. Section 361.1 (21 CFR 361.1) sets forth specific regulations regarding the establishment and composition of Radioactive Drug Research Committees and their role in approving and monitoring basic research studies utilizing radiopharmaceuticals. No basic research study involving any administration of a radioactive drug to research subjects is permitted without the authorization of an FDA approved Radioactive Drug Research Committee (§ 361.1(d)(7)). The type of research that may be undertaken with a radiopharmaceutical drug must be intended to obtain basic information and not to carry out a clinical trial for safety or efficacy. The types of basic research permitted are specified in the regulation, and include studies of metabolism, human physiology, pathophysiology, or biochemistry.

Section 361.1(c)(2) requires that each Radioactive Drug Research Committee shall select a chairman, who shall sign all applications, minutes, and reports of the committee. Each committee shall meet at least once each quarter in which research activity has been authorized or conducted. Minutes shall be kept and shall include the numerical results of votes on protocols involving use in human subjects. Under § 361.1(c)(3), each Radioactive Drug Research Committee shall submit an annual report to FDA. The annual report shall include the names and qualifications of the members of, and of any consultants used by, the Radioactive Drug Research Committee, using FDA Form 2914, and a summary of each study conducted during the proceeding year, using FDA Form 2915.

Under § 361.1(d)(5), each investigator shall obtain the proper consent required

under the regulations. Each female research subject of childbearing potential must state in writing that she is not pregnant, or on the basis of a pregnancy test be confirmed as not pregnant.

Under § 361.1(d)(8), the investigator shall immediately report to the Radioactive Drug Research Committee all adverse effects associated with use of the drug, and the committee shall then report to FDA all adverse reactions probably attributed to the use of the radioactive drug.

Section 361.1(f) sets forth labeling requirements for radioactive drugs. These requirements are not in the reporting burden estimate because they are information supplied by the Federal Government to the recipient for the purposes of disclosure to the public (5 CFR 1320.3(c)(2)).

Types of research studies not permitted under this regulation are also specified, and include those intended for immediate therapeutic, diagnostic, or similar purposes or to determine the safety or effectiveness of the drug in humans for such purposes (i.e., to carry out a clinical trial for safety or efficacy). These studies require filing of an investigational new drug application (IND) under 21 CFR part 312, and the associated information collections are covered in OMB control number 0910–0014.

The primary purpose of this collection of information is to determine if the research studies are being conducted in accordance with required regulations and that human subject safety is assured. If these studies were not reviewed, human subjects could be subjected to inappropriate radiation or pharmacologic risks.

Respondents to this information collection are the chairperson(s) of each individual Radioactive Drug Research Committee, investigators, and participants in the studies.

The burden estimates are based on FDA's experience with these reporting and recordkeeping requirements over the past few years and the number of submissions received by FDA under the regulations.

In the **Federal Register** of September 21, 2007 (72 FR 54044), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Forms	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
361.1(c)(3) and (c)(4)	FDA 2914	80	1	80	1	80
361.1(c)(3)	FDA 2915	50	6.8	340	3.5	1,190
361.1(d)(8)		50	6.8	340	0.1	34
Total Reporting						1,304

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Hours per Record	Total Hours
361.1(c)(2)	80	4	10	800
361.1(d)(5)	50	6.8	.75	38
Total Recordkeeping				838

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23977 Filed 12–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0317]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Pharmacogenomic Data Submissions; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 10, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0557. Also

include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Pharmacogenomic Data Submissions (OMB Control Number 0910–0557)—Extension

The guidance provides recommendations to sponsors submitting or holding investigational new drugs (INDs), new drug applications (NDAs), or biologic licensing applications (BLAs) on what pharmacogenomic data should be submitted to the agency during the drug development process. Sponsors holding and applicants submitting INDs, NDAs, or BLAs are subject to FDA requirements for submitting to the agency data relevant to drug safety and efficacy (§§ 312.22, 312.23, 312.31, 312.33, 314.50, 314.81, 601.2, and 601.12).

Description of Respondents: Sponsors submitting or holding INDs, NDAs, or BLAs for human drugs and biologics.

Burden Estimate: The guidance interprets FDA regulations for IND, NDA, or BLA submissions, clarifying when the regulations require pharmacogenomics data to be submitted and when the submission of such data is voluntary. The pharmacogenomic data submissions described in the guidance that are required to be submitted to an IND, NDA, BLA, or annual report are covered by the information collection requirements under parts 312, 314, and 601 (21 CFR parts 312, 314, and 601) and are approved by OMB under control numbers 0910–0014 (part 312—INDs); 0910–0001 (part 314—NDAs and annual reports); and 0910–0338 (part 601—BLAs).

The guidance distinguishes between pharmacogenomic tests that may be considered valid biomarkers appropriate for regulatory decisionmaking, and other, less well developed exploratory tests. The submission of exploratory pharmacogenomic data is not required under the regulations, although the agency encourages the voluntary submission of such data.

The guidance describes the voluntary genomic data submission (VGDS) that can be used for such a voluntary submission. The guidance does not recommend a specific format for the VGDS, except that such a voluntary submission be designated as a VGDS. The data submitted in a VGDS and the level of detail should be sufficient for FDA to be able to interpret the information and independently analyze the data, verify results, and explore possible genotype-phenotype correlations across studies. FDA does not want the VGDS to be overly burdensome and time-consuming for the sponsor.

FDA has estimated the burden of preparing a voluntary submission described in the guidance that should be designated as a VGDS. Based on FDA's experience with this guidance over the past few years, and on FDA's familiarity with sponsors' interest in submitting pharmacogenomic data during the drug development process, FDA estimates that approximately 8 sponsors will submit approximately 10 VGDSs and that, on average, each VGDS will take approximately 50 hours to prepare and submit to FDA.

In the **Federal Register** of August 21, 2007 (72 FR 46636), FDA published a 60-day notice requesting public comment on the information collection provisions. We received one comment which requested clarification of how the confidential information received in a VGDS will remain outside the public domain and not end up being cited in a publicly posted submission review.

FDA Response: Information received as part of a VGDS not to be used for regulatory decisionmaking and received in confidence is covered by the same confidentiality levels of INDs, NDAs, and BLAs. There is no publicly posted submission review associated with the data in a VGDS, and release of information associated with a VGDS is exclusively up to the sponsor of the VGDS and not to FDA.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Voluntary Genomic Data Submissions	8	1.25	10	50	500

[1] There are no capital costs or operating and maintenance costs associated with this collection.

Dated: December 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23996 Filed 12–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0236]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Presubmission Conferences, New Animal Drug Applications and Supporting Regulations and Guidance 152, and Form FDA 356V

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 10, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments

should be identified with the OMB control number 0910–0032. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Presubmission Conferences, New Animal Drug Applications and Supporting Regulations and Guidance 152, and Form FDA 356V—(OMB Control Number 0910–0032)—Extension

Under section 512(b)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(b)(3)), any person intending to file a new animal drug application (NADA) or supplemental NADA or a request for an investigational exemption under section 512(j) is entitled to one or more conferences with FDA to reach an agreement acceptable to FDA establishing a submission or investigational requirement. FDA and industry have found that these meetings increased the efficiency of the drug development and drug review processes.

Section 514.5 (21 CFR 514.5), describes the procedures for requesting, conducting, and documenting presubmission conferences. Section 514.5(b) describes the information that must be included in a letter submitted by a potential applicant requesting a presubmission conference, including a proposed agenda and a list of expected participants. Section 514.5(d) describes the information that must be provided by the potential applicant to FDA at least 30 days prior to a presubmission conference. This information includes a detailed agenda, a copy of any materials to be presented at the conference, a list of proposed indications and, if available, a copy of the proposed labeling for the product under consideration, and a copy of any background material that provides scientific rationale to support the potential applicant's position on issues listed in the agenda for the conference. Section 514.5(f) discusses the content of the memorandum of conference that will be prepared by FDA and gives the potential applicant an opportunity to seek correction to or clarification of the memorandum. The OMB control number for the collection of presubmission conference information is 0910–0555.

Under section 512(b)(1) of the act, any person may file an NADA seeking approval to legally market a new animal drug. Section 512(b)(1) of the act sets forth the information required to be submitted in an NADA. FDA allows applicants to submit a complete NADA or to submit information in support of an NADA for phased review followed by submission of an administrative NADA when FDA finds all the applicable technical sections are complete.

Section 514.1 (21 CFR 514.1) interprets section 512(b)(1) of the act and further describes the information that must be submitted as part of an NADA and the manner and form in which the NADA must be assembled and submitted. The application must include safety and effectiveness data, proposed labeling, product manufacturing information, and where necessary, complete information on food safety (including microbial food safety) and any methods used to determine residues of drug chemicals in edible tissue from food producing animals. Guidance 152 outlines a risk assessment approach for evaluating the microbial food safety of antimicrobial new animal drugs. FDA requests that an applicant accompany NADAs, supplemental NADAs, and requests for phased review of data to support NADAs, with the revised Form FDA 356V to ensure efficient and accurate processing of information to support new animal drug approval. The OMB control number for the NADA and the revised Form FDA 356V is 0910–0032, and the OMB control number for Guidance 152 ''Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern'' is 0910–0522. This information collection also consolidates several other OMB control numbers: OMB control number 0910–0356 and OMB control number 0910–0600, for which the collection of information requirements under the new revised § 514.8 (21 CFR 514.8) has been approved for a final rule that became effective February 12, 2007. The Animal Drug Availability Act of 1996 required FDA to further define the term ''substantial evidence'' of effectiveness. Following notice and comment rulemaking, FDA further defined substantial evidence at § 514.4 (21 CFR 514.4) (OMB control number 0910–0356). Because § 514.4 is only a definition, it should not be viewed as creating an additional collection burden; the collection of substantial evidence occurs as part of an NADA under § 514.1. As previously stated, FDA also recently revised § 514.8 to implement the provisions of section 116 of the Food and Drug Administration Modernization Act of 1997 (71 FR 74766, December 13, 2006). Revised § 514.8 describes the information that must be submitted as part of a supplemental application to support proposed changes to an approved NADA. An applicant may reference existing information from the NADA in the supplemental NADA, but must submit some subset of information required under § 514.1 to support the proposed changes. The total burden hours for each of these CFR sections are found in table 1 of this document.

In the **Federal Register** of July 9, 2007 (72 FR 37240), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received in response to that notice.

FDA estimates the burden of the collections of information described in this notice as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/FDA Form #	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.5(b), (d), and (f)	134	.7	93	50	4,650
514.1 and 514.6	134	.1	19	212	4,028
514.4	134	0	0	0	0
514.8(b)	134	3.2	425	35	14,875

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section/FDA Form #	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.8(c)(1)	134	0.1	14	71	994
514.8(c)(2) and (c)(3)	134	.4	53	20	1,060
514.11	134	.1	19	1	19
558.5(i)	134	.01	1.0	5	5
514.1(b)(8) and 514.8(c)(1)[2]	134	.1	10	90	900
Form FDA 356V	134	5.8	778	5	3,890
Total Hours					30,421

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] NADAs and supplements regarding antimicrobial animal drugs that use a recommended approach assessing antimicrobial concerns as part of the overall preapproval safety evaluation.

Number of respondents. Based on the number of sponsors subject to animal drug user fees, FDA estimates that there are 134 respondents. We use this estimate consistently throughout the table and calculate the ''annual frequency per respondent'' by dividing the total annual responses by number of respondents. Following is a description of how we estimated the total annual responses and calculated total paperwork burden hours by type of submission.

Presubmission conferences (§ 514.5). Over the past 5 fiscal years, from October 1, 2001, through September 30, 2006, FDA estimates it has conducted an average of 93 presubmission conferences per year. FDA estimates that preparing the paperwork to request the meeting, providing the advance materials, and commenting on the memorandum of conference will take approximately 50 hours. Thus, the total burden hours for presubmission conferences is estimated to be 4,650 hours.

NADA (§§ 514.1 and 514.6). Over the past 5 fiscal years, FDA has received an average of 19 NADAs per year. FDA estimates that preparing the paperwork required for an NADA under § 514.1, whether all of the information is submitted with the NADA or the applicant submits information for phased review followed by an Administrative NADA that references that information, will take approximately 212 hours. Thus, the total burden hours for the submission of an NADA with any amendments is estimated to be 4,028 hours.

Substantial evidence (§ 514.4). Because § 514.4 only defines substantial evidence, it should not be viewed as creating an additional collection burden. The collection of information to demonstrate substantial evidence occurs as part of an NADA under 21 CFR 514.1. There is no additional paperwork burden under § 514.4.

Supplements fall into one of three categories:

- Manufacturing supplements described at § 514.8(b);
- Section 514.8(b)(1) supplements (i.e., supplements seeking changes, other than in manufacturing or labeling, in an established condition of an approval beyond the variations already provided for in the approved application) described at § 514.8(c)(1); and,
- Labeling supplements described at § 514.8(c)(2) and (c)(3).

An applicant may rely on information and data already filed to support those aspects of the NADA for which there are no changes. Thus, an applicant submitting a supplement should only have to prepare supporting information for those aspects of the application for which there are changes and the paperwork burden will be a percentage of the burden of preparing an NADA.

Manufacturing supplements (§ 514.8(b)). Over the past 5 fiscal years, FDA has received an average of 425 manufacturing supplements annually. FDA estimates that it takes on average 35 hours (1/6 of the time it takes to prepare the paperwork to support a full NADA) to prepare the paperwork to support approval of manufacturing changes. This results in a total of 14,875 burden hours.

Supplements seeking approval of changes in intended uses or conditions of use (§ 514.8(c)(1)). Over the past 3 fiscal years, October 1, 2003, through September 30, 2006, FDA has received an average of 14 supplements annually seeking approval for changes in intended uses or conditions of use. FDA used a 3-year average for this calculation because data for the previous 2 years for this category of supplements was not tracked as an independent number. FDA estimates that it takes an average of 71 hours (approximately 1/3 of the time it takes to prepare the paperwork to support a full NADA) to prepare the paperwork to support approval for such changes. This results in a total of 994 burden hours.

Labeling supplements (§ 514.8(c)(2) and (c)(3)). Over the past 5 fiscal years, FDA has received an average of 53 labeling supplements annually. FDA estimates that it takes an average of 20 hours (approximately 1 percent of the time it takes to prepare the paperwork to support a full NADA) to prepare the paperwork to support approval of a labeling change. This results in a total of 1,060 burden hours.

Freedom of Information Summary (§ 514.11) (21 CFR 514.11). Regulations under § 514.11 require the preparation of a summary of the safety and effectiveness data and information submitted with or incorporated by reference in an approved NADA and that the summary be publicly released when the approval is published in the **Federal Register**. This summary, generally referred to as the Freedom of Information (FOI) Summary, may be prepared by FDA or FDA may require the applicant to prepare the summary (§ 514.11(e)(ii)). In the past, FDA has required the applicant to prepare the FOI Summary. Currently, FDA generally takes responsibility for preparing the FOI Summary. Thus, the paperwork burden on applicants to prepare an FOI Summary has significantly decreased. Based on the estimate of 19 NADAs received annually and an estimate that applicants now spend little or no time preparing the FOI summary, the estimated burden hours are 19 hours.

Requirements for liquid medicated feeds (§ 558.5(i) (21 CFR 558.5(i)).

Generally, specific labeling is required to make sure that certain drugs, approved for use in animal feed or drinking water but not in liquid medicated feed, are not diverted to use in liquid feeds. Section 558.5(i) permits an applicant to seek a waiver from this requirement (§ 558.5(h)), if there is evidence that it is unlikely a new animal drug would be used in the manufacture of a liquid medicated feed. If FDA receives one NADA per year seeking approval of the use of a liquid medicated feed and on average it takes 5 hours to prepare the request for waiver, the estimated paperwork burden is 5 hours.

Risk assessment of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern (§§ 514.1(b)(8) and 514.8(c)(1)). FDA estimates that it receives ten risk assessments evaluating the microbial food safety of antimicrobial new animal drugs per year. FDA estimates that it takes on average 90 hours to put together the references and other materials in the format recommended by Guidance 152 and to summarize the hazards and associated risk(s). Thus, the total burden hours for preparing such risk assessments for submission to FDA is estimated to be 900 hours.

Form FDA 356V. FDA requests that an applicant fill out and send in with NADAs and supplemental NADAs, and requests for phased review of data to support NADAs, a Form FDA 356V to ensure efficient and accurate processing of information to support new animal drug approval. Over the past 5 fiscal years, FDA has received an average of 511 NADAs and supplements and 267 submissions of data to support NADAs. FDA estimates that it takes an average of 5 hours to read the instructions and fill out Form FDA 356V and organize the information that it will accompany. This results in a total of 3,890 burden hours.

Dated: December 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–23998 Filed 12–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0469]

Establishment of Fiscal Year 2008 User Fee Rates for Advisory Review of Direct-to-Consumer Television Advertisements for Prescription Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice, as required by the Food and Drug Administration Amendments Act of 2007 (FDAAA), to establish the fiscal year (FY) 2008 fees that will be charged for each FY 2008 advisory review submission to FDA and to fund the operating reserve established under FDAAA. The Federal Food, Drug, and Cosmetic Act (the act), as amended by FDAAA, authorizes FDA to collect user fees for certain direct-to-consumer (DTC) television advertisements submitted to FDA for advisory review.

ADDRESSES: Information about the DTC television user fee program is available on the Internet at *http://www.fda.gov/cder/ddmac/user_fees/default.htm*.

FOR FURTHER INFORMATION CONTACT: *For questions about rates, invoices, or payments*: Ashley Linkous, Office of Regulatory Policy (HFD–7), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

For questions about where or how to submit proposed DTC television advertisements for advisory review, what to include in your submission, the status of pending DTC television advertisements submitted for advisory review, or your remaining balance of advisory reviews under the DTC television user fee program: Wayne Amchin, Division of Drug Marketing, Advertising, and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 1454, Silver Spring, MD 20993–0002, 301–796–1200, FAX: 301–796–9878, e-mail *dtcp@fda.hhs.gov*.

For questions about submissions to the Advertising and Promotional Labeling Branch (APLB) in the Center for Biologics Evaluation and Review (CBER): Ele Ibarra-Pratt, Advertising and Promotional Labeling Branch, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6331.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 27, 2007, the President signed into law FDAAA (Public Law 110–85). Section 104 of this statute created new section 736A of the act, which in addition to reauthorizing the Prescription Drug User Fee Act (PDUFA) for FYs 2008–2012, also authorized a new and separate user fee program for the advisory review of DTC prescription drug television advertisements. Participation in the program is voluntary. Sponsors can decide, at their own discretion, whether to seek FDA advisory review of DTC prescription drug television advertisements in advance of publicly broadcasting them. However, under the new law, if a sponsor decides to seek FDA advisory review of a DTC television advertisement, the sponsor must pay all applicable fees for that review under the DTC television user fee program.

In the **Federal Register** of October 25, 2007 (72 FR 60677), FDA issued a participation notice asking companies: (1) To notify FDA by November 26, 2007, if they intend to participate in the DTC television user fee program during FY 2008 and (2) if they do plan to participate, to identify the number of DTC television advertisements for prescription drug and biological products they plan to submit to CDER or CBER for advisory review during FY 2008. The information gathered in response to the participation notice is the basis for the fees this notice establishes that will be charged for each FY 2008 advisory review submission to FDA and to fund the operating reserve established under FDAAA.

II. Establishing the Advisory Review Fee and Operating Reserves

A. Basis for the Fee

The advisory review fee for FY 2008 will be $41,390 for each proposed television advertisement voluntarily submitted for advisory review. The fee is based on the number of advertisements identified by all companies in response to the participation notice. The advisory review fees in FY 2008 are set at a level to generate target revenues of $6.25 million in the first year of the program. Individual fees have been determined by dividing the target revenue, established in the statute, by 151 (the number of television advertisements all

companies have indicated in response to the participation notice that they intend to submit during FY 2008 for advisory review).

A participant who does not pay the fees on time as specified in the billing instructions included with the invoice will be assessed a fee of $62,085 because the statute establishes a 50 percent penalty for fees not paid on time. A participant who submits more advertisements for advisory review in FY 2008 than it has told FDA it plans to submit in response to the participation notice will be assessed for each additional submission a fee that is 50 percent greater than the established individual fee. A participant who intends to submit additional advertisements should notify Wayne Amchin (see **FOR FURTHER INFORMATION CONTACT**).

The target revenue figures will be adjusted annually for inflation and workload on a compounded basis in subsequent years. In each subsequent year of the program, FDA will issue a new notice of participation by June 1 of that year and a second notice by August 1 establishing the fees.

B. Operating Reserves

To establish operating reserves for the program, in the first year of their participation in the program, participants will be assessed a one-time participation fee that will be based on the number of submissions the participant identifies for that year. In this way, FDA will collect revenues of $6.25 million to be placed in reserve from which funds can be drawn if target revenues fluctuate downward in subsequent years. For companies who responded by November 26, 2007 (the date given in the participation notice), the operating reserve fee for each participant in FY 2008 will be an amount equal to the total amount assessed that company for the annual advisory review fees for FY 2008. For companies who responded to the participation notice by November 26, 2007, but do not pay the assessed operating reserve fee within the time period specified in the invoice, the operating reserve fee will be 50 percent higher than what they would have owed had they paid on time. For participants who join the program late in FY 2008 (i.e., those who did not notify FDA of their intent to participate by November 26, 2007), the operating reserve fee will be 50 percent higher than what they would have owed had they both notified FDA and paid on time.

Companies who join the program in subsequent fiscal years (FYs 2009–2012) will be assessed an amount for the operating reserve fee that will be at least as much as the amount they would have been assessed if they had joined the program at the start of FY 2008. Specifically, in subsequent years, the operating reserve fee for new participants will be the higher of: (1) The total amount of advisory review fees for all of the new participant's proposed DTC television advertisements in the year the participant joins the program or (2) the total amount of advisory review fees that would have been assessed in FY 2008 for that number of proposed DTC television advertisements. This statutory fee structure limits the incentive for companies to join the program late, which could prevent the program from receiving sufficient funding in the initial year and place a disproportionate share of the cost of the program on those participants who join the program in its initial year of operation.

C. Effect of Inadequate Funding

The statute provides that if FDA fails to receive sufficient funding from companies by January 25, 2008, the program will not commence. Sufficient funding consists of a combined total amount of at least $11.25 million from advisory review fees and operating reserve fees. In the event that insufficient funding is received and the program does not commence, all collected fees will be refunded to the companies who paid.

III. Participating in the DTC Television User Fee Program

A. How Do Participating Companies Pay the User Fees for Advisory Review?

FDA will send invoices to each company for all submissions identified in response to the participation notice, and the advisory review fees and the operating reserve fees are due and payable on the date specified in the invoices. Participating companies should not send payment until after receipt of the invoice. FDA will also assign each participant a series of unique user fee ID numbers to correspond with the number of advisory reviews that participants have identified in response to the participation notice. For example, a company that has identified 10 advisory reviews will receive 10 unique user fee ID numbers in its invoice. Companies should assign one of its unique user fee ID numbers to each submission of a DTC television advertisement for FDA advisory review and reference this number in the submission cover letter and outer package. FDA will track this unique user fee ID number against the invoice to ensure that all applicable fees have been paid and that the company has an available balance of advisory reviews for each submission received by the FDA. A company's advisory review submission will be considered incomplete and not accepted for review until all fees owed by the company for all advisory reviews and the operating reserve fee have been paid.

B. How Do I Send In DTC Television Advertisements for Advisory Review Under the DTC Television User Fee Program?

FDA intends to issue guidance for industry explaining how to submit proposed DTC television Advisory Review Request Packages for review by CDER and CBER under the DTC television user fee program. The guidance document will provide details on the contents, format, and procedures that FDA recommends be followed. The guidance will also explain how and where to submit advisory review packages to start the DTC television user fee program performance clock. FDA will issue a **Federal Register** notice to announce the availability of this guidance. Prior to availability of the guidance, for questions about where or how to submit proposed DTC television advertisements for advisory review, what to include in your submission, the status of pending DTC television advertisements submitted for advisory review, or your remaining balance of advisory reviews under the DTC television user fee program, please contact Wayne Amchin (see **FOR FURTHER INFORMATION CONTACT**).

For questions about submissions to CBER (APLB), please contact Ele Ibarra-Pratt (see **FOR FURTHER INFORMATION CONTACT**).

C. What Happens if I Send In a DTC Television Advertisement for Advisory Review After October 1, 2007, but Before I'm Invoiced by FDA for My FY 2008 Fees?

The effective date for the assessment and collection of fees for DTC television advertisements under this program is October 1, 2007. Therefore, any proposed DTC television advertisement voluntarily submitted for advisory review in FY 2008 is subject to the fees established in this notice. FDA recognizes that, due to the timing of the enactment of FDAAA, the advisory review and operating reserve fees for FY 2008 were not established and billed before October 1, 2007, and that there will be a gap between the start of the fiscal year and the date that fees are due. FDA will contact companies who submit DTC television advertisements

in this time period to request written confirmation from these companies of their commitment to pay these fees; if companies do not agree to make this commitment, FDA will request that they withdraw their submission(s), and such submissions will not be reviewed. For further information, contact Wayne Amchin (see **FOR FURTHER INFORMATION CONTACT**).

For information on how FDA will treat DTC television advertisement advisory review submissions not identified in response to the participation notice that are submitted after the 30-calendar-day time period for responding to that notice has elapsed, see sections II.A ''Basis for the Fee'' and II.B ''Operating Reserves'' of this document.

Dated: December 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24000 Filed 12–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Drug Safety and Risk Management Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 1, 2008, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/ Silver Spring, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Teresa Watkins, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Teresa.Watkins@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the efficacy and safety of new drug application (NDA) 22–054, INJECTAFER (ferric carboxymaltose injection), Luitpold Pharmaceuticals Incorporated, used for the treatment of iron deficiency anemia in patients with postpartum hemorrhage or heavy uterine bleeding.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 17, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 9, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 10, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Teresa Watkins at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 4, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–24003 Filed 12–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Closed Meeting Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings during fiscal year 2007.

ADDRESSES: Copies are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–827–6860.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Committee Management Officer, Advisory Committee and Oversight Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: Under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. app.1) and 21 CFR 14.60(d), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 2006 through September 30, 2007:

Center for Biologics Evaluation and Research:

Cellular, Tissue and Gene Therapies

Advisory Committee,
Vaccines and Related Biological Products Advisory Committee,
Center for Drugs Evaluation and Research:
Antiviral Drugs Advisory Committee
Center for Devices and Radiological Health:
Medical Devices Advisory Committee (consisting of reports for Dental Products Panel; Circulatory Devices Panel)

Annual Reports are available for public inspections between 9 a.m. and 4 p.m., Monday through Friday.

(1) The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE, rm. 133, Washington, DC; and (2) The Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Dated: December 4, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–23986 Filed 12–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Data Relating to Beneficiary of Private Bill, Form G–79A.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 11, 2008.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Data Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–79A. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information is needed to report on Private Bills to Congress when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Acting Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 616–2266.

Dated: December 6, 2007.

Lee Shirkey,

Acting Branch Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E7–23979 Filed 12–10–07; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection, Comment Request

ACTION: Request OMB Emergency Approval and 60-Day Notice; Immigration Bond; Form I–352, OMB Control No. 1653–0022.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 11, 2008.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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 information collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–352. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The data collected on this form is used by the ICE to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The form serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Lee Shirkey 202–616–2266, Acting Branch Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, 425 I Street, NW., Room 1122, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Lee Shirkey.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Acting Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 616–2266.

Dated: December 6, 2007.

Lee Shirkey,

Acting Records Management Branch Chief, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E7–23980 Filed 12–10–07; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–102]

Notice of Submission of Proposed Information Collection to OMB; Automated Clearing House (ACH) Program Application—Title I Insurance Charge Payments System

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is used to collect data to establish an electronic premium payment method for the Title I Program. This information collection is designed to facilitate the collection of Title I insurance charges electronically in lieu of sending checks and other payment instruments by mail.

DATES: *Comments Due Date:* January 10, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0512) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Automated Clearing House (ACH) Program Application—Title Insurance Charge Payments System.

OMB Approval Number: 2502–0512.

Form Numbers: HUD 56150.

Description of the Need for the Information and Its Proposed Use: This information collection is used to collect data to establish an electronic premium payment method for the Title I Program. This information collection is designed to facilitate the collection of Title I insurance charges electronically in lieu of sending checks and other payment instruments by mail.

Frequency of Submission: On occasion, Other Information only collected once per lender with possible changes submitted occasionally.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	50	1		0.26		13

Total Estimated Burden Hours: 13.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 5, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–23987 Filed 12–10–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–103]

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Request for Release of Funds and Certification (RROF/C) is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for release of funds. To the currently approved collection, the following procedures are added: (1) Regulatory waivers of requirements of HUD environmental regulations; and (2) in lieu of hard copy, voluntary use of electronic submissions and notifications.

DATES: *Comments Due Date:* January 10, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0087) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

OMB Approval Number: 2506–0087.

Form Numbers: HUD–7015.15: Request for Release of Funds and Certification (RROF/C).

Description of the Need for the Information and Its Proposed Use: The RROF/C is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for release of funds. To the currently approved collection, the following procedures are added: (1) Regulatory waivers of requirements of HUD environmental regulations; and (2) in lieu of hard copy, voluntary use of electronic submissions and notifications.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	18,791	1		0.600		11,283

Total Estimated Burden Hours: 11,283.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 6, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–23983 Filed 12–10–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 10, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Tom Stehn, Whooping Crane Recovery Plan Coordinator, U.S. Fish and Wildlife Service, Region 2, Austwell, TX, PRT–022747.

The applicant requests renewal of their permit to export/re-export captive-bred/captive hatched and wild live specimens, captive-bred/wild collected viable eggs, biological samples and salvaged materials from captive-bred/wild specimens of Whooping cranes (Grus americana) to Canada, for completion of identified tasks and objectives mandated under the Whooping Crane Recovery Plan. Salvage materials may include, but are not limited to, whole or partial specimens, feathers, eggs, and egg shell fragments. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: University of North Carolina at Wilmington, Wilmington, NC, PRT–168756.

The applicant requests a permit to export biological samples from Kemp's Ridley sea turtle (*Lepidochelys kempii*) to Ontario, Canada for the purpose of scientific research. This notification covers activities conducted by the applicant over a five-year period.

Applicant: Dr. Leslie Lyons, University of California, Davis, Davis, CA, PRT–154582

The applicant requests a permit to import biological samples from wild and captive born species of Felidae from various locations for the purpose of scientific research. This notification covers activities conducted by the applicant over a five-year period.

Applicant: Priour Brothers Ranch, Ingram, TX, PRT–707102

The applicant requests renewal of their permit which authorizes interstate and foreign commerce, export, and cull of excess animals of the following species: swamp deer (*Cervus duvauceli*), Eld's deer (*Cervus eldi*) and red lechwe (*Kobus leche*) from their captive herd for the purpose of enhancement of the survival of the species in the wild. This notification covers activities to be conducted by the applicant over a five-year period.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Monterey Bay Aquarium, Monterey, CA, PRT–032027

The applicant requests renewal and amendment of their permit to take up to 100 southern sea otters (*Enhydra lutris nereis*) annually by capturing and recapturing, tagging and instrumenting, taking biological samples, conducting non-invasive and minimally invasive experiments on captive-held animals, conducting birth control, rehabilitating stranded animals, releasing animals, and care and maintenance of animals deemed provisionally non-releasable and non-releasable for the purpose of scientific research and enhancement of the survival of the species. The applicant is also requesting authorization to export and re-import captive-held sea otters deemed non-releasable for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Beyond Bears, Inc., Frazier Park, CA, PRT–142439

The applicant requests a permit to import one female captive-born polar bear (*Ursus maritimus*) from Beyond Bears' facility in Abbotsford, British Columbia, Canada, for the purpose of public display.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: November 16, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–23952 Filed 12–10–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
072945, 072948, 074389–074393, 074395, 074397, and 074398.	Mitchel Kalmanson	72 FR 37795; July 11, 2007	October 31, 2007.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
046081	U.S. Fish and Wildlife Service, Marine Mammals Management.	72 FR 37039; July 6, 2007	August 30, 2007.
134165	Edward Keith	72 FR 16383; April 4, 2007	August 20, 2007.
134907	North Slope Borough	72 FR 52905; September 17, 2007	November 7, 2007.
156390	University of Massachusetts Lowell	72 FR 48292; August 23, 2007	November 7, 2007.
801652	U.S. Geological Survey, BRD	72 FR 31601; June 7, 2007	November 7, 2007.
155087	Tom L. Miranda	72 FR 33242; June 15, 2007	September 20, 2007.
156712	John M. Azevedo	72 FR 37795; July 11, 2007	October 15, 2007.

Dated: November 16, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–23953 Filed 12–10–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for the General Management Plan, Great Falls, Park, VA.

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the General Management Plan, Great Falls Park, Virginia.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service (NPS) announces the availability of the Final Environmental Impact Statement for the General Management Plan, Great Falls Park, Virginia (FEIS/GMP), administered by the George Washington Memorial Parkway (GWMP), a unit of the National Park System.

DATES: The NPS will execute a Record of Decision no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the FEIS/GMP. A 60-day public review period took place on the Draft Environmental Impact Statement for the General Management Plan (DEIS/GMP), Great Falls Park, Virginia, from October 15, to December 15, 2005 (70 FR 47853). Responses to public comment are addressed in the FEIS/GMP.

ADDRESSES: Comments on this FEIS/GMP may be submitted in writing to: Mr. David Vela, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101; e-mailed to *gwmp_superintendent@nps.gov*; or submitted via an electronic link at *http://parkplanning.nps.gov*. To submit comments on *http://parkplanning.nps.gov*, click on the link ''*Plans/Documents Open for Comment*'' and follow that link to ''*Great Falls Park GMP/EIS*.''

The FEIS/GMP will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m., at the GWMP Headquarters, Turkey Run Park, McLean, Virginia 22101, and at the following sites: Great Falls Park, Virginia, Visitor Center, 9200 Old Dominion Drive, McLean, Virginia 22101, (703) 285-2965; Office of the Chief of Planning, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, D.C. 20242, (202) 619–7277; Great Falls Library, 9830A Georgetown Pike, Great Falls, Virginia; and at *http://www.nps.gov/gwmp/parkmgmt/documents.html*.

FOR FURTHER INFORMATION CONTACT: Mr. David Vela, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia, 22102, (703) 289–2500, or Mr. Walter McDowney, Site Manager, Great Falls Park, Virginia, 9300 Old Dominion Drive, McLean, Virginia 22101, (703) 285–2965.

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes two alternatives for managing Great Falls Park, Virginia. The plan is intended to provide a foundation to help park managers guide park programs and set priorities for the management of Great Falls, Park, Virginia, for the next 20 years. The FEIS/GMP evaluates the environmental consequences of the preferred alternative and the status quo alternative on natural and cultural resources, recreational opportunities, traditional park character and visitor experience ,and public health and safety.

Alternative A, ''Status Quo/Continuation of Current Conditions,'' maintains the status quo in the park, and describes resource conditions where existing practices continue to guide park practices. This alternative does not address resource protection planning needs including a Climbing Management Plan and a Trail Management Plan.

Alternative B (Preferred Alternative [Modified]) is based on an overall goal for the park of balancing opportunities for recreation while protecting sensitive natural and cultural resources. The preferred alternative described in the DEIS/GMP has been modified based on public and agency Comments that were received, as well as additional review by the internal planning team.

All interested individuals, agencies, and organizations are urged to provide comments on the FEIS/GMP. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. 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

public at any time. While one can request in their comments to withhold from pubic review personal identifying information, we cannot guarantee that we will be able to do so. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 17, 2007.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 07–6007 Filed 12–10–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Elk and Vegetation Management Plan, Final Environmental Impact Statement, Rocky Mountain National Park, CO

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Elk and Vegetation Management Plan, Rocky Mountain National Park.

SUMMARY: Pursuant to National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Final Environmental Impact Statement for the Elk and Vegetation Management Plan, Rocky Mountain National Park, Colorado. This Final Plan analyzes five alternatives, including a no action alternative, to manage elk and vegetation within the Park. Alternative 3, the preferred alternative, would use a variety of conservation tools including fencing, redistribution of elk, vegetation restoration and lethal reduction of elk (culling). The number of elk removed would vary each year based on annual population surveys and hunter success outside the park.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection (1) online at *http://parkplanning.nps.gov,* (2) in the office of the Superintendent, Vaughn Baker, 1000 West Hwy. 36, Rocky Mountain National Park, Estes Park, Colorado, 80517, 970–586–1206, (3) at all Rocky Mountain National Park Visitor Centers, (4) at the Estes Park Public Library, 335 East Elkhorn Ave., Estes Park, Colorado 80517, 970–586–8116, (5) at the Juniper Library at Grand Lake, P.O. Box 506, 316 Garfield Street, Grand Lake, CO 80447–0506, Phone: 970–627–8353, and (6) at the municipal libraries in Boulder, Loveland, Longmont, Fort Collins, and Granby, Colorado.

FOR FURTHER INFORMATION CONTACT: Therese Johnson, 1000 West Hwy. 36, Rocky Mountain National Park, Estes Park, Colorado 80517, 970–586–1262, *therese_johnson@nps.gov*.

Dated: September 4, 2007.

Anthony J. Schetzsle,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. E7–23936 Filed 12–10–07; 8:45 am]

BILLING CODE 4310–08–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan, Environmental Impact Statement, for the Martin Van Buren National Historic Site, in Kinderhook, NY in the County of Columbia, and To Conduct Public Scoping Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the General Management Plan for Martin Van Buren National Historic Site and to hold public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), as amended, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for the General Management Plan (GMP) for the Martin Van Buren National Historic Site (NHS) in Kinderhook, New York. This effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, park carrying capacity and any necessary facilities. The planning area includes Martin Van Buren's home from 1839–62, Lindenwald, various out buildings and roads and the 39 acres that comprise the entire National Historic Site established by Congress in 1974. Attention will also be given to resources outside the boundaries that may affect the integrity of the site.

The GMP/EIS will be prepared by planners in the NPS Northeast Region and park staff with assistance from advisors and consultants, and will propose a long-term approach to managing the Martin Van Buren NHS. Consistent with the site's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the Martin Van Buren NHS over the next 15 to 20 years. The GMP/EIS will address a range of management alternatives for natural and cultural resource protection, visitor use and interpretation, park carrying capacity, facilities development and operations. A 'no-action' alternative will also be considered and an agency preferred management alternative selected. The EIS will assess the impacts of the alternatives presented in the GMP.

Meeting Notices: Public scoping meetings will be scheduled and consist of a discussion of the GMP/EIS process including ways that the public can be involved in providing and receiving information, and reviewing and commenting upon the draft GMP/EIS. The purpose of the meetings will be to solicit public input prior to formally undertaking the GMP/EIS. The place and time of public scoping meetings will be announced by the National Park Service (NPS) and noticed in local newspapers serving the area. Scoping and other periodic public meeting notices and information regarding the GMP/EIS will also be placed on the NPS Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.gov* for continuing public review and comment.

FOR FURTHER INFORMATION CONTACT:

Daniel Dattilio, Superintendent, Martin Van Buren National Historic Site, 1013 Old Post Road, Kinderhook, New York 12106, Telephone: 518–758–6986. E-mail: *dan_dattilio@nps.gov*

Peter Samuel, Community Planner/Project Manager, National Park Service, Division of Park Planning and Special Studies, 200 Chestnut Street, Philadelphia, PA 19106, Telephone: 215–597–1848. E-mail: *peter_samuel@nps.gov*

Dated: August 28, 2007.

John A. Latschar,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. E7–24010 Filed 12–10–07; 8:45 am]

BILLING CODE 4310–W3–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Termination of Preparation of an Environmental Impact Statement for the Washington-Rochambeau Revolutionary Route Resource Study

AGENCY: National Park Service, Department of the Interior.

ACTION: Termination of preparation of an environmental impact statement.

SUMMARY: This notice announces the termination of the process to develop an Environmental Impact Statement (EIS) for the Washington-Rochambeau Revolutionary Route Resource Study. The study area includes parts of Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island and Virginia. In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service published a Notice of Intent to Prepare an Environmental Impact Statement in the **Federal Register** on March 5, 2002.

Subsequent scoping did not reveal the potential for significant adverse impacts or controversy; therefore, it was determined that an Environmental Assessment (EA) would suffice to address National Environmental Policy Act requirements for this study.

The Washington-Rochambeau Revolutionary Route Resource Study and Environmental Assessment was made available for public review starting 11/13/2006, and the comment period ended 5/4/2007. Based on the results of public comments, a Finding of No Significant Impact (FONSI) was prepared for review and approval by the NPS Northeast Regional Director.

The study report can be viewed at the NPS Planning, Environment and Public Comment (PEPC) Web site at: *http://parkplanning.nps.gov/.*

FOR FURTHER INFORMATION CONTACT: Terrence Moore, Chief of Planning and Special Studies, National Park Service, Northeast Region, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106.

Dated: September 24, 2007.

Dennis R. Reidenbach,

Director, Northeast Region, National Park Service.

Editorial Note: This document was received at the Office of the Federal Register on Thursday, December 6, 2007.

[FR Doc. E7–24009 Filed 12–10–07; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–451 and 731–TA–1126–1128 (Preliminary)]

Certain Lightweight Thermal Paper From China, Germany, and Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of certain lightweight thermal paper,[2] provided for in subheadings 4811.90.80 and 4811.90.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.[3] The Commission determines that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain lightweight thermal paper from Germany that are alleged to be sold in the United States at LTFV.[4] The Commission also determines that imports of certain lightweight thermal paper from Korea are negligible, and therefore, terminates its investigation with regard to Korea.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] ''Certain lightweight thermal paper'' is thermal paper with a basis weight of 70 grams per square meter (''g/m^2'') (with a tolerance of ±4.0 g/m^2) or less; irrespective of dimensions; with or without a base coat on one or both sides; with thermal active coating(s) on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat; and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts.

[3] Commissioner Charlotte R. Lane determines that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of lightweight thermal paper from China that are alleged to be sold at LTFV and subsidized.

[4] Chairman Daniel R. Pearson, Vice Chairman Shara L. Aranoff, and Commissioner Deanna Tanner Okun dissenting. Commissioners Charlotte R. Lane and Dean A. Pinkert's determinations are on the basis of reasonable indication of material injury. Commissioner Irving A. Williamson's determination is on the basis of reasonable indication of threat of material injury.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations concerning certain lightweight thermal paper from China and Germany. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 19, 2007, a petition was filed with the Commission and Commerce by Appleton Papers, Inc., Appleton, WI, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain lightweight thermal paper from China, Germany, and Korea and by reason of subsidized imports from China. Accordingly, effective September 19, 2007, the Commission instituted antidumping and countervailing duty investigation Nos. 701–TA–451 and 731–TA–1126–1128 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 27, 2007 (72 FR 54926). The conference was held in Washington, DC, on October 10, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 27, 2007. The views of the Commission are contained in USITC Publication 3964 (November 2007), entitled *Certain Lightweight Thermal Paper from China, Germany, and Korea: Investigation Nos. 701–TA–451 and 731–TA–1126–1128 (Preliminary).*

Issued: December 5, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–23914 Filed 12–10–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 31, 2007 and published in the **Federal Register** on August 9, 2007, (72 FR 44859–44860), Aptuit (Allendale), Inc., 75 Commerce Drive, Allendale, New Jersey 07401, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to import the basic class of controlled substance for clinical trials and research.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Aptuit (Allendale), Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Aptuit (Allendale), Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: October 31, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–23978 Filed 12–10–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–62,101]

American Woodmark, Hardy County Plant, Moorefield, Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated November 8, 2007, Carpenters Industrial Council, United Brotherhood of Carpenters and Joiners of America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The denial notice was signed on October 17, 2007 and published in the **Federal Register** on October 31, 2007 (72 FR 61685).

The initial investigation resulted in a negative determination based on the finding that imports of kitchen cabinet parts did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information concerning the interpretation of facts of the investigation.

The Department has carefully reviewed the request for reconsideration and the existing record and therefore the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 30th day of November, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–23912 Filed 12–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,414]

Consistent Textile Industries Dallas, North Carolina; Notice of Affirmative Determination Regarding Application for Reconsideration

On November 27, 2007, the Department of Labor (Department) received a request for administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The negative determination was issued on November 13, 2007. The Department's Notice of determination will soon be published in the **Federal Register**.

The negative determination was based on the Department's findings that, during the relevant period, the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. The petition stated that two workers were separated and the company official stated in the initial investigation that the company consisted of fewer than 50 workers.

In the request for reconsideration, a worker alleged that three workers were separated from the subject firm during the relevant period.

The Department has carefully reviewed the worker's request for reconsideration and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 29th day of November 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–23908 Filed 12–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *November 26 through November 30, 2007.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–62,404; Motor Wheel Commercial Vehicle Systems, Full Cast—Assembly Area, Berea, KY: October 28, 2006.

TA–W–62,171; Everett Charles Technologies, Clifton Park, NY: September 11, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–62,373; Mahle Industries, Inc., Holland, MI: October 24, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

NONE

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

NONE

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,242; Weyerhaeuser Company, Veneer Technologies, Elma, WA: October 1, 2006

TA–W–62,337; Robert Bosch Corporation, Automotive Chassie Division, St. Joseph, MI: June 9, 2007

TA–W–62,436; Council Company, LLC, Plant #1, On-Site Leased Workers of Stewart Staffing, Denton, NC: November 7, 2006

TA–W–62,445; Samson Manufacturing Co., A Division of S Lichtenberg and Company, Inc., Waynesboro, GA: December 20, 2007

TA–W–62,451; Hickory Dyeing and Winding Co., Inc., On-Site Leased Workers from Foothills Staffing, Hickory, NC: November 9, 2006

TA–W–62,263; W. B. Marvin Manufacturing Co., Urbana, OH: September 28, 2006

TA–W–62,297; Delphi Corporation, Electronics and Safety Division, Oak Creek, WI: October 10, 2006.

TA–W–62,399; Wausau Paper, Printing and Writing LLC, Groveton, NH: October 31, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,350; Hewlett Packard Company, Inkjet Supplies Business, Leased Workers of Technical Aid, dba TAC World Co., Boise, ID: September 24, 2007

TA–W–62,372; Tree Island Fastener, Division of Tree Island Industries, On-Site Leased Workers of Express Temporary, Ferndale, WA: October 22, 2006

TA–W–62,382; Milsco Manufacturing Company, A Unit of Jason, Inc., Milwaukee, WI: October 25, 2006

TA–W–62,446; VF Jeanswear Service Support Center, 1421 South Elm Street, Greensboro, NC: December 16, 2007

TA–W–62,323; Teradyne, Inc., Operations Division of Semi-Conductor Test Division/Leased Workers DCI Corp., North Reading, MA: October 17, 2006

TA–W–62,434; Arrow Home Fashions, Anaheim, CA: November 6, 2006

TA–W–62,461; Universal Tire Mold, Inc., A Subsidiary of Saehwa, Inc., Corinth Division, Corinth, MS: November 13, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,410; Small-Pak Chemicals, Inc., Pineville, NC: November 2, 2006

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

NONE

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

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.

TA–W–62,171; Everett Charles Technologies, Clifton Park, NY

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–62,404; Motor Wheel Commercial Vehicle Systems, Full Cast—Assembly Area, Berea, KY

TA–W–62,373; Mahle Industries, Inc., Holland, MI.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

NONE

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–62,365; West Point Home, Inc., Bed Division, Biddeford, ME.

TA–W–62,440; Evergy, Inc., Vitrus Division, Pawtucket, RI

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,390; Erdman Furniture Group, Techline USA Division, Waunakee, WI

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,134; Mohawk ESV., Inc., Home Division, Hiawassee, GA.

TA–W–62,158; Intel Corporation, Fab 11 Plant Division, Rio Rancho, NM.

TA–W–62,189; Diaz Intermediates Corporation, West Memphis, AR.

TA–W–62,207; Diaz Intermediates Corporation, Brockport, NY.

TA–W–62,442; Infinite Graphics, Inc., Minneapolis, MN.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–62,160; Dataproducts USA LLC, A Division of Clover Holdings, Inc., Calexico, CA.

TA–W–62,357; WestPoint Home, Inc., Stores Division, Valley, AL.

TA–W–62,357A; WestPoint Home, Inc., Stores Division, Albertville, MN.

TA–W–62,357AA; WestPoint Home, Inc., Stores Division, Valdosta, GA.

TA–W–62,357B; WestPoint Home, Inc., Stores Division, Allen, TX.

TA–W–62,357BB; WestPoint Home, Inc., Stores Division, Williamsburg, VA.

TA–W–62,357C; WestPoint Home, Inc., Stores Division, Birch Run, MI.

TA–W–62,357CC; WestPoint Home, Inc., Stores Division, Wrentham, MA.

TA–W–62,357D; WestPoint Home, Inc., Stores Division, Birmingham, AL.

TA–W–62,357E; WestPoint Home, Inc., Stores Division, Boaz, AL.

TA–W–62,357F; WestPoint Home, Inc., Stores Division, Burlington, NC.

TA–W–62,357G; WestPoint Home, Inc., Stores Division, Cabazon, CA.

TA–W–62,357H; WestPoint Home, Inc., Stores Division, Clinton, CT.

TA–W–62,357I; WestPoint Home, Inc., Stores Division, Columbus, GA.

TA–W–62,357J; WestPoint Home, Inc., Stores Division, Commerce, GA.

TA–W–62,357K; WestPoint Home, Inc., Stores Division, Dalton, GA.

TA–W–62,357L; WestPoint Home, Inc., Stores Division, Dawsonville, GA.

TA–W–62,357M; WestPoint Home, Inc., Stores Division, Destin, FL.

TA–W–62,357N; WestPoint Home, Inc., Stores Division, Edinburgh, IN.

TA–W–62,357O; WestPoint Home, Inc., Stores Division, Ellenton, FL.

TA–W–62,357P; WestPoint Home, Inc., Stores Division, Fairburn, GA.

TA–W–62,357Q; WestPoint Home, Inc., Stores Division, Foley, AL.

TA–W–62,357R; WestPoint Home, Inc., Stores Division, Howell, MI.

TA–W–62,357S; WestPoint Home, Inc., Stores Division, Lamarque, TX.

TA–W–62,357T; WestPoint Home, Inc., Stores Division, Lumberton, NC.

TA–W–62,357U; WestPoint Home, Inc., Stores Division, New Braunfels, TX.

TA–W–62,357V; WestPoint Home, Inc., Stores Division, Park City, UT.

TA–W–62,357W; WestPoint Home, Inc., Stores Division, Pigeon Forge, TN.

TA–W–62,357X; WestPoint Home, Inc., Stores Division, San Marcos, TX.

TA–W–62,357Y; WestPoint Home, Inc., Stores Division, Sarasota, FL.

TA–W–62,357Z; WestPoint Home, Inc., Stores Division, St. Augustine, FL.

TA–W–62,403; Quality Industrial Services, Inc., Madisonville, KY.

TA–W–62,437; Mirador International, LLC, High Point, NC.

TA–W–62,478; Option One Mortgage Corporation, A Subsidiary of H and R Block, East Providence, RI

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

NONE

I hereby certify that the aforementioned determinations were issued during the period of *November 26 through November 30, 2007*. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 5, 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–23910 Filed 12–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,867]

Non-Metallic Components, Inc., Rib Lake, Notice of Revised Determination on Reconsideration

On November 8, 2007, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on November 16, 2007 (72 FR 64685).

The previous investigation initiated on July 24, 2007, resulted in a negative determination issued on September 19, 2007, was based on the finding that imports of custom injection molded plastic parts did not contribute importantly to worker separations at the subject firm and no shift in production to countries that are Party to a Free Trade Agreements with the United States or beneficiary countries occurred. The denial notice was published in the **Federal Register** on October 3, 2007 (72 FR 56385).

In the request for reconsideration, the petitioner provided additional information regarding the subject firm's declining customers.

Based on the new information, the Department conducted a survey of a major declining customer regarding its purchases of like or directly competitive products with plastic parts manufactured by the subject firm. The survey revealed that the major declining customer increased imports of plastic parts during the relevant period.

In accordance with Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Non-Metallic Components, Inc., Rib Lake, Wisconsin, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Non-Metallic Components, Inc., Rib Lake, Wisconsin, who became totally or partially separated from employment on or after July 18, 2006, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC this 30th day of November 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–23911 Filed 12–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 21, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 21, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 4th day of December 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 11/26/07 and 11/30/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62494	Red Farm Studios LLC (Comp)	Pawtucket, RI	11/26/07	11/01/07
62495	Telex Communications, Inc. (State)	Blue Earth, MN	11/27/07	11/26/07
62496	GE Lighting Systems, Inc. (Comp.)	East Flat Rock, NC	11/27/07	11/20/07
62497	H & W Trucking Co., Inc. (Comp)	Mt. Airy, NC	11/27/07	11/26/07
62498	Double D Logging (Comp)	John Day, OR	11/27/07	11/26/07
62499	Timber Products Company (Wkrs)	Grants Pass, OR	11/27/07	11/26/07
62500	Credence Systems Corp (Comp)	Hillsboro, OR	11/27/07	11/21/07
62501	American Fiber and Finishing, Inc. (Comp)	Albemarle, NC	11/28/07	11/27/07
62502	Girard Plastics, LLC (Comp)	Girard, PA	11/28/07	11/27/07
62503	Black & Decker Abrasives, Inc. (Comp)	Marshall, TX	11/28/07	11/26/07
62504	Electronic Data Systems (Wkrs)	Midland, MI	11/28/07	11/27/07
62505	Springs Global U.S./Charles D. Owen Manufacturing (Comp)	Swannanoa, NC	11/28/07	11/27/07
62506	Dielink International (Comp)	Grand Rapids, MI	11/29/07	11/26/07
62507	Chester Bednar (Comp)	Washington, PA	11/29/07	11/20/07
62508	Brenham Spring (Comp)	Brenham, TX	11/29/07	11/29/07
62509	Bekaert Corporation (Comp)	Dyersburg, TN	11/29/07	11/27/07
62510	Cuno, Inc (State)	Meriden, CT	11/29/07	11/28/07
62511	BCGI Cellular Express (Wkrs)	Westbrook, ME	11/29/07	11/26/07
62512	Dunlap Industries (Wkrs)	Dunlap, TN	11/29/07	11/13/07
62513	SE-GI Products, Inc. (State)	Norco, CA	11/29/07	11/28/07
62514	Atlas Aero Corporation (State)	Meriden, CT	11/29/07	11/28/07
62515	Drive Sol Global Steering Inc. (State)	Watertown, CT	11/30/07	11/29/07
62516	Northern Machine Tool Company (Comp)	Muskegon, MI	11/30/07	11/28/07
62517	BenchCraft (Comp)	Blue Mountain, MS	11/30/07	11/29/07
62518	Chace Leathers, Inc. (State)	Fall River, MA	11/30/07	11/28/07
62519	American Greetings Corporation (Comp)	Philadelphia, MS	11/30/07	11/29/07
62520	Carrier Access Corporation (Comp)	Boulder, CO	11/30/07	11/27/07

[FR Doc. E7–23909 Filed 12–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report (MSHA Forms 7000–1 and 7000–2)

ACTION: Notice.

SUMMARY: The Department of Labor, 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. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before February 11, 2008.

ADDRESSES: Send comments to Debbie Ferraro, Records Management Branch, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *ferraro.debbie@dol.gov.* Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice

SUPPLEMENTARY INFORMATION:

I. Background

The reporting and recordkeeping provisions in 30 CFR Part 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 50.10 requires mine operators and mining contractors to immediately notify MSHA in the event of an accident. This immediate notification is critical to MSHA's timely investigation and assessment of the probable cause of the accident.

Section 50.11 requires that the operator or contractor investigate each accident and occupational injury and prepare a report. The operator or contractor may not use MSHA Form 7000–1 as a report, unless the mine employs fewer than 20 miners and the occurrence involves an occupational injury not related to an accident.

Section 50.20(a) requires mine operators and mining contractors to report each accident, injury, or illness to MSHA on Form 7000–1 within 10 working days after an accident or injury has occurred or an occupational illness has been diagnosed. The use of MSHA Form 7000–1 provides for uniform information gathering across the mining industry.

Section 50.30(a) requires mine operators and independent contractors working on mine property to report quarterly employment and coal production to MSHA on Form 7000–2. MSHA tabulates and analyzes the information from this form along with data from MSHA Form 7000–1, Mine Accident, Injury, and Illness Report, to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

MSHA tabulates and analyzes the information from MSHA Form 7000–1,

along with data from MSHA Form 7000–2, to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

Accident, injury, and illness data when correlated with employment and production data provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing. This could not be done effectively utilizing historical data. The information collected under Part 50 is the most comprehensive and reliable occupational data available concerning the mining industry.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) mandates that each accident be investigated by the operator to determine the cause and means of preventing a recurrence. Records of such accidents and investigations shall be kept and made available to the Secretary or his authorized representative and the appropriate State agency. Section 103(h) requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act. Section 103(j) of the Mine Act requires operators to notify MSHA of the occurrence of an accident and to take appropriate measures to preserve any evidence which would assist in the investigation into the cause or causes of the accident.

Data collected through MSHA Form 7000–1 and MSHA Form 7000–2 enable MSHA to publish timely quarterly and annual statistics, reflecting current safety and health conditions in the mining industry. These data are used not only by MSHA, but also by other Federal and State agencies, health and safety researchers, and the mining community to assist in measuring and comparing the results of health and safety efforts both in the United States and internationally.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs,'' and then selecting ''Fed Reg Docs.''

III. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations; requiring specialized expertise; related to miner safety and health at coal mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report.

OMB Number: 1219–0007.

Form(s): MSHA 7000–1 and MSHA 7000–2.

Frequency: Quarterly and On Occasion.

Affected Public: Business or other for-profit.

Respondents: 22,295.

Responses: 139,903.

Estimated Time per Response: 30 minutes for hardcopy filings and 15 minutes for Form 7000–02 electronic filings.

Total Burden Hours: 270,666.

Total Burden Cost (operating/maintaining): $31,993.

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 at Arlington, Virginia, this 6th day of December, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–23941 Filed 12–10–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Qualification/Certification Program and Man Hoist Operators Physical Fitness

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before February 11, 2008.

ADDRESSES: Send comments to Debbie Ferraro, Records Management Branch, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *ferraro.debbie@dol.gov*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Persons performing tasks and certain required examinations at coal mines related to miner safety and health, which require specialized training, experience, and physical qualifications, are required to be either ''certified'' or ''qualified''. The regulations recognized State certification and qualification programs. However, under the Federal Mine Safety and Health Act of 1977 and MSHA standards, where State programs do not exist, MSHA may certify and qualify persons for as long as they

continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remained employed at the same mine or by the same independent contractor.

Applications for Secretarial qualification or certification are submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. Form 5000–41 provides the coal mining industry with a standardized reporting format that expedited the certification and qualification process while ensuring compliance with the regulations. MSHA uses the form's information to determine if applicants satisfy the requirements to obtain the certification or qualification sought. Persons must meet certain minimum experience requirements depending on the type of certification or qualification.

Sections 75.155 and 77.105 of Title 30 of the CFR explain the qualifications to be a qualified hoisting engineer or a qualified hoist man on a slope or shaft sinking operation. Sections 75.100 and 77.100 pertain to the certification of certain persons to perform specific examinations and tests. Under §§ 75.160, 75.161, 77.107 and 77.107–1, the mine operator must have an approved training plan developed to train and retrain the qualified and certified people to effectively perform their tasks.

Sections 75.159 and 77.106 requires the operator of a mine to maintain a list of all certified and qualified persons designated to perform certain duties, which require specialized expertise at underground and surface coal mines, i.e., conduct test for methane and oxygen deficiency, conduct tests of air flow, perform electrical work, repair energized surface high-voltage lines, and perform duties of hoisting engineer. The recorded information is necessary to ensure that only persons who are properly trained and have the required number of years of experience are permitted to perform these duties. MSHA does not specify a format for the recordkeeping; however, it normally consists of the names of the certified and qualified person listed in two columns on a sheet of paper. One column is for certified persons and the other is for qualified persons.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Qualification/Certification Program and Man Hoist Operators Physical Fitness. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs'', and then selecting ''Fed Reg Docs.''

III. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations requiring specialized expertise related to inner safety and health at coal mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Qualification/Certification Program and Man Hoist Operators Physical Fitness.

OMB Number: 1219–0127.

Frequency: Quarterly and on occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,721.

Recordkeeping: One year.

Total Burden Hours: 15,355.

Total Burden Cost (operating/maintaining): $8,047.

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 at Arlington, Virginia, this 6th day of December, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–23942 Filed 12–10–07; 8:45 am]

BILLING CODE 4510–43–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: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before January 10, 2008.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* 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.
4. *Hand-Delivery or Courier:* 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–2007–066–C.

Petitioner: Knight Hawk Coal, LLC, 501 Barwick Road, Elkville, Illinois 62932.

Mine: Royal Falcon Mine, MSHA I.D. No. 11–03162, located in Jackson County, Illinois

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to increase the maximum length of cables supplying power to permissible equipment used in continuous mining sections. The petitioner states that: (1) This petition will only apply to trailing cables supplying three-phase, 995-volt power to continuous mining machines and trailing cables supplying three-phase, 480-volt power to roof bolters; (2) the maximum length of the 995-volt continuous mining machine trailing cables will be 950 feet and the maximum length of the 480-volt trailing cables for roof bolters will be 900 feet; (3) 995-volt continuous mining machine trailing cables will not be smaller than 2/0 and the 480-volt trailing cables for roof bolters will not be smaller than #2 AWG; (4) all circuit breakers used to protect 2/0 trailing cables exceeding 850 feet in length will have instantaneous trip units calibrated to trip at 1,500 amperes and the trip setting will be sealed or locked and will have permanent legible permanent labels that will be maintained as legible to identify the circuit breaker as being suitable for protecting 2/0 cables; (5) replacement instantaneous trip units, used to protect 2/0 trailing cables, will be calibrated to trip at 1,500 amperes and the setting will be sealed or locked; (6) all circuit breakers used to protect #2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 amperes, the trip setting will be sealed or locked, and the circuit breakers will have permanent legible labels that will be maintained as legible to identify the circuit breakers as being suitable for protecting #2 AWG cables; (7) replacement instantaneous trip units used to protect #2 AWG trailing cables will be calibrated to trip at 800 amperes and the setting will be sealed or locked; (8) the designated operator will visually examine the trailing cables during each production day to ensure that the cables are operating safely and the instantaneous settings of the calibrated breakers do not have seals or locks removed and do not exceed the stipulated settings; and (9) any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced. Persons may review a complete description of petitioner's alternative method and procedures at the MSHA address listed in the notice. The petitioner states that the alternative method will not be implemented until miners designated to examine the integrity of the seals or locks verify the short-circuit settings, and proper procedures training has been provided for examining trailing cables for defects and damage. The petitioner further states that the miners will be trained in the terms and conditions of the Proposed Decision and Order, and within 60 days the petitioner will submit revisions of its Part 48 training plan to the District Manager that includes task training to comply with the final order. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to the miners.

Docket Number: M–2007–067–C.

Petitioner: Mach Mining, LLC, P.O. Box 300, Johnson City, Illinois 62951.

Mine: Mach No. 1 Mine, MSHA I.D. No. 11–03141 located in Williamson County, Illinois.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit, through the use of alternative safety measures, the mining through or intersecting of certain oil and gas wells located within the projected workings of its No. 1 Mine to recover significant and valuable coal resources in an area of the mine penetrated by several abandoned oil and gas wells. The petitioner asserts that the proposed alternative method would provide the same measure of protection afforded the miners by application of the existing standard.

Docket Number: M–2007–068–C.

Petitioner: KenAmerican Resources, Inc., 7590 State Route 181, Central City, Kentucky 42330.

Mine: Paradise Mine, MSHA I.D. No. 15–17741 located in Muhlenberg 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 a measuring point location to be established in the Main East Parallel return at crosscut #13 (MPL#ME–01) and in the Main North Parallel return at crosscut #169 (MPL#MN–02). The petitioner states that due to deteriorating roof conditions in these affected areas of the mine it is not desirable for normal travel for inspections and examinations. The petitioner asserts that the alternative method would at all times guarantee the same measure of protection as the existing standard.

Dated: November 30, 2007.

Jack Powasnik,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E7–23933 Filed 12–10–07; 8:45 am]

BILLING CODE 4510–43–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service Performance Review Board (PRB)

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of Members of the Federal Mine Safety and Health Review Commission combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the combined PRB for the Federal Mine Safety and Health Review Commission. The Board reviews the performance appraisals of career and non-career senior executives. The Board makes recommendations regarding proposed

performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of PRB: The Board shall consist of at least three voting members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Primary Members:

—Cynthia Z. Springer, Deputy Executive Director, Administrative Resource Center, Bureau of the Public Debt;

—Debra L. Hines, Assistant Commissioner, Office of Public Debt Accounting, Bureau of the Public Debt;

—Kimberly A. McCoy, Assistant Commissioner, Office of Information Technology, Bureau of the Public Debt.

Alternative Members:

None.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Thomas A. Stock, Executive Director, Federal Mine Safety and Health Review Commission, Suite 9500, 601 New Jersey Avenue NW., Washington, DC 20001, (202) 434–9900.

This notice does not meet the Federal Mine Safety and Health Review Commission's criteria for significant regulations.

Dated: December 5, 2007.

Thomas A. Stock,

Executive Director, Federal Mine Safety and Health Review Commission.

[FR Doc. E7–24004 Filed 12–10–07; 8:45 am]

BILLING CODE 6735–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Proposed Information Collection Activity: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing an opportunity for public comment on the proposed collection of voluntary feedback regarding the public NTSB Web site. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies must publish notice in the **Federal Register** concerning each proposed collection of information and subsequently allow 60 days for public comment in response to each notice. This notice solicits comments concerning the NTSB's proposed collection of information and feedback, via a voluntary survey available on the NTSB Web site, concerning the navigation, utility, and site design of the NTSB Web site.

DATES: Submit written comments regarding this proposed collection of information by February 11, 2008.

ADDRESSES: Respondents may submit written comments on the collection of information to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the National Transportation Safety Board, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Christine Fortin, NTSB, Office of Chief Information Officer, at (202) 314–6607.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13, codified at 44 United States Code (U.S.C.) 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the NTSB's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

The NTSB Online Customer Satisfaction Survey will seek the public's feedback regarding a variety of aspects of the current NTSB Web site. In particular, the survey will solicit feedback concerning the public's satisfaction with the content of information on the Web site, as well as the presentation and organization of information that is available on the NTSB Web site. The survey will also ask the public for opinions regarding the overall utility of certain categories of the existing Web site. The survey will also seek responses to questions concerning ways to improve the Web site, such as whether the public would find it helpful to include certain information. In addition, the survey will ask for general comments regarding ways the NTSB can improve its Web site. Finally, the survey will inquire into whether respondents are affiliated with a particular group, industry, or profession, and how often respondents visit the NTSB Web site. All responses to the survey will remain anonymous, and the introductory text of the survey will request that respondents refrain from including any identifying or personal information.

The NTSB intends to use the feedback it obtains from this survey to improve the navigation, search capabilities, and information content on the NTSB Web site. The NTSB recognizes that Congress has directed the NTSB to provide transportation safety and accident-related information to the public, in the interest of improving transportation safety for the public. See 49 U.S.C. 1101–1155. Accordingly, the NTSB is aware of the importance of maintaining a Web site that is helpful to the public, and provides relevant, up-to-date information. Feedback from the public regarding the NTSB Web site will assist the NTSB in achieving this goal.

Respondents' participation in the survey is voluntary. The survey will only be available on the NTSB Web site, and the NTSB has carefully reviewed the survey to ensure that it has used plain, coherent, and unambiguous terminology in its requests for information and feedback. The survey is not duplicative of other agencies' collections of information. The survey will consist of seven questions, and imposes minimal burden on respondents: The NTSB estimates that respondents will spend approximately 10 minutes in completing the survey. The NTSB estimates that approximately 100 respondents will participate in the survey.

Dated: December 5, 2007.

Vicky L. D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 07–6001 Filed 12–10–07; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

Agency Holding the Meetings: Nuclear Regulatory Commission.

DATES: Weeks of December 10, 17, 24, 31, 2007, January 7, 14, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 10, 2007.

Wednesday, December 12, 2007.

9:30 a.m.

Discussion of Management Issues

(Closed—Ex. 2).

Week of December 17, 2007—Tentative

There are no meetings scheduled for the Week of December 17, 2007.

Week of December 24, 2007—Tentative

There are no meetings scheduled for the Week of December 24, 2007.

Week of December 31, 2007—Tentative

There are no meetings scheduled for the Week of December 31, 2007.

Week of January 7, 2008—Tentative

There are no meetings scheduled for the Week of January 7, 2008.

Week of January 14, 2008—Tentative

There are no meetings scheduled for the Week of January 14, 2008.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 7, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–6021 Filed 12–7–07; 10:51 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56893; File No. 4–429]

Joint Industry Plan; Notice of Summary Effectiveness on a Temporary Basis of Joint Amendment No. 25 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to Response Time for Certain Orders Sent Through the Linkage, and Notice of Filing of Such Amendment

December 4, 2007.

I. Introduction

On November 13, 2007, November 28, 2007, November 29, 2007, November 9, 2007, November 9, 2007, and November 23, 2007, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE''), the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder [2] an amendment (''Joint Amendment No. 25'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] In Joint Amendment No. 25, the Participants propose to reduce (i) the amount of time a member must wait after sending a Linkage Order [4] to a market before the member can trade through that market and (ii) the timeframe within which a Participant must respond to a Linkage Order after receipt of that Order. This order summarily puts into effect Joint Amendment No. 25 on a temporary basis not to exceed 120 days and solicits comment on Joint Amendment No. 25 from interested persons.[5]

II. Description of the Proposed Amendment

First, the purpose of Joint Amendment No. 25 is to reduce the amount of time a member must wait after sending a Linkage Order to a market before the member can trade through that market. The Participants propose to decrease this time period from 5 seconds to 3 seconds.

Second, Joint Amendment No. 25 will also reduce the time frame in which a Participant must respond to a Linkage Order from 5 to 3 seconds after receipt of that Order. Because the Linkage is highly automated and a Participant should receive a response to a Linkage Order within seconds after it is sent, the Participants do not believe it is necessary to wait the current 5 seconds for such a response. In addition, especially in fast-moving markets like the options market, the Participants believe that amending the time period to 3 seconds for the rejection of a P/A Order or Principal Order [6] due to an untimely response will provide an opportunity for the transmittal of responses while also allowing a Participant's members to execute orders on their own exchanges in a timely manner.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Linkage Plan is consistent with the requirements of the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act [8] and Rule 608 of Regulation NMS thereunder [9] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. Specifically, the Commission believes that reducing the time required by a Participant to

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] *See* Section 2(16) of the Linkage Plan. For the purposes of this Joint Amendment No. 25 only, references to ''Linkage Orders'' herein pertain to P/A Orders and Principal Orders. For definitions of ''P/A Order'' and ''Principal Order,'' *see* note 6 *infra.*

[5] A proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. *See* 17 CFR 242.608(b)(4).

[6] *See* Section 2(16)(a) and (b) of the Linkage Plan, respectively.

[7] In summarily putting into effect this Joint Amendment No. 25, the Commission has considered its impact on efficiency, competition, and capital formation.

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

respond to a Linkage Order and the amount of time a member sending a Linkage Order must wait before trading through a nonresponsive Participant should facilitate the more timely execution of orders across the options markets. In addition, the Commission finds that it is appropriate to summarily put into effect Joint Amendment No. 25 upon publication of this notice on a temporary basis for 120 days. The Commission believes that such action is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, because it will facilitate implementation of the Joint Amendment No. 25 in conjunction with the recent expansion of the options penny quoting pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether proposed Joint Amendment No. 25 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 4–429 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 4–429. 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 filings also will be available for inspection and copying at the principal offices of the Amex, BSE, CBOE, ISE, NYSE Arca, and Phlx. 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 publicly available. All submissions should refer to File Number 4–429 and should be submitted on or before January 2, 2008.

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [10] and Rule 608(b)(4) thereunder,[11] that Joint Amendment No. 25 is summarily put into effect until April 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23920 Filed 12–10–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56898; File Nos. SR–Amex–2007–124; SR–BSE–2007–50; SR–CBOE–2007–144; SR–ISE–2007–108; SR–NYSEArca–2007–116; SR–Phlx–2007–88]

Self-Regulatory Organizations; American Stock Exchange LLC: Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, as Amended, Relating to Linkage Order; Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC, NYSE Arca, Inc., and Philadelphia Stock Exchange, Inc.: Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Linkage Orders

December 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2007, November 28, 2007, November 27, 2007, November 13, 2007, December 4, 2007, and November 27, 2007, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''); the International Securities Exchange, LLC (''ISE''), the NYSE Arca, Inc. (''NYSE Arca''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (each, an ''Exchange'' and, collectively, the ''Exchanges''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below. On December 4, 2007, Amex filed Amendment No. 1 to its proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons and is approving the proposed rule changes on an accelerated basis.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to amend their respective rules pertaining to the Intermarket Options Linkage (''Linkage'') to conform such rules to Joint Amendment No. 25 [3] of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[4] The text of the proposed rule changes are available at the Exchanges' Web sites,[5] the Exchanges' principal offices, and at the Commission's Public Reference Room.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, each Exchange included statements concerning the purpose of, and basis for, its proposed rule change and discussed any comments it received on the proposed rule change. The text of the statements may be examined at the places specified in Item III below. The Exchanges have prepared summaries, set forth in Sections A, B, and C, below, of the most significant aspects of such statements.

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[10] 15 U.S.C. 78k–1.

[11] 17 CFR 242.608(b)(4).

[12] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56893 (December 4, 2007).

[4] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[5] *See http://www.amex.com, http://www.bostonstock.com, http://www.cboe.com, http://www.iseoptions.com, http://www.nyse.com*, and *http://www.phlx.com.*

A. Self-Regulatory Organizations' Statement for the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchanges propose to reduce certain ''turn-around'' times in the Linkage to 3 seconds. Specifically, if a member [6] of an Exchange does not receive a response to its Linkage Order [7] seconds, that member would be able to reject any response purporting to be an execution received thereafter. The member would also be able to trade through the Exchange that failed to respond within 3 seconds after receiving that order and, if the Exchange that sent the Linkage Order cancels such response, the member would be required to cancel any purported trade resulting from that order. The Exchanges state that, as they have become more automated, experience with Linkage indicates that reducing the turn-around time to 3 seconds is expected to facilitate speedy executions of orders while not adversely affecting the ability of members to make markets on their Exchanges. The Exchanges submitted the proposed rule changes in conjunction with Joint Amendment No. 25 to the Linkage Plan.[8]

2. Statutory Basis

The Exchanges believe the proposed rule changes are consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchanges believe the proposed rule changes are consistent with the requirements of Section 6(b)(5) of the Act [10] that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges believe that the proposed rule changes would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Exchanges have neither solicited nor received comments on these proposals.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 Numbers SR-Amex-2007–124; SR–BSE–2007–50; SR–CBOE–2007–144; SR–ISE–2007–108; SR-NYSEArca-2007–116; SR-Phlx-2007–88 in 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 Numbers SR-Amex-2007–124; SR–BSE–2007–50; SR–CBOE–2007–144; SR–ISE–2007–108; SR-NYSEArca-2007–116; SR-Phlx-2007–88. These file numbers 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 Section, 100 F Street, NE., Washington, DC 20549–1090 on 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 Exchanges. 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 Numbers SR-Amex-2007–124; SR–BSE–2007–50; SR–CBOE–2007–144; SR–ISE–2007–108; SR-NYSEArca-2007–116; SR-Phlx-2007–88 and should be submitted on or before January 2, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

After careful consideration, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder, applicable to national securities exchanges.[11] In particular, the Commission finds that the proposals are consistent with the provisions of Section 6(b)(5) of the Act [12] in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that reducing the time required by an Exchange to respond to a Linkage Order and reducing the amount of time a member sending a Linkage Order must wait before trading through a nonresponsive Exchange should facilitate the more timely execution of orders across the Exchanges.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act [13] for approving the proposal prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. Granting accelerated approval would facilitate the implementation of these changes in conjunction with the implementation of Joint Amendment No. 25 to the Linkage Plan.[14]

[6] The term ''member,'' as used herein, includes NYSE Arca OTP Holders and OTP Firms and Boston Options Exchange (''BOX'') Options Participants. *See* NYSE Arca Rules 1.1(q) and 1.1(r) and Chapter 1, Sec. 1(a)(40) of BOX Rules, respectively.

[7] *See* Section 2(16) of the Linkage Plan. For the purposes of these proposed rule changes only, references to ''Linkage Orders'' herein pertain to Principal Acting as Agent (''P/A'') Order and Principal Orders. *See* Section 2(16)(a) and (b) of the Linkage Plan, respectively, for definitions of ''P/A Order'' and ''Principal Order.''

[8] Joint Amendment No. 25 to the Linkage Plan became summarily effective for a period not to exceed 120 days on December 4, 2007. *See supra* note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving these proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] *See supra* note 8.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2007–124), as amended, and proposed rule changes (SR–BSE–2007–50; SR–CBOE–2007–144; SR–ISE–2007–108; SR-NYSEArca-2007–116; SR-Phlx-2007–88) are hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23923 Filed 12–10–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56903; File No. SR–CBOE–2007–68]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Stock-Option Orders

December 5, 2007.

I. Introduction

On June 20, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to amend its rules to provide for the electronic handling and execution of stock-option orders. The CBOE filed Amendment No. 1 to the proposal on October 19, 2007.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on October 31, 2007.[4] The Commission received no comments regarding the proposed rule change, as amended. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Currently, stock-option orders[5] are handled manually on the CBOE and the options component is traded in open outcry. The CBOE proposes to amend CBOE Rule 6.53C, ''Complex Orders on the Hybrid System,'' to allow stock-option orders to be submitted to the Complex Order Book (''COB'') or executed via a Complex Order Auction (''COA'').[6] The stock component of a stock-option order will be executed electronically on the CBOE's electronic stock trading facility, the CBOE Stock Exchange (''CBSX''), consistent with CBSX's order execution rules.[7] A stock-option order will not be executed on the CBOE's Hybrid System unless the stock leg is executable on CBSX at the price(s) necessary to achieve the desired net price.[8]

An electronic stock-option order accepted by the Hybrid System will be auctioned in a COA when the requirements for an auction are met. An unexecuted stock-option order also could be maintained in the COB or on a PAR workstation, either of which would monitor the marketability of the order, taking into account the CBSX market for the execution of the stock component of the order.

Under the proposal, the CBOE proposes to process stock-option orders in a manner that is substantially similar to the way that the CBOE currently processes complex orders comprised solely of options. However, a stock-option order submitted to the COB would seek to trade first against other stock-option orders in the COB, and second against individual orders or quotes on the CBOE.[9] Similarly, a stock-option order submitted to a COA would trade in the sequence set forth in CBOE Rule 6.53C(d)(v)(1)–(4), except that subparagraph (d)(v)(1), relating to individual orders and quotes residing in the EBook, would be applied last in sequence.[10] The CBOE believes that because a portion of a stock-option order would be executed on a different platform (CBSX), it is more practical to execute resting stock-option orders against other stock-option orders received by the Hybrid System before scanning for executions against the legs on the CBSX book and the Hybrid options book.

The options leg of a stock-option order will not trade ahead of any public customer option resting on the Hybrid book. Specifically, the options leg of a stock-option order will not be executed on the Hybrid System at the CBOE's best bid (offer) in a series if one or more public customer orders are resting on the electronic book at that price, unless the options leg trades with such public customer order(s).[11] Accordingly, the CBOE notes that the proposal is consistent with CBOE Rule 6.45A(b)(iii), which provides the options leg of a stock-option order with priority over bids (offers) in the trading crowd at the same price, but not over public customer bids (offers) in the limit order book at the same price.[12]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 56701 (October 25, 2007), 72 FR 61694.

[5] A stock-option order is an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying or related security or the number of units of the underlying security necessary to create a delta neutral position or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and each representing the same number of units of stock as, and on the opposite side of the market from, the underlying security or related security portion of the order. *See* CBOE Rule 1.1(ii) and CBOE Rule 6.53C(a)(10).

[6] *See* CBOE Rule 6.53C, Commentary .06 (c) and (d).

[7] *See* CBOE Rule 6.53C, Commentary .06(a).

[8] *See* CBOE Rule 6.53C, Commentary .06(a).

[9] *See* CBOE Rule 6.53C, Commentary .06(c). In contrast, a complex order comprised solely of options would seek to execute first against orders and quotes in the EBook, if possible, and then against other complex orders in the COB. *See* CBOE Rule 6.53C(c)(ii).

[10] *See* CBOE Rule 6.53C, Commentary .06(d).

[11] *See* CBOE Rule 6.53C, Commentary .06(b).

[12] The CBOE provides the following example to illustrate how the Hybrid System would protect the priority of a resting public customer options order: a customer enters a stock-option order to buy 100 shares of XYZ (trading at around $40) and sell a 45 call with a net price of $39.00. A public customer order to sell the 45 call for $1 is resting on the Hybrid book. When executing the stock-option order against auction responses, the Hybrid System will not allow the options leg of the transaction to trade at $1 or higher, thereby preserving the resting limit order's priority at that price. An execution could occur where the options leg prints at $0.99 and the stock trade prints at $39.99, in accordance with CBSX priority rules. This execution would meet the stock-option order's limit price and would not violate priority on CBOE or CBSX.

[13] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal could facilitate the execution of stock-option orders on the CBOE by providing for the electronic handling and execution of these orders, which currently must be handled manually. The Commission notes that proposal provides for the execution of stock-option orders in a manner that is consistent with the CBOE's existing priority rules for stock-option orders, which provide the options leg of a stock-option order with priority over bids (offers) in the trading crowd at the same price, but not over public customer bids (offers) at the same price.[15] In addition, the execution of the stock component of a stock-option order on CBSX will be consistent with CBSX's order execution rules.[16]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CBOE–2007–68), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23925 Filed 12–10–07; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* CBOE Rule 6.45A(b)(iii).

[16] *See* CBOE Rule 6.53C, Commentary .06(a).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56876; File No. SR–NASDAQ–2007–068]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To Amend the Limited Liability Company Agreement of The NASDAQ Stock Market LLC; and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

November 30, 2007.

I. Introduction

On July 20, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to amend its Limited Liability Company Agreement (''LLC Agreement''). On September 26, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on October 5, 2007.[3] The Commission received no comments on the proposal. On November 16, 2007, Nasdaq filed Amendment No. 2 to the proposed rule change (''Amendment No. 2''). This notice and order notices Amendment No. 2; solicits comments from interested persons on Amendment No. 2; and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

Nasdaq proposes to amend its LLC Agreement, which includes its by-laws ('' By-Laws'') to: (1) Revise the process by which its directors (''Directors'') are nominated and elected; (2) amend the compositional requirements for its board of directors (''Board'') and several committees; and (3) make certain other changes as described below.

A. Election of Fair Representation Directors

Nasdaq proposes to amend its LLC Agreement, including its By-Laws, to revise the process by which the members of its Board are nominated and elected. Section 6(b)(3) of the Act[4] requires a national securities exchange to establish rules that assure a fair representation of its members in the selection of its directors. Nasdaq's LLC Agreement currently provides that twenty percent of the directors on the Board will be ''Member Representative Directors.''[5] The Board appoints a ''Member Nominating Committee,'' which nominates and creates a list of candidates for each Member Representative Director position on the Board, and nominates candidates for appointment by the Board for each vacant or new position on a committee that is to be filled with a Member Representative under Nasdaq's By-Laws.[6] Additional candidates may be added to the list of candidates for Member Representative Director positions if a Nasdaq Exchange Member submits a timely and duly executed written nomination to the Secretary of the Exchange.[7] These candidates, together with those nominated by the Member Nominating Committee, are then presented to Exchange members for election.[8]

Under the proposal, the Board will continue to appoint a Member Nominating Committee, which will nominate candidates for each Member Representative Director position on the Board, and nominate candidates for appointment by the Board for each vacant or new position on a committee that is to be filled with a Member Representative under Nasdaq's By-Laws. In Amendment No. 2,[9] Nasdaq proposes to add the requirement that, in appointing the Member Nominating Committee, the Board will consult with representatives of members of the Exchange.[10] Also, members will continue to be able to add candidates to the list of candidates for Member Representative Director positions through the petitions process. The timing and method for the petition process will not change pursuant to the proposal. The list of candidates for Member Representative Director positions and the election date will be announced by the Exchange in a Notice to Members and in a prominent location on a publicly accessible Web site. Such announcement also will describe the procedures for Exchange members to nominate candidates for election at the next annual meeting.[11]

If the list of candidates (comprised of those candidates nominated by the Member Nominating Committee and any candidates added through the petition process) exceeds the number of positions to be elected, a formal notice of the election date and list of candidates will be sent by the Exchange to its members as of the record date at least 10 days, but no more than 60 days, prior to the election date.[12] As is currently the case, each Exchange member that is eligible to vote will have the right to cast one vote for each Member Representative Director position to be filled, and the persons on the list of candidates who receive the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56581 (September 28, 2007), 72 FR 57083 (''Notice'').

[4] 15 U.S.C. 78f(b)(3).

[5] ''Member Representative Director'' means a Director ''who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Nasdaq Member * * *'' *See* Exchange By-Laws Article I(q).

[6] *See* Nasdaq By-Laws Article II, Section 1(b) and 3, and Article III, Section 6(b).

[7] *See* Nasdaq By-Laws Article II, Section 1(c).

[8] *See* Nasdq By-Laws Article II, Section 2.

[9] The text of Amendment No. 2 is available at Nasdaq's Web site *http://nasdaq.complinet.com*, at Nasdaq, and at the Commission's Public Reference Room.

[10] *See* Proposed Nasdaq By-Laws Article III, Section 6(b)(iii).

[11] *See* Proposed Nasdaq By-Laws Article II, Section 1(a).

[12] *See* Proposed Nasdaq By-Laws Article II, Section 1(a) and (c).

most votes will be elected to the Member Representative Positions.[13] If there is only one candidate for each Member Representative position to be filled, the Member Representative Directors will be elected from the list of candidates by The Nasdaq Stock Market, Inc., Nasdaq's parent company.[14]

B. Board and Committee Compositional Requirements

Nasdaq proposes to make several changes to its By-Laws pertaining to the compositional requirements of its Board and committees thereof.

First, Nasdaq's By-Laws currently require that twenty percent of its directors shall be Member Representative Directors.[15] Nasdaq proposes to amend the LLC Agreement to require that *at least* twenty percent of Nasdaq's directors shall be Member Representative Directors.[16] Thus, Nasdaq would not be required to remove a previously elected Member Representative Director if the Board's size was reduced.

Second, Nasdaq proposes to amend the compositional requirements of its Quality of Markets Committee (''QMC''). Currently,[17] Nasdaq's QMC must be comprised of an equal number of Industry [18] and Non-Industry Directors.[19] Nasdaq proposes to amend this provision such that the number of Non-Industry members on the QMC must equal *or exceed* the number of Industry members and Member Representative members.[20] The Exchange represents that this change is consistent with certain undertakings made by Nasdaq with regard to the composition of this committee.[21]

Third, Nasdaq proposes to amend the compositional requirements applicable to its Arbitration and Mediation Committee (''Arbitration Committee''), which currently provide that the committee shall consist of no fewer than 10 and no more than 25 members.[22] As amended, Nasdaq's By-Laws would require the committee consist of no fewer than 3 and no more than 10 members.[23] The balance requirements applicable to this committee will remain unchanged, consistent with the 1996 Settlement Order.[24] Nasdaq believes that a reduction in the size of this committee is appropriate because FINRA manages an arbitration and mediation program for use of Nasdaq members pursuant to a regulatory services agreement with FINRA, and because Nasdaq has appointed the members of FINRA's Arbitration and Mediation Committee to also serve on Nasdaq's Arbitration Committee.[25]

Fourth, Nasdaq proposes to amend the compositional requirements of the Nasdaq Review Council (''NRC''), which currently require this committee to be comprised of no fewer than 12 and no more than 14 members.[26] As amended, Nasdaq's By-Laws would require the NRC to be comprised of no fewer than 8 and no more than 12 members.[27] The Exchange believes that because Nasdaq and FINRA are parties to an agreement under Rule 17d–2 of the Act [28] that allocates responsibility to FINRA for enforcing a wide range of common rules with respect to common members, the caseload of the NRC is likely to be considerably lower than that of the FINRA's comparable committee, the National Adjudicatory Council. Therefore, Nasdaq believes that reducing the size of this committee will be consistent with the efficient discharge of its responsibilities.[29] Nasdaq is also proposing an amendment to allow NRC members to serve two consecutive three-year terms,[30] consistent with Nasdaq's other appellate review body, the Nasdaq Listing and Hearing Review Council.[31]

C. Other Changes

Nasdaq is proposing to make various other changes to its LLC Agreement. Specifically, the proposal would remove out of date references to the Exchange's initial directors and officers, and provisions that were applicable to the transitional period between the formation of Nasdaq and when it commenced operations as a national securities exchange.[32] The proposed rule change also amends Nasdaq's LLC Agreement to provide that amendments to the LLC Agreement (including the By-Laws) must be approved by the Board and also reflected in a written agreement executed by The Nasdaq Stock Market, Inc., as sole member of Nasdaq within the meaning of the Delaware Limited Liability Company Act. Changes to the LLC Agreement must also be filed with the Commission pursuant to section 19(b) of the Act.[33] Further, Nasdaq is amending Article IX, Section 1 of its By-Laws (i) to make explicit that Nasdaq's Board is authorized to adopt and amend rules for the required or voluntary arbitration of controversies between members and between members and customers or others, and (ii) to delete from the list of the Board's specified authorities the

[13] *See* Proposed Nasdaq By-Laws Article II, Section 2. Nasdaq is also amending By-Laws Article II, Section 2 to provide that votes may be cast until 11:59 p.m. (rather than 5 p.m.) on the election date. *Id.*

[14] *See* Proposed Nasdaq By-Laws Article II, Section (c).

[15] *See* Nasdaq LLC Agreement, Section 9.

[16] *See* Proposed Nasdaq LLC Agreement, Section 9.

[17] *See* Nasdaq By-Laws Article III, Section 6(c)(ii).

[18] Generally, an ''Industry Director'' is, among other things, a Director that is or has been an officer, director, employee, or owner of a broker-dealer. In addition, persons who have a consulting or employment relationship with the Exchange, its affiliates, or the National Association of Securities Dealers, Inc (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc. or FINRA) are considered ''Industry.'' *See* Nasdaq By-Laws Article I(l).

[19] ''Non-Industry Director'' means a ''Director (excluding Staff Directors) who is (i) a Public Director; (ii) and officer or employee of an issuer of securities listed on the national securities exchange operated by the [Exchange]; or (iii) any other individual who would not be an Industry Director.'' *See* Nasdaq By-Laws Article I(v).

''Public Director'' means a ''Director who has no material business relationship with a broker or dealer, the [Exchange] or its affiliates, or the NASD.'' *See* Nasdaq By-Laws Article I(y).

[20] *See* Proposed Nasdaq By-Laws Article III, Section 6(c)(ii).

[21] *In the Matter of National Association of Securities Dealers, Inc.*, Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996) (Administrative Proceeding File No. 3–9056) (''1996 Settlement Order'') (requiring ''at least fifty percent independent public and non-industry membership'' in the QMC). Nasdaq was previously bound by the 1996 Settlement Order due to its status as a subsidiary of the NASD, and in connection with Nasdaq's Exchange application, Nasdaq submitted a letter to the Commission affirming that it would comply with the 1996 Settlement Order, except as specified. *See* Letter to Robert L.D. Colby, Acting Director, Division of Market Regulation, Commission, from Edward S. Knight, Executive Vice President, General Counsel, and Chief Regulatory Officer, Nasdaq, dated January 11, 2006).

[22] *See* Nasdaq By-Laws Article III, Section 6(e)(iii).

[23] *See* Proposed Nasdaq By-Laws Article III, Section 6(e)(iii).

[24] *See* 1996 Settlement Order, *supra* note 21, (requiring ''at least fifty percent independent public and non-industry membership'' in the Arbitration Committee).

[25] *See* Notice, *supra* note 3, at Section II.A.1.

[26] *See* Nasdaq By-Laws Article VI, Section 2.

[27] *See* Proposed Nasdaq By-Laws Article Article VI, Section 2.

[28] 17 CFR 240.17d–2.

[29] *See* Notice, *supra* note 3, at Section II.A.1.

[30] *See* Proposed Nasdaq By-Laws Article VI, Section 4(c).

[31] *See* Proposed Nasdaq By-Laws Article VI, Section 4(c).

[32] Nasdaq represents that up-to-date information regarding the current directors of Nasdaq and its parent corporation, The Nasdaq Stock Market, Inc., is maintained at *http://ir.nasdaq.com/directors.cfm* (with a link provided from *http://www.nasdaq.com*). The Exchange also certifies that information regarding the officers of Nasdaq is kept up to date and is available to the Commission and the public upon request, and is filed with the Commission as an amendment to its Form 1 every three years, as required by Rule 6a–2 under the Act, 17 CFR 240.6a–2. *See* Notice, *supra* note 3, at note 10.

[33] 15 U.S.C. 78s(b).

authority to issue exemptions from, suspend, or cancel Exchange rules.[34]

Finally, the proposal amends Nasdaq's By-Laws to correct typographical errors.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–068 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to Amendment No. 2 to File Number SR–NASDAQ–2007–068. 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 Amendment No. 2 to File Number SR–NASDAQ–2007–068 and should be submitted on or before January 2, 2008.

IV. Discussion

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.[35] In particular, the Commission finds that the proposal is consistent with section 6(b)(3) of the Act,[36] which requires, among other things, that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. The Commission also finds that the proposal is consistent with section 6(b)(1) of the Act,[37] which requires, among other things, that an exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange.

The Commission notes that although the Exchange will no longer hold a member election for Member Representative Directors if the number of candidates for election does not exceed the number of vacancies, members will continue to be able to petition to have candidates added to the list of candidates, as is currently the case. Also, the Commission notes that should the number of candidates exceed the number of vacancies, Exchange members will have the opportunity to elect the candidates to fill the open Member Representative Director positions. If no such election is required (*i.e.*, the number of candidates equals the number of position to be filled), The Nasdaq Stock Market, Inc. will elect the candidates on the list of candidates prepared by the Member Nominating Committee. Additionally, the Exchange's Board will now be obligated to consult with Exchange members when appointing individuals to the Member Nominating Committee. The Commission previously considered and approved rules of another Exchange that provide a similar structure for the selection of directors.[38] In addition, the Commission believes that the requirement that *at least* twenty percent of the directors be Member Representative Directors, and the means by which Member Representative Directors are to be nominated and elected, provides for the fair representation of the Exchange's members in the selection of its directors and administration of its affairs, consistent with the requirements of section 6(b)(3) of the Act.[39]

Pursuant to the proposal, the Exchange's By-Laws will provide that the number of Non-Industry members of the Exchange's QMC must equal or exceed the number of Industry members. The proposal also will reduce the size of the Exchange's Arbitration Committee and the NRC, but will not otherwise alter the compositional requirements of, or method for designating, these committees. The Commission notes that the proposed compositional balance for the QMC and Arbitration Committee is consistent with the 1996 Settlement Order requirement that such committees maintain *at least* fifty percent independent public and non-industry membership. The Commission therefore believes that the proposal is designed to assure that the Exchange be organized and have the capacity to carry out the purposes of the Act.

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act.

V. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after publishing notice of Amendment No. 2 in the **Federal Register** pursuant to section 19(b)(2) of the Act.[40] In Amendment No. 2, Nasdaq added the that requirement the Board will appoint individuals to the Member Nominating Committee after appropriate consultation with Exchange members.[41] The Commission believes that such a requirement is consistent with the

[34] Nasdaq notes that the deletion of a reference to the Board's authority to issue exemptions from Nasdaq rules should not be construed to limit Nasdaq's authority under rules that, by their terms, explicitly authorize waivers or exemptions. *See* Notice, *supra* note 3, at note 15 and accompanying text.

[35] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(3).

[37] 15 U.S.C. 78f(b)(1).

[38] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2007) (SR–NYSE–2005–77) (''Release No. 34–53382'') (order granting approval of proposed rule change relating to NYSE's business combination with Archipelago Holdings, Inc., which included the bylaws of NYSE Market, Inc.).

[39] 15 U.S.C. 78f(b)(3).

[40] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

[41] The changes pursuant to Amendment No. 2 are discussed more fully in Section II.A. *See supra* notes 9 and 10 and accompanying text.

requirement under section 6(b)(3) of the Act[42] that the rules of an exchange assure a fair representation of its members in the selection of its directors. The Commission also notes that such a requirement is consistent with the rules of another exchange, which were approved by the Commission,[43] and therefore believes that Amendment No. 2 raises no new issues. The Commission therefore finds good cause exists to accelerate approval of the proposed change, as modified by Amendment No. 2, pursuant to section 19(b)(2) of the Act.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NASDAQ–2007–068) as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23917 Filed 12–10–07; 8:45 am]

BILLING CODE 8011–01–P

[42] 15 U.S.C. 78f(b)(3).

[43] *See* Article III, Section 5 of the Amended and Restated Bylaws of NYSE Market, Inc. *See also* Release No. 34–53382, *supra* note 38.

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56890; File No. SR–NSX–2007–13]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Market Data and Liquidity Provider Rebate Programs for Transactions Through NSX BLADE

December 4, 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 October 26, 2007, the National Stock Exchange, Inc. (''NSX'' 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 prepared substantially by NSX. NSX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 16.2(b) and the NSX BLADE Fee Schedule (''Schedule'') in order to implement a series of fee changes, including changes to its tape credit programs. The text of the proposed rule change is available at NSX, *http://www.nsx.com*, and 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, NSX 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. NSX 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

NSX proposes a series of fee changes, including changes to its tape credit program for ETP Holders using the Order Delivery mode of order interaction as set forth in Exchange Rule 11.13(b)(2) (''Order Delivery''). In general, as further described below, the Exchange proposes to restructure its market data rebates (known as ''tape credits'') so as to credit ETP Holders using Order Delivery for market data revenue derived from both transactions and quotes.[5] The Exchange will also decrease the rate at which it rebates those ETP Holders using Order Delivery who have executed liquidity providing shares. Finally, the Exchange proposes that its liquidity provider rebate be simplified for all transactions in shares executed at less than $1.00 per share to a single rate.

Market Data Rebates

Exchange Rule 16.2(b) currently provides for a 100% pro rata credit on market data revenues generated by transactions in Tape A, Tape B and Tape C securities except for transactions executed using AutoEx and involving certain Designated ETF Shares as set forth in Exhibit A to the Schedule. NSX currently provides no credit on market data revenue generated by quotes in Tape A, Tape B and Tape C securities.[6] With the instant proposed rule change, the Exchange proposes that Exchange Rule 16.2(b) be amended such that the Exchange will share 50% of its market data revenue generated by transactions and 50% of its market data revenue generated by quotes to those ETP Holders[7] using Order Delivery. Thus, while the market data revenue derived from trades is being reduced, there will be a corresponding increase in market data revenue derived from quotes. This rebate program is consistent with other rebate programs provided to Order Delivery firms by other self-regulatory organizations.[8]

The instant proposed rule change does not affect ETP Holders using AutoEx. AutoEx ETP Holders will continue to receive a 100% pro rata credit on market data revenue generated by transactions, unless the subject of the transaction is a Designated ETF Share, but will not receive any credit on market data revenue derived from quoting. All of these market data credits will continue to be allocable to ETP Holders on a pro rata, or symbol-by-symbol, basis based upon Tape A, Tape B and Tape C revenue generated by an ETP Holder's transactions or an ETP Holder's quotes on the Exchange, as applicable.

Liquidity Provider Rebates in Order Delivery Transactions

Currently, the Schedule provides that Order Delivery ETP Holders providing liquidity on securities executed at more than $1.00 per share will receive a

[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).

[5] ETP Holders using the Automatic Execution (''AutoEx'') mode of order interaction pursuant to Exchange Rule 11.13(b)(1) would continue to receive a 100% pro rata allocation of market data revenue related to transactions. ETP Holders using AutoEx will not receive any market data revenue related to quotes. ETP Holders will additionally receive no market data revenue credit for transactions that utilize AutoEx and that involve those securities that have been identified by the Exchange as Designated ETF Shares.

[6] *See* Securities Exchange Act Release No. 56008 (July 3, 2007), 72 FR 37809 (July 11, 2007) (SR–NSX–2007–07); *see also* SR–NSX–2007–11 (filed October 1, 2007).

[7] The Allocation Amendment of Regulation NMS provides that market data revenue will be received by self-regulatory organizations such that 50% of the revenue is based on the reporting of quotes and 50% is based on the reporting of transactions. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37476 (June 29, 2005).

[8] *See* Securities Exchange Act Release No. 55722 (May 8, 2007), 72 FR 27150 (May 14, 2007) (SR–ISE–2007–24).

rebate of $0.0028 per share executed. The Exchange is proposing that the Schedule be modified so that Order Delivery ETP Holders placing these orders will receive rebates of $0.0026 per share executed. However, if the Order Delivery ETP Holder providing liquidity has executed an average of 60 million shares per trading day (excluding partial trading days) on NSX BLADE for the calendar month, the Exchange will provide those ETP Holders with rebates of $0.0027 per share executed. The Exchange believes that the enhanced rebate that ETP Holders who have executed an average of 60 million shares per day on NSX BLADE over the course of a calendar month will receive for Order Delivery orders is appropriate in light of the significant order flow it is likely to produce, resulting in the Exchange receiving greater funds to permit, among other things, the Exchange to carry out its regulatory functions. Moreover, the Exchange believes that this change in the liquidity provider rebate is appropriate because the Order Delivery mode of order interaction involves greater cost and regulatory burden for the Exchange.

Liquidity Provider Rebates for Trades Executed at Less Than $1.00 per Share

The Exchange currently provides all ETP Holders who provide liquidity with rebates for transactions executed at less than $1.00 per share (''sub-dollar trades'') which mirror the rebates provided for orders executed at $1.00 or more per share. Thus, the Exchange currently provides different levels of liquidity-providing rebates for sub-dollar trades depending on the circumstances. With the instant proposed rule change, the Exchange is proposing to simplify this arrangement by providing all ETP Holders providing liquidity with a rebate equal to 0.1% of the price per share, multiplied by the number of shares, for all sub-dollar trades. This rate will apply regardless of the symbols executed or the mode of order interaction selected by the ETP Holder.

The Exchange has determined that these changes to the Schedule and tape credits are necessary for competitive reasons, particularly in light of the fact that other markets have similar provisions in their market data revenue rebate programs.[9] Further, the Exchange believes that these fee changes will not impair its ability to carry out its regulatory responsibilities.

Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange.'' Accordingly, ETP Holders will, simultaneously with this filing, be notified through the issuance of a Regulatory Circular of the changes to Rule 16.2(b) and the NSX BLADE Fee Schedule.

2. Statutory Basis

NSX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[10] in general, and with Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2007–13 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–NSX–2007–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/ sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSX. 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–NSX–2007–13 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23919 Filed 12–10–07; 8:45 am]

BILLING CODE 8011–01–P

[9] *Id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56894; File No. SR–NYSE–2007–107]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Exchange's NYSE Bonds℠ System and Trade Execution Fees

December 4, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2007, the New York Stock Exchange LLC (''NYSE'' or the ''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 NYSE. 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 implement a four-month pilot program, effective December 1, 2007, that will issue liquidity providers a $20 credit for certain bond trades executed on the NYSE Bonds℠ system (''NYSE Bonds'') with an execution size of less than 20 bonds. This pilot program will terminate on the close of business March 31, 2008, and will apply to all orders. The text of the proposed rule change is available at the Exchange's principal office, in the Commission's Public Reference Room, and at *http://www.nyse.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, NYSE 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. NYSE 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 implement a four-month pilot program pursuant to which it will issue liquidity providers a $20 credit for every execution on NYSE Bonds that is less than 20 bonds. This pilot program will commence on December 1, 2007 and will terminate at the close of business March 31, 2008.

A liquidity provider is one who posts liquidity to the system. During the course of clearing their bond trades, liquidity providers absorb clearing costs. To offset these clearing costs, liquidity providers may increase the offer price or decrease the bid price of the bond. In doing so, the best execution of a bond order may be compromised as clearing costs increase with smaller orders.

Accordingly, the Exchange proposes that liquidity providers be issued a $20 credit for executions of bond orders with an execution size of less than 20 bonds. For a liquidity provider to be eligible to receive this $20 credit, the original order posted by the liquidity provider must be for 20 bonds or more. For example, if a liquidity provider posts an order for 100 bonds and a contra side order comes in for 50 bonds, the liquidity provider will not receive a $20 credit. However, if a contra side order comes in for 10 bonds against the liquidity provider's original posted order of 100 bonds, the liquidity provider will receive a credit of $20 for that execution from the Exchange.

NYSE Bonds, which was implemented in March 2007, will continue to update its functionality to provide competitive bond trading for customers. The Exchange believes that this $20 credit will incentivize the liquidity provider to display the best price available on NYSE Bonds.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(4) of the Act[4] in particular, in that it is designed to provide 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

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–107 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–NYSE–2007–107. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–107 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23921 Filed 12–10–07; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56895; File No. SR–NYSE–2007–109]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the NYSE Rule 98 Guidelines for Approved Persons Associated With a Specialist's Member Organization

December 4, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the NYSE Rule 98 Guidelines for Approved Persons Associated with a Specialist's Member Organization (''Rule 98 Guidelines'') to provide NYSE Regulation, Inc. (''NYSE Regulation'') with the authority to grant a prospective specialist member organization a temporary exemption from section (b)(i) of the NYSE Rule 98 Guidelines. The text of the proposed rule change is available at *http://www/nyse.com*, NYSE and 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. 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

For purposes of seeking NYSE Rule 98 exemptive relief, the NYSE is proposing to amend the Rule 98 Guidelines to allow NYSE Regulation[5] to grant prospective specialist firms with a temporary exemption from section (b)(i) of such guidelines, which currently require a specialist member organization and its approved person be separate and distinct organizations. The Exchange has consistently interpreted this provision to require that the specialist and the approved person be in separate, registered broker-dealer organizations. Pursuant to the proposed rule change, while NYSE Regulation would be permitted to grant a temporary exemption from section (b)(i), specialist firms and their approved persons would still be required to comply with sections (b)(ii) through (b)(x) of the Rule 98 Guidelines and thus maintain the functional separation contemplated by the rule.

Recent changes among the specialist firms, including the recent decisions by Van der Moolen Specialists USA, LLC and SIG Specialists, Inc. to close their respective specialist businesses at the Exchange,[6] have warranted the need for greater flexibility to permit new firms to qualify as specialist member organizations. NYSE Rule 98, which requires certain barriers between a specialist member organization and an approved person, has the potential to impede the approval process for a prospective specialist firm. In particular, because of the time delay necessary for an NYSE member organization to form a separate NYSE member organization from which to run a specialist business, the requirement to maintain a separate and distinct organization could impact the ability of a current member organization to expeditiously begin operating as a specialist organization.

The NYSE is in the process of reviewing Rule 98 and, in particular, whether revising the Rule 98 Guidelines would provide sufficient protection to meet the stated goals of Rule 98. Nevertheless, the NYSE is not seeking to amend Rule 98 comprehensively at this time. Rather, pending further review by the NYSE of the continued applicability of Rule 98 in its current form, the NYSE proposes to grant NYSE Regulation exemptive authority to allow prospective specialist firms and their approved persons to temporarily operate without having to be separate and distinct organizations. The NYSE proposes granting this exemptive authority to expedite the process for new entrants to apply for and be approved as specialist organizations at the NYSE.

The NYSE notes that prospective specialist organizations and their approved persons would continue to be subject to sections (b)(ii) through (b)(x) of the Rule 98 Guidelines, which set

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 98(b) requires an approved person seeking a Rule 98 exemption to obtain the prior written agreement of the Exchange. Pursuant to a Delegation Agreement, the Exchange has delegated to NYSE Regulation the authority to review and approve such Rule 98 exemption requests.

[6] *See* Press Release, NYSE, NYSE to Reallocate Certain Specialist Rights to Kellogg Specialist Group (Nov. 14, 2007), *available at http://www.nyse.com/press/1195039877990.html*; Press Release, Van der Moolen, Van der Moolen to terminate U.S. specialist activities (Nov. 15, 2007), *available at http://www.vandermoolen.com/?sid=17&press=151*.

forth the information barriers that a specialist firm and approved person must implement in order to meet the ''functional regulation'' requirements contemplated by the rule. The NYSE believes that a firm that meets those Rule 98 Guidelines would meet the stated goals of NYSE Rule 98 to ensure that an approved person does not have undue control over or access to privileged information of the specialist organization, and vice versa.

A. Background

Approved persons of specialist organizations generally are subject to the same trading restrictions that govern specialist organizations, including, among others, restrictions on the ability to engage in transactions for their own accounts in such specialty stocks, prohibitions on trading in specialty stock options, and prohibitions on engaging in business transactions with the issuer of the specialty stock. As defined by NYSE Rule 2, an ''approved person'' is a person (other than a member, allied member, or employee of a member organization), who (i) controls a member organization, or (ii) is engaged in a securities or kindred business and is controlled by or under common control with a member organization.[7]

NYSE Rule 98 and the related Rule 98 Guidelines provide a mechanism for approved persons of specialist organizations to seek an exemption from certain specialist trading restrictions. Under NYSE Rule 98(b), to obtain such an exemption, an approved person must obtain the prior written agreement of the NYSE that the approved person and the associated specialist organization are in compliance with the Rule 98 Guidelines.

Rule 98 sets forth a ''functional regulation'' concept that permits an approved person to obtain a Rule 98 exemption so long as such approved person and associated specialist organization maintain an arms-length relationship. To obtain such approval, the two entities must establish procedures sufficient to restrict the flow of privileged information between them. Such procedures should be designed to preclude the possibility that privileged information will be used by either the approved person or the associated specialist organization to influence a particular trading decision. Once approved, an approved person of a specialist member organization would not be subject to certain trading restrictions that govern a specialist member organization.

The Rule 98 Guidelines provide guidance regarding how approved persons and associated specialist organizations should establish their respective operational structures. As enumerated in section (b)(i) of the Rule 98 Guidelines, an approved person and the associated specialist member organization should be organized as separate and distinct organizations. In particular, the specialist member organization should not in any manner function as a ''downstairs'' extension of an ''upstairs'' trading desk.

Sections (b)(ii) through (b)(x) of the Rule 98 Guidelines enumerate further operational structures that an approved person and its associated specialist firm should implement, including a management structure designed to prevent the influence of approved persons on specialists, and vice versa, and various information barriers concerning confidentiality of information, separate books and records, separate financial accounting, separate capital requirements, confidentiality of the specialist's Book, confidentiality of information derived from business activities with the issuer, and confidentiality of draft research reports.

B. Proposed Temporary Exemption From Rule 98 Guidelines

As noted above, within the space of two days, two of the NYSE's seven specialist organizations announced their intent to close their Floor-based specialist business. In order to ensure the continuity of a fair and orderly market, the NYSE is committed to working with firms that are interested in seeking approval to become a specialist member organization and be eligible for allocations of stocks listed at the NYSE. In the event that an existing NYSE member organization is interested in qualifying as a specialist firm, the NYSE is committed to working with such a prospective specialist organization to meet the requisite operational and regulatory requirements.

For the most part, assuming a current NYSE member organization takes over the book of business of a departing specialist organization, including the algorithms and Specialist Application Program Interface (''SAPI'')[8] of the departing specialist organization, the transfer of the Book can be seamless and expedited. However, if in addition to acting as a specialist firm, such member organization is interested in maintaining its ''upstairs'' or floor brokerage business, that member organization would be considered an approved person of the specialist organization, *i.e.*, it is in the securities business and under common control with the specialist organization. If such approved person does not have an existing separate broker-dealer that is already an NYSE member organization from which to operate its associated specialist operations, the Rule 98 Guideline requirement that an approved person be a separate and distinct organization from an associated specialist member organization acts as a gating item to the speedy transfer of a specialist's book to another member organization.

Accordingly, to enable the NYSE to respond to the dynamic changes in the marketplace and expeditiously approve, where appropriate, a current NYSE member organization as a new specialist organization, the NYSE proposes that NYSE Regulation have exemptive authority to grant prospective specialist firms with a temporary exemption from the requirement in section (b)(i) of the Rule 98 Guidelines that a specialist member organization and its approved person be separate and distinct organizations, *i.e.*, maintain separate NYSE member organizations. Obtaining such a temporary exemption would be subject to the specialist organization and the approved person both maintaining the functional divisions and information barriers as enumerated in sections (b)(ii) through (b)(x) of the Rule 98 Guidelines, and promptly seeking to form a separate member organization. The NYSE believes that by meeting these conditions there will be sufficient functional regulation during the period while the prospective specialist firm is exempt from section (b)(i) of the Rule 98 Guidelines.

The NYSE notes that the Commission recently approved an amendment to NYSE Rule 103B that implemented the same type of change as proposed by this filing.[9] NYSE Rule 103B previously prohibited specialist organizations from being registered in a specialist capacity in both an Exchange Traded Fund (''ETF'') and in a component security of such ETF. To avoid this prohibition, firms were required to have separate member organizations for its specialty stocks and for its ETF securities. As amended, NYSE Rule 103B now permits a member organization to register as a specialist in both an ETF and a

[7] *See* section (a) of Rule 98 Guidelines.

[8] The SAPI is the electronic link between specialist trading algorithms and the NYSE Display Book. Via this interface, specialist organization trading algorithms send quoting and trading messages to the Exchange for implementation in the Display Book, and the Exchange transmits information necessary to acting as a specialist to specialist organizations.

[9] *See* Securities Exchange Act Release No. 56392 (Sept. 12, 2007), 72 FR 53615 (Sept. 19, 2007) (SR–NYSE–2007–42) (''Rule 103B Rule Filing'').

component security of such ETF without having to form a separate member organization.

Under NYSE Rule 103B, a specialist member organization must have policies and procedures to separate the activities of such member organization in the trading of ETFs and any component securities in which the member organization is also registered as specialist. At a minimum, such policies and procedures must include information barriers that prevent the flow of non-public information between a member organization's ETF specialist and the member organization's specialist in an associated component security. As with the Rule 98 Guidelines, a specialist firm must submit its policies and procedures relating to such information barriers before being approved for an allocation of an ETF for which the specialist is already registered for a component security. As noted in the Rule 103B Rule Filing, after an ETF has been allocated to a specialist member organization, the Exchange will continue to examine for compliance with these Rule 103B requirements, including testing and reviewing on-site for breaches and weaknesses.

The NYSE believes that the same rationale for amending Rule 103B is applicable here; namely, so long as the firm meets the other requirements of Rule 98, there should be sufficient functional regulation to create information barriers to restrict the flow of information while the firm is working toward a formal structural separation. In the context of Rule 98, because firms would still be required to comply with sections (b)(ii) through (b)(x) of the Rule 98 Guidelines, which set forth the information barriers required between a specialist firm and its approved person, the functional regulation contemplated by the current rule would be met, even in the temporary absence of a formal separation between two operating divisions.

The Exchange proposes that a temporary exemption from section (b)(i) of the Rule 98 Guidelines may be granted only to those current NYSE member organizations that are not already approved persons of a specialist organization and are seeking to both become a specialist organization and apply to be a Rule 98-exempt approved person. The Exchange further proposes that the temporary exemption is contingent upon (i) the Exchange approving the member organization as a specialist organization and that the non-specialist division of the firm qualifies both as an approved person and for an exemption under Rule 98, as set forth in the Rule 98 Guidelines and other applicable NYSE rules, and (ii) the member organization promptly seeks to create, in a time frame acceptable to NYSE Regulation, a separate NYSE member organization from which the specialist organization would eventually be run.

The NYSE will closely monitor the application process of any prospective member organization and will require a broker-dealer seeking such approval to be diligent in working through the application process. In addition, before operating as a specialist firm, prospective specialist firms must provide NYSE Regulation with its Rule 98 policies and procedures so that NYSE Regulation can assess whether the firm's information barriers meet requirements of the Rule 98 Guidelines. As it does for other specialist firms and their approved persons, NYSE Regulation will examine such prospective specialist organizations for compliance with these Rule 98 Guidelines.

2. Statutory Basis

The basis for this proposed rule change is the requirement under Section 6(b)(5) of the Act [10] that an Exchange have rules that are designed to promote the just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b-4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NYSE has asked that the Commission waive the 30-day operative delay.[13] The proposal is similar to recent amendments to NYSE Rule 103B that were approved by the Commission, which removed the requirement that an ETF specialist be a separate member organization from a specialist registered in component securities of the ETF.[14] The Commission notes that the proposed rule change would only permit on a temporary basis an exemption for prospective specialist organizations from the NYSE Rule 98 Guidelines requirement that a specialist and its approved person maintain a formal structural separation. The Commission also notes that, pursuant to the proposed rule change, prospective specialist organizations seeking such an exemption would be required to satisfy the other requirements of the Rule 98 Guidelines, including specifically satisfying the Exchange that adequate information barriers will be maintained notwithstanding the fact that separate entities are not employed,[15] and must promptly seek to create a separate NYSE member organization from which the specialist organization would eventually be run. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will enable the Exchange to immediately implement the proposal so that prospective specialist member organizations may be approved on a timely basis. For this reason, the Commission designates the proposed

[10] 15 U.S.C. 78(f)(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission 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 requirement.

[14] *See supra* note 9 and accompanying text.

[15] *See* section (b)(i) of proposed NYSE Rule 98 Guidelines.

rule change to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro/shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–109 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

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[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. 34–56888; File No. SR–NYSEArca–2007–124]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Closing Auction Time for Exchange Traded Funds

December 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2007, NYSE Arca, Inc. (''NYSE Arca'' or the ''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, II and III below, which Items have been substantially prepared by NYSE Arca. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.35(e)(3)(E) in order to change the closing auction time for Exchange Traded Funds (''ETFs'') from 1:15 p.m. Pacific Time (''PT'') to 1 p.m. PT. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nysearca.com.*

[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).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.35(e)(3)(E) in order to change the closing auction time for Exchange Traded Funds (''ETFs'') from 1:15 p.m. PT to 1 p.m. PT.[5]

Presently, closing auctions for ETFs listed on NYSE Arca are conducted at 1:15 p.m. PT. Historically, ETFs were frequently hedged by transactions in futures traded on the Chicago Mercantile Exchange, which closes its equity futures trading session at 1:15 p.m. PT. Certain marketplaces, however, such as the American Stock Exchange (''Amex''), which previously was the only exchange actively pursuing these listings, does not offer after-hours trading. Instead, conducting the closing auction for ETFs at 1:15 p.m. PT was the means by which Amex accommodated this hedge strategy. Other marketplaces simply followed this arbitrary timing structure, including NYSE Arca.

Now, however, there is no longer any meaningful reason for NYSE Arca to conduct its Closing Auctions for ETFs at 1:15 p.m. PT as opposed to 1 p.m. PT for all equities. The historical reasoning is outdated and is not practical for securities listed on NYSE Arca, because it offers no benefit to investors in our marketplace that offers trading in three distinct sessions, one of which extends until 5 p.m. PT. Indeed, the arbitrary time for closing auctions for ETFs may lead to unnecessary confusion. For starters, NYSE Arca offers a Late Trading Session for all equities, including ETFs, from the close of the Core Trading Session until 5 p.m. PT. In addition, fund managers calculate the

[5] The Exchange is not proposing to amend the manner in which the closing auction operates, merely the time at which the closing auction for ETFs will occur. *See* NYSE Arca Equities Rule 7.35(e).

daily net asset value (''NAV'') of ETFs when equity markets close, typically 1 p.m. PT. Since ETFs trade until 1:15 p.m. PT, their closing price, which is the recorded price of the last trade, is often different than its NAV, calculated 15 minutes earlier. By synchronizing the closing auctions for ETFs with the close of the Exchange's Core Trading Session, an ETF's closing price will be better aligned with its NAV.

The Exchange intends this system change to be effective on filing and operative on January 1, 2008. By amending the time of the Closing Auction for ETFs from 1:15 p.m. PT to 1 p.m. PT, users will benefit from a better alignment of an ETF's NAV and closing price.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] in particular, because 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 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 foregoing proposed 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 from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–124 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–2007–124. 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–2007–124 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23918 Filed 12–10–07; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, NYSE Arca has given 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 on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56899; File No. SR–NYSEArca–2007–120]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Relating to Restrictions on Acting as Market Makers and Floor Broker

December 5, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2007, the NYSE Arca, Inc. (''NYSE Arca'' or the ''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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Exchange rules to restrict an OTP Holder from concurrently registering as both a Market Maker and a Floor Broker. The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, and *http://www.nyse.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange states that the purpose of this proposal is to amend NYSE Arca Rules 6.33 and 6.44, in order to restrict an OTP Holder from concurrently registering as both a Market Maker and as a Floor Broker, on NYSE Arca. The Exchange also proposes to revise Rule 6.82(h) to restrict a Lead Market Maker from performing the functions of a Floor Broker. Further, the Exchange proposes to eliminate, in its entirety, Rule 6.38, which deals with restrictions when acting as a Market Maker and Floor Broker.

Presently, OTP Holders may be registered as either a Market Maker or a Floor Broker, or in certain situations, both. An OTP Holder that wished to act in both capacities must apply for and receive approval from the Exchange.[3] The Exchange noted that presently there are no OTP Holders registered in the dual capacity of Market Maker and Floor Broker, nor does the Exchange have any pending applications from existing OTP Holders.

The practice of dual registration dates back to the early days of floor-based, open outcry trading. Open outcry trading was for the most part a manual process, necessitating the need for a large number of Floor Brokers. On occasion, often in periods of unusually active market conditions, there might have been a shortage of brokers on the floor, and in the interest of maintaining a fair and orderly market, Market Makers could be called upon to act as Floor Brokers. Automation has led to a dramatic decrease in open outcry trading and has greatly reduced the reliance on Floor Brokers to execute orders. Because the vast majority of trades on NYSE Arca now occur electronically, the Exchange does not feel there would ever be a shortage of Floor Brokers such that it could be detrimental to efficient order handling, even in times of unusual market activity.

The Exchange proposes establishing new Rule 6.33(b) stating that an OTP Holder registered as a Market Maker on NYSE Arca may not be concurrently registered as a Floor Broker on NYSE Arca. Accordingly, the Exchange also proposes establishing new Rule 6.44(b), stating that an OTP Holder presently registered as a Floor Broker on NYSE Arca cannot be concurrently registered as a Market Maker on NYSE Arca. The Exchange also proposes making non-substantive changes regarding the numbering of existing rules in order to accommodate the new rules.

Pursuant to NYSE Arca Rule 6.82(h)(3), Lead Market Makers (''LMM'') may perform the functions of a Floor Broker. Historically, LMMs might perform the duties of a Floor Broker and represent public customer orders when there was a shortage of Floor Brokers available. As stated above, due to increased automation in the marketplace, the Exchange does not anticipate a shortage of Floor Brokers such that it would necessitate an LMM to have to act as a Floor Broker. As such, the Exchange proposes deleting Rule 6.82(h)(3) in its entirety. The Exchange also proposes deleting Commentary .02 to Rule 6.82 relating to a LMM's handling of public customer orders.

Presently, OTP Holders acting as both Floor Broker and Market Maker are subject to certain restrictions under NYSE Arca Rule 6.38. Upon approval of the above-mentioned rule changes, these restrictions will become obsolete. Since Market Makers will be prohibited from acting as Floor Brokers, and vice-versa, there is no need to have specific restrictions governing their trading activity. Therefore, the Exchange proposes eliminating Rule 6.38 in its entirety.

The Exchange noted that LMMs and InterMarket Linkage Maker Makers (''IMM'') are exempt from certain provisions contained in NYSE Arca Rule 6.38. Currently, LMMs and IMMs may be called upon to send Principal Acting as Agent (''P/A'') Orders through the InterMarket Linkage System (''Linkage'') pursuant to NYSE Arca Rules 6.92 and 6.93. Linkage is a fully automated process on NYSE Arca, and while the IMM or LMM may be acting in an agency capacity, as the responsible party for sending the order, they are not acting in the capacity of a Floor Broker. The Exchange's electronic system automatically routes orders through Linkage, on behalf of the IMM or LMM. Neither the IMM nor LMM has any manual interaction with the system, nor the individual Linkage orders. Eliminating NYSE Arca Rule 6.38 will not affect their ability to carry out any Linkage obligations. Thus, the Exchange proposes to add language to Rule 6.33(b) stating that a prohibition on concurrent registration as both a Market Maker and Floor Broker will not prevent an IMM or LMM from acting in an agency capacity for Linkage purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[4] in general, and furthers the objectives of section 6(b)(5) of the Act[5] in particular, because 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 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 neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

[3] *See* NYSE Arca Rule 6.38(b)(4).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–120 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–2007–120. 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 will also 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–2007–120 and should be submitted by January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23924 Filed 12–10–07; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11120 and #11121]

Indiana Disaster #In–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1732–DR), dated 11/30/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/15/2007 through 08/27/2007.

Effective Date: 11/30/2007.

Physical Loan Application Deadline Date: 01/29/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 09/01/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/30/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Lake.

Contiguous Counties (Economic Injury Loans Only):

Indiana: Jasper, Newton, Porter.

Illinois: Cook, Kankakee, Will.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 111206 and for economic injury is 111210.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 07–6002 Filed 12–10–07; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[PUBLIC NOTICE 6012]

Culturally Significant Objects Imported for Exhibition Determinations: ''The World of 1607''

ACTION: Notice, correction.

SUMMARY: On March 7, 2007, notice was published on page 10289 of the **Federal Register** (volume 72, number 44) of determinations made by the Department of State pertaining to the Exhibit, ''The World of 1607.'' The referenced notice is corrected as to additional objects to be included in the exhibition. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The World of 1607'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Jamestown Settlement, Williamsburg, Virginia, from on or about January 1, 2008, until on or about April 25, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these

Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: December 4, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–23988 Filed 12–10–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–46]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–0181 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–0181.

Petitioner: Solid Edge Aviation, LLC.

Section of 14 CFR Affected: Part 121 appendices I and J.

Description of Relief Sought: To permit Solid Edge Aviation, which is operating under separate parts of the regulations, to cover its safety-sensitive employees under one drug and alcohol testing program.

[FR Doc. E7–23989 Filed 12–10–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Marad 2007 0022]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 11, 2008.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–0284; or E-Mail: *rita.jackson@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: U.S. Merchant Marine Academy Candidate Application for Admission.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0010.

Form Numbers: KP 2–65.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Application for Admission). Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

Need and Use of the Information: The information is necessary to select the best qualified candidates for the U.S. Merchant Marine Academy.

Description of Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Annual Responses: 2,500 responses.

Annual Burden: 12,500 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the

World Wide Web at *http://www.regulations.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Authority: 49 CFR 1.66.

Dated: December 5, 2007.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–24006 Filed 12–10–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–0021]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NAUTI GIRL.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–0021 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 10, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2007–0021. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NAUTI GIRL is:

Intended Use: ''Passenger for hire, sports fishing for fish not sold commercially.''

Geographic Region: ''Wisconsin, Michigan, Minnesota, Ohio, Pennsylvania, New York''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478).

Dated: December 5, 2007.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–23992 Filed 12–10–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–0018]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SIROCCO.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–0018 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 10, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2007–0018. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except

Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SIROCCO is:

Intended Use: ''Sight-seeing and ecotourism excursions, day and overnight trips.''

Geographic Region: ''Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland and their inland tributairies.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478).

Dated: December 5, 2007.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–23999 Filed 12–10–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007 0019]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VIDA C.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007 0019 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 10, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2007 0019. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE, Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VIDA C is:

Intended Use: ''Carrying passengers for hire. A company will hire my boat to carry their crewman/employees to the job site.''

Geographic Region: ''Limited Coastwise in Gulf of Mexico—will operate only on the Gulf Coast.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478).

Dated: December 5, 2007.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–24001 Filed 12–10–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–0020]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WILD THING.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–0020 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver

criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 10, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2007–0020. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WILD THING is:

Intended Use: ''Charter fishing.''

Geographic Region: ''Lower Cook Inlet of Alaska, Gulf of Alaska (North and West of Ivy Point)''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478).

Dated: December 5, 2007.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–23994 Filed 12–10–07; 8:45 am]

BILLING CODE 4910–81–P

Corrections

Federal Register

Vol. 72, No. 237

Tuesday, December 11, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56809; File No. SR–Amex–2007–116]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To Harmonize the Annual Listing Fees for All Exchange Traded Funds

Correction

In notice document E7–22974 beginning on page 66203 in the issue of Tuesday, November 27, 2007, make the following correction:

On page 66205, in the second column, in the third paragraph, in the last line, ''December 17, 2007'' should read ''December 18, 2007''.

[FR Doc. Z7–22974 Filed 12–10–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
December 11, 2007

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800, 2880 and 2920
Update of Linear Right-of-Way Rent Schedule; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2880, and 2920

RIN 1004–AD87

[WO–350–07–1430–PN]

Update of Linear Right-of-Way Rent Schedule

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its right-of-way regulations to update the linear right-of-way rent schedule in 43 CFR parts 2800 and 2880. The rent schedule covers most linear rights-of-way granted under Title V of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and Section 28 of the Mineral Leasing Act of 1920, as amended (MLA). Those laws require the holder of a right-of-way grant to pay annually, in advance, the fair market value to occupy, use, or traverse public lands for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches.

Section 367 of the Energy Policy Act of 2005 (the Act) directs the Secretary of the Interior to update the per acre rent schedule found in 43 CFR 2806.20. The Act requires that the BLM revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way use to reflect current land values in each zone. The Act also requires the Secretary of Agriculture (Forest Service) to make the same revisions for rights-of-way on National Forest System (NFS) lands.

DATES: We will accept comments and suggestions on the proposed rule until February 11, 2008.

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

Mail: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 401 LS, 1849 C St., NW., Attention: AD87, Washington, DC 20240.

Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036.

Federal eRulemaking Portal: *http://www.regulations.gov* for proposed rules. Follow the instructions on this Web site.

FOR FURTHER INFORMATION CONTACT: For information on the substance of the proposed rule, please contact Bil Weigand at (208) 373–3862 or Rick Stamm at (202) 452–5185. For information on procedural matters, please contact Ian Senio at (202) 452–5049. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during business hours. FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at the BLM's Internet home page at www.blm.gov. You may also comment via the Internet to: *http://www.regulations.gov* (Include ''Attn: AD87''). If you submit your comments electronically, please include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Written Comments

Confine written comments on the proposed rule to issues pertinent to the proposed rule and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph of the proposal which you are addressing. The BLM need not consider or include comments in the Administrative Record for the final rule, which it receives after the comment period closes (see **DATES**), or comments delivered to an address other than those listed above (see **ADDRESSES**).

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.

Written comments, including the names, street addresses, and other contact information about respondents, will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Reviewing Comments Submitted by Others

Comments, including names and street addresses of respondents, and other contact information will be available for public review at the address listed under ''**ADDRESSES**: Personal or messenger delivery'' during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Interagency Coordination

The United States Department of Agriculture, Forest Service (FS), will adopt without rulemaking the revisions to the linear right-of-way rent schedule promulgated by BLM through this rulemaking. The rent for a linear right-of-way across NFS lands must be determined in accordance with BLM regulations at 43 CFR 2806.20, as updated through this rulemaking. None of the other sections in 43 CFR subpart 2806 apply to the FS's right-of-way program, and any revisions made to that subpart through this rulemaking do not apply to the FS's right-of-way program.

II. Background

Statutory: Section 367 of the Act, entitled ''Fair Market Value Determinations for Linear Rights-of-Way Across Public Lands and National Forests,'' directs the Secretary of the Interior to: (1) Update 43 CFR 2806.20, which contains the per acre rent schedule for linear rights-of-way; and (2) Revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way uses to reflect current values of land in each zone. The Act also directs the Secretary of Agriculture to adopt the revisions to the linear right-of-way rent schedule.

Advance Notice of Proposed Rulemaking: The BLM published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on April 27, 2006 (see 71 FR 24836). The comment period for the ANPR ended on May 30, 2006. The purpose of the ANPR was to encourage members of the public to provide comments and suggestions to help with updating the BLM's and the FS's rent schedule, as described in the Act. The BLM received ten responses to the ANPR, including comments on six specific questions posed there. The BLM has utilized the comments received from the ANPR extensively in the development of the proposed rule (see discussion of the proposed rule in Section III. below).

Current Linear Rent Schedule: On July 8, 1987, and September 30, 1987, the BLM published regulations establishing rent schedules for linear rights-of-way

granted under Section 28 of the MLA and Title V of FLPMA (52 FR 25818 and 52 FR 36576). The FS uses these same schedules to charge rent for rights-of-way across NFS lands. Therefore, updates to these schedules would also impact the FS and users of NFS lands.

The 1987 rent schedule was developed to set fair market rent, while minimizing the need for individual real estate appraisals for each right-of-way requiring rent payments, as well as to avoid the costs, delays, and unpredictability of the appraisal process in reasonably setting fair market rent.

The 1987 rent schedule defines eight fee zones based on the distribution of average land values by county in Puerto Rico and in each of the states, except Alaska and Hawaii. (The existing rent schedule does not apply to Alaska and Hawaii; the proposed schedule would. Linear right-of-way rental fees in Alaska are currently determined on a case-by-case basis based on local market values. There are no linear rights-of-way in Hawaii currently administered by either the BLM or the FS). Under the 1987 regulations, a county is assigned to one of the eight zone values, based on land values in the county: lower-value counties are assigned lower-numbered zones. The eight zone values are set at $50, $100, $200, $300, $400, $500, $600, and $1,000 per acre. A county's zone value is translated into a per acre zone rent by use of the adjustment formula described below. To calculate the annual right-of-way rental payment, the zone rent is multiplied by the total acreage within the right-of-way. The formula for zone rent is:

Zone rent = (zone value) × (impact adjustment) × (Treasury Security Rate)

The zone value term in the formula is the land value that is established for each of the eight zones. The zone values established in 1987 have not been updated since that time; however, it is generally recognized that land values have increased in most areas over the past 20 years.

The impact adjustment term (or encumbrance factor) in the formula reflects the differences in land-use impacts between: (1) Oil, gas, and other energy-related pipelines, roads, ditches, and canals; and (2) Electrical transmission and distribution lines, telephone lines, and non-energy related pipelines. Energy-related pipelines and roads are considered as having a greater surface disturbance impact on the land, and are adjusted to 80 percent of the zone value. Electrical transmission and distribution lines, phone lines, and non-energy related pipelines with a smaller area of disturbance, are adjusted to 70 percent of the zone value.

The Treasury Security term in the formula reflects a reasonable rate of return to the United States for the use of the land within the right-of-way. The 1987 regulations are based on a rate of return of 6.41 percent for a 1-year Treasury Security.

The zone rent is adjusted annually by the change in the Gross Domestic Product, Implicit Price Deflator index.

BLM Right-of-Way Program and Revenues

The BLM administers 94,500 rights-of-way, of which 65,000 are authorized under the FLPMA and 29,500 are authorized under the MLA. However, only 48,000 are subject to a rental payment. Wyoming and New Mexico together account for slightly more than 30,000 of the rights-of-way subject to rent. The BLM collected over $18 million in right-of-way rental receipts for fiscal year 2006. This total includes receipts from both linear and site-type rights-of-way, and includes any reversals and/or transfers which may have occurred during the fiscal year. Seventy-eight percent of all right-of-way rent receipts were collected by five BLM State Offices. These five State Offices and the revenues collected are listed in Table 1.

TABLE 1.—RIGHT-OF-WAY RENTAL RECEIPTS FOR "TOP FIVE" BLM STATE OFFICES

State office	Total rental receipts (FY 2006)
Nevada	$3,955,955
California	3,255,602
Wyoming	2,987,481
New Mexico	2,569,861
Arizona	1,391,588
Total	14,160,487

Rent receipts from communication uses, which have their own rent schedule, totaled nearly $5 million, while receipts from other site-type rights-of-way, which normally require an appraisal to determine rent, and/or initial ad hoc billings, totaled approximately $7 million.

The BLM collected $6.3 million total rent for 10,859 linear rights-of-ways, but only $5.4 million was determined using the current Per Acre Rent Schedule in fiscal year 2006. Of this amount, only 94 bills (for $12,600) were for rent payment periods less than 1 year, while 4,534 bills (for $4,340,000) were issued for annual rental payment periods. The annual rental bills included 81 bills that were issued for approximately $920,000 for linear rights-of-way located in high value areas. The rent for these bills was generated using a similar methodology as the linear rent schedule, but utilizing higher land values supported by appraisal data (used to develop "unique zones" with annual per acre rent values ranging from $280 to $6,000). The average annual rent bill, including the 81 bills using the "unique zone" values, equaled $957. Another 4,600 bills were issued for $569,750, covering a 5-year rent payment period. The average 5-year bill totaled $124, or less than $25 on an annual basis. A total of $1,210,300 was billed for rent payment periods between 6 and 30 years.

To summarize, in fiscal year 2006 the BLM collected a total of $18 million in right-of-way rent receipts, but of that only $5.4 million was calculated using the current Per Acre Rent Schedule. Another $900,000 was calculated using similar methodology as the Per Acre Rent Schedule, but utilized higher land values (unique zones) supported by appraisal data. In addition, over half of all bills generated for linear right-of-way grants in fiscal year 2006 were for multi-year periods of 5 years or more.

Under the current policy for implementing the 2005 right-of-way regulations (see 70 FR 20969) (hereafter referred to as the 2005 regulations), holders have the option, until January 2009, to pay rent annually, for 5 years, 10 years, or for the term of the grant. The BLM established this policy (see Washington Office Information Bulletin 2006–006) to provide holders a transition period from annual and 5-year billing periods (under the 1987 regulations) to a minimum 10-year billing period under the 2005 regulations. Because the BLM can bill for multi-year periods, except for communication uses, only about 20 to 25 percent of the total grants subject to rent are billed in any given year. The average annual rental bill in 2006, for 4,450 bills issued for linear grants subject to the linear rent schedule, was approximately $773. However, the average rental amount for 4,600 bills that were for a 5-year period was only $124, or less than $25 per year. In comparison, the average annual bill for the 81 authorizations determined by "unique zone" land values was $11,400.

III. Discussion of Proposed Rule

Part 2800 Rights-of-Way Under FLPMA

The BLM is proposing to amend the Per Acre Rent Schedule in its right-of-way regulations at 43 CFR parts 2800 and 2880. The rent schedule covers most linear rights-of-way granted under Title V of FLPMA and Section 28 of the MLA. These laws require the holder of

a right-of-way grant to pay annually, in advance, the fair market value to occupy, use, or traverse public lands for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches.

As mentioned above, the Act directs the Secretary of the Interior to update the per acre rent schedule in the BLM's existing regulations at 43 CFR 2806.20. The Act specifically requires that the BLM revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way use to reflect current land values in each zone. The Per Acre Rent Schedule applies to linear rights-of-way the BLM issues under 43 CFR parts 2800 and 2880. All of these changes are a direct requirement of the statute. So as not to be redundant, we discuss the components and application of the rent schedule primarily in part 2800 and will not repeat those discussions in part 2880. However, we will note any differences in part 2880 that are necessary based upon specific statutory provisions of the MLA.

In addition to revising the Per Acre Rent Schedule, the proposed rule would make minor revisions to parts 2800 and 2880 to bring the existing regulations into compliance with the statutory rent schedule changes discussed above. Finally, there are a number of minor corrections and changes in the proposed rule that are not directly related to the rent schedule.

These proposed changes are limited in scope and address trespass and the new rental payments, land status changes, annual rental payments, phased-in rental increases, and reimbursements of monitoring costs and processing fees. These latter items would correct some existing errors in the current regulations and clarify others. This proposed rule would:

(1) Make clear that the rent exemptions listed in section 2806.14 do not apply if the applicant/holder is in trespass;

(2) Provide that only the Per Acre Rent Schedule will be used to determine rent for linear right-of-way grants, unless the land encumbered by the grant is to be transferred out of Federal ownership;

(3) Provide for an annual rent payment term when the annual rent for non-individuals is $1,000 or more;

(4) Provide for a one-time rent payment for grants and easements when the land encumbered by the grant or easement is to be transferred out of Federal ownership;

(5) Provide for a limited one-time, 2-year phrase-in period for holders of MLA authorizations if they pay rent annually and the payment of the new rental amount would cause the holder undue hardship;

(6) Revise section 2920.6 to require reimbursement of processing and monitoring costs under sections 2804.14 and 2805.16 for applications for leases and permits issued under Title II of FLPMA;

(7) Amend section 2920.8(b) to assess a non-refundable processing fee and monitoring fee under sections 2804.14 and 2805.16 for each request for renewal, transfer, or assignment of a lease or easement;

(8) Amend sections 2805.11(b)(2) and 2885.11(a) so that all grants, except those issued for a term of 3 years or less and those issued in perpetuity under FLPMA, terminate on December 31 of the final year of the grant; and

(9) Amend sections 2805.14(f) and 2885.12(e) to make it clear that you may assign your grant, without the BLM's prior written approval, if your authorization so provides.

Subpart 2805—Terms and Conditions of Grants

The BLM is proposing two minor revisions to two sections in subpart 2805, which addresses the terms and conditions of FLPMA right-of-way authorizations.

Section 2805.11 What does a grant contain?

Current section 2805.11(b)(2) states that all grants, except those issued for a term of less than 1 year and those issued in perpetuity, expire on December 31 of the final year of the grant. The BLM uses the calendar year, not the fiscal year or the anniversary date, as the rental period for grants. Terminating grants on December 31 allows for consistency and ease of administration, because after the initial billing period only full calendar years are included in subsequent billing periods. However, the BLM often issues short-term right-of-way grants for 3 years or less to allow the holder to conduct temporary activities on public land. Current section 2806.23(b) and proposed section 2806.25(c) both explain that the BLM considers the first partial calendar year in the rent payment period to be the first year of the rental term. Therefore, a 3-year grant actually has a term period of 2 years plus the time period remaining in the calendar year of issuance. A 2-year grant has a term period of 1 year plus the time period remaining in the calendar year of issuance. Depending on when the grant is issued, the actual term could be just over 2 years for a 3-year grant and could be just over 1year for a 2-year grant. Under the proposed rule, all grants, except those issued for a term of 3 years or less and those issued in perpetuity, would terminate on December 31 of the final year of the grant. The proposed changes to this section would allow the holder to use short-term grants for the full period of the grant. For example, if a 3-year grant were issued under the proposed rule on October 1, 2008, it would terminate on September 30, 2011, instead of December 31, 2010, under the current rule. If a 2-year grant were issued under the proposed rule on October 1, 2008, it would terminate on September 30, 2010, instead of December 31, 2009, under the current rule. In most cases, the BLM would assess a one-time rental bill for the term of the grant which would lessen any administrative impact which might otherwise result from this revision.

Section 2805.14 What rights does a grant convey?

Current section 2805.14(f) states that you have a right to assign your grant to another, provided that you obtain the BLM's prior written approval. The BLM is proposing to add the phrase ''unless your grant specifically states that such approval is unnecessary'' at the end of this sentence to indicate that BLM's prior written approval may be unnecessary in certain cases. In most cases, assignments would continue to be subject to the BLM's written approval. However, with the proposed change, the BLM could amend existing grants to allow future assignments without the BLM's prior written approval. This may be especially important to the future administration of a grant when the land encumbered by a grant is being transferred out of Federal ownership, and there is a request to convert an existing grant to an easement or a perpetual grant under section 2807.15(c).

Subpart 2806—Rents

Sections 2806.10 through 2806.16 of subpart 2806 contain general rent provisions that apply to grants. No changes are proposed to these general provisions except to section 2806.14.

Section 2806.14 Under what circumstances am I exempt from paying rent?

Current section 2806.14 identifies those circumstances where a holder or facility is exempt from paying rent. None of the current circumstances change under the proposed rule. We have, however, added a provision (proposed section 2806.14(b)) that states that the exemptions in this section do not apply if you are in trespass. The addition of this provision makes it clear that the penalties specified in subpart

2808—Trespass, which includes the assessment of rent for use of the public land, and possible additional penalties which are based upon the rent value, apply to all entities in trespass, even those entities that may otherwise be exempt from paying rent under section 2806.14. This is consistent with how trespass penalties are assessed under current policy, and provides for consistency with similar provisions in subpart 2888—Trespass. Section 2888.10(c) states that the BLM will administer trespass actions for MLA grants and temporary use permits (TUPs) as set forth in section 2808.10(c) and section 2808.11, except that the rental exemption provisions of part 2800 do not apply to grants issued under part 2880. Adding a new provision at section 2806.14(b) makes it clear that the rental exemption provisions do not apply to trespass situations covered under subpart 2808, as they likewise do not apply to trespass situations covered under subpart 2888. The proposed rule would remove the phrase ''except that the rental exemption provisions of part 2800 (section 2806.14) do not apply to grants issued under this part'' from section 2888.10(c), because the cross reference is no longer necessary (see preamble discussion for proposed section 2888.10(c)).

Section 2806.20 What is the rent for a linear right-of-way grant?

This section explains that the BLM will use the Per Acre Rent Schedule, except as described in section 2806.26, to calculate rent for linear right-of-way grants. The per acre rent from the schedule (for all types of linear right-of-way facilities regardless of the granting authority, e.g., FLPMA, MLA, and their predecessors) is the product of three factors: The per acre zone value multiplied by the encumbrance factor multiplied by the rate of return. The following discussion explains how the BLM adjusted these factors in the current Per Acre Rent Schedule to arrive at the Per Acre Rent Schedule in the proposed rule, including the determination of per acre land values by county, as directed by the Act.

Use of a Schedule

Section 367 of the Act directs the Secretary of the Interior to ''revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone.'' Therefore, the proposed rule retains the use of a schedule and no alternative rental fee options are considered.

County Land Values—Use of Published Data

In the 1987 rent schedule, the average per acre land value for each county was based upon a review of the typical per acre value for the types of lands that the BLM and the FS had allocated to various utility and right-of-way facilities. These values were mapped, reviewed, and adjusted, resulting in the placement of each county (except Coconino County, Arizona, which was split by the Colorado River) in one of eight zones ranging in value from $50 to $1,000 per acre.

In the ANPR, the BLM requested comments regarding what available published information, statistical data, or reports the BLM should use to update the current linear right-of-way rental fee zone values. The BLM stated in the ANPR that it was considering using existing published information or statistical data for updating the rent schedule, such as information published by the National Agricultural Statistics Service (NASS). The NASS publishes two reports:

(1) The Census of Agriculture published every 5 years (NASS Census); and

(2) The annual Land Values and Cash Rents Summary (Annual Report).

The NASS Census includes average per acre land and building values by county, or other geographical areas, for each state. The land values are reported for cropland, woodland, permanent pasture, and rangeland and include non-commercial, non-residential buildings. The NASS data in the Annual Report includes average per acre values for cropland, pastureland, and farm real estate, but only on a statewide basis, and not on a countywide basis. Another shortcoming of the Annual Report is the absence of any data for Alaska, Hawaii, and Puerto Rico. You can find more detailed information about these two reports at the NASS Web site at: *http://www.nass.usda.gov/index.asp*.

The BLM received four comments in response to our request in the ANPR for comment on the use of available published information. One commenter said that the NASS data is appropriate. Two commenters recommended using the NASS Census of Agriculture (5-year census) for county-level data. One commenter stated that the NASS data seems appropriate for updating the schedule, so long as agricultural uses are not reflected in the land values used.

The BLM agrees with the commenters that support the use of the NASS Census data to determine the average per acre value for each county. The proposed rule uses the NASS data. The NASS publishes average per acre land and building values, by state and county, each 5 year period in its NASS Census report. The most recent county values are from the 2002 NASS Census, which was published in June 2004. The next NASS Census report will provide 2007 data, and it is due to be published in June 2009.

Other Federal and state agencies regularly use the NASS Census data when it is necessary to obtain average per acre land value for a particular state or county. In addition, Congress specifically endorsed the use of this data for rental determination purposes when it passed the ''National Forest Organizational Camp Fee Improvement Act of 2003'' (Pub. L. 108–7) (16 U.S.C. 6232). This law established a formula for determining rent for organizational camps located on NFS lands by applying a 5 percent rate of return to the average per acre land and building value, by state and county, as reported in the most recent NASS Census. That law also provides for a process to update the per acre land values annually based on the change in per acre land value, by county, from one census period to another. The law does not mandate the use of zones or a schedule, which eliminates the need for an annual index adjustment to keep the schedule or zones current. However, the range between the high and low county values which results from using the components mandated under Public Law 108–7, including the use of a 100 percent encumbrance factor, is significantly greater than the range between the high and low zone values which result from using the components established under this proposed rule. Thus, there is potential for significantly higher per acre rental amounts when using only the county land per acre value approach as compared to the per acre rental amounts generated using the zone value approach proposed in this rule.

The BLM also requested in the ANPR comments regarding whether the proposed Per Acre Rent Schedule should split some states and counties into more than one zone and whether the schedule should apply to Alaska. The BLM received three comments regarding whether some counties should be split into more than one zone. One commenter said that any consideration of splitting states or counties into more than one zone should involve discussions with stakeholders. One commenter said that zones smaller than a single county may lead to undue administrative burden for the BLM (establishing boundaries and collecting data). For very high-valued lands, rent

could be based on 25 percent of the assessed value, according to one commenter. Alternatively, high-valued BLM lands could be sold or exchanged. One commenter said that wide variations in land values within a state or county may require applying the zone methodology at the sub-state or sub-county level. Regarding whether the Per Acre Rent Schedule should apply to Alaska, one commenter stated that the new linear right-of-way rent schedule should apply to public and NFS lands in Alaska if similar published data for land values is available for Alaska as for the lower 48 states and the data produces a reasonable per acre rental value.

In this proposed rule, the BLM does not split any county into more than one zone because there is no published data, easily obtainable, that would support making such a split. However, we do propose that the schedule apply to Alaska since the NASS Census does include average per acre land and building values for five Alaska areas: Fairbanks; Anchorage; Kenai Peninsula; Aleutian Islands; and Juneau. This data does produce a reasonable per acre rental value and is comparable to the per acre rent values from contracted appraisals and/or local rent schedules now in effect in some BLM and FS offices. The NASS Census data does not define the actual boundaries for the five areas, and therefore we specifically ask for comments to assist the BLM and the FS in determining and identifying the on-the-ground area to be included in each of the five Alaska areas in the NASS Census. For example, the NASS Census average per acre land value for the Fairbanks ''area'' could be used for all public lands administered by the BLM Fairbanks District Office; and the NASS Census average per acre land value for the Anchorage ''area'' could apply to all public lands administered by the BLM Anchorage District Office, and so forth. Another approach, which the BLM and the FS prefer, would be to identify specific geographic or management areas and apply the most appropriate per acre land value from the five Alaska NASS Census areas to the BLM/FS identified geographic or management areas based on similar landscapes and/or similar average per acre land values. Under this approach, the FS plans to use the NASS census data for the Kenai Peninsula for all NFS lands in Alaska, except for NFS lands located in the Anchorage and Juneau areas. For NFS lands located in the Municipality of Anchorage, the NASS census data for the Anchorage area would apply. For NFS lands in the downtown Juneau area (Juneau voting precincts 1, 2, and 3), the NASS census data for the Juneau area would apply.

Puerto Rico, which has no public lands administered by the BLM, is not divided into counties. However, the NASS publishes average farmland values for the entire Commonwealth of Puerto Rico. The FS plans to use the NASS average farmland values ($5,866 per acre in 2002) for linear right-of-way authorizations located on NFS lands in Puerto Rico.

Per Acre Zone Values

The 1987 linear rent schedule contains eight separate zones representing average per acre land value from $50 per acre to $1,000 per acre. The schedule contains two zones with a $50 range, five zones with a $100 range, and one zone with a $400 range. All the counties in the 48 contiguous states, except one and Puerto Rico, are in one of the eight zones based on their estimated average per acre land value. The lone exception, as mentioned above, is Coconino County, Arizona, where the area north of the Colorado River is in one zone, and the area south of the river is in a different zone.

In the ANPR, the BLM requested comments regarding the appropriate number of rental zones for the revised rent schedule, and received three comments. One commenter said that the number of zones (8) in the current schedule is sufficient. Two commenters said that the number of zones should not be changed, unless the NASS Census data indicates the need for a change.

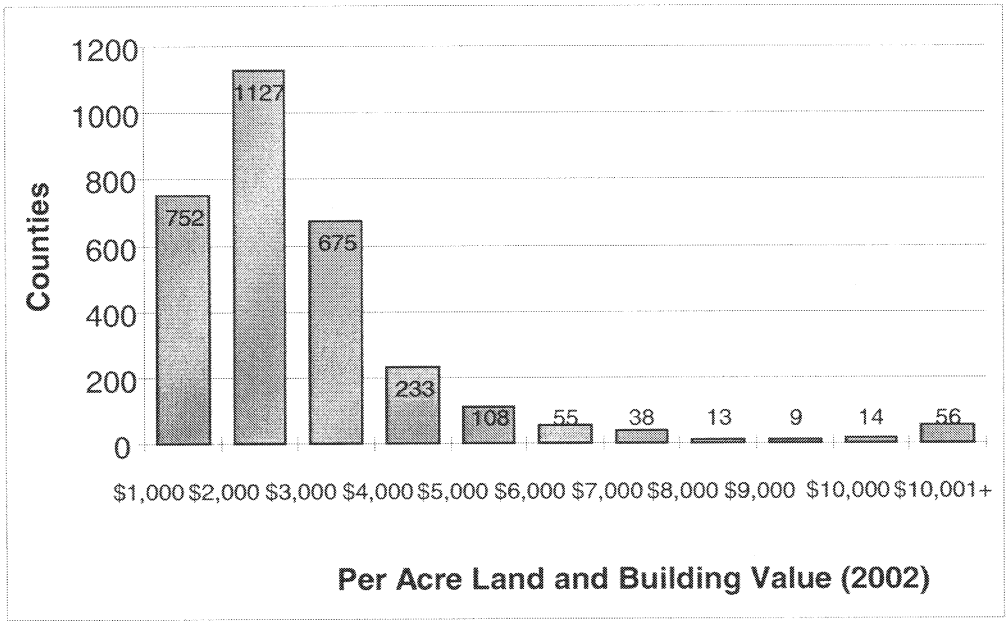
In the proposed rule, the number of zones has been increased from the current 8 to 12, in order to accommodate the range of 3,080 county land values contained in the NASS Census. For the same reason, it was necessary to increase the dollar value per zone. In the 2002 NASS Census, the county land and building per acre value ranged from a low of $75 to a high of $98,954. To accommodate such a wide range in average per acre land values, the BLM proposes two zones with $250 increments, three zones with $500 increments, one zone with a $1,000 increment, one zone with a $2,000 increment, one zone with a $5,000 increment, two zones with $10,000 increments, one zone with a $20,000 increment, and one zone with a $50,000 increment (see Table 2—Zone Thresholds).

TABLE 2.—ZONE THRESHOLDS

Zone	2002 County land and building value
Zone 1	$1 to $250.
Zone 2	$251 to $500.
Zone 3	$501 to $1,000.
Zone 4	$1,001 to $1,500.
Zone 5	$1,501 to $2,000.
Zone 6	$2,001 to $3,000.
Zone 7	$3,001 to $5,000.
Zone 8	$5,001 to $10,000.
Zone 9	$10,001 to $20,000.
Zone 10	$20,001 to $30,000.
Zone 11	$30,001 to $50,000.
Zone 12	$50,001 to $100,000.

The proposed zones accommodate the per acre land and building values of 100 percent of the total number of counties in the 2002 NASS Census (see Table 3). As land values increase or decrease, it may be necessary to adjust either the number of zones and/or the dollar value per zone. The proposed rule would allow adjustments to the number of zones and/or the dollar value per zone after every other NASS Census is published (once each ten-year period). The adjustments must accommodate 100 percent of the county per acre land and building values reflected in the 5-Year Census. The BLM, specifically asks for comments on whether 100 percent of the counties should be covered by the per acre rent schedule. Only 14 of the 3,080 counties have per acre land values in excess of $30,000. If Zones 11 and 12 were deleted from the per acre rent schedule, the 14 counties with per acre land values in excess of $30,000 would be included in Zone 10 for purposes of calculating rent for any rights-of-way located in these counties. The use of zones in this manner would then serve as a rental ''cap'' for any rights-of-way located in a county with per acre land values statistically outside of the norm. However, it would also significantly limit the dollar amount of the one-time payment for perpetual right-of-way grants under proposed sections 2806.25(c) and 2885.22(b), and may not achieve the objectives of the Act to ''revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way uses to reflect current value of land in each zone.''

Table 3 – Distribution of U.S. Counties by 2002 Per Acre Land and Building Value



The 2002 NASS Census per acre land and building value for each county (or similar area) and the corresponding zone number in the Per Acre Rent Schedule are listed for informational purposes at the end of this proposed rule. Most of the areas subject to the proposed Per Acre Rent Schedule are called ''counties.'' Exceptions include Alaska ''areas,'' the ''Commonwealth'' of Puerto Rico, and Louisiana ''parishes.'' To make the terminology uniform in this proposed rule, all such areas are referred to as counties.

Encumbrance Factor

The BLM is proposing an encumbrance factor (EF) of 50 percent for all types of linear right-of-way facilities. This is a change from the current rule where the EF for roads and energy related pipelines and other facilities is 80 percent and the EF for telephone and electrical transmission facilities is 70 percent. This change is the result of public comments on the ANPR, a review of industry practices in the private sector, and a review of the Department of the Interior (DOI) appraisal methodology for right-of-way facilities located on Federal lands.

The EF is a measure of the degree that a particular type of facility encumbers the right-of-way area and/or excludes other types of land uses. If the EF is 100 percent, the right-of-way facility (and its operation) is encumbering the right-of-way area to the exclusion of all other uses. The land use rent for such a facility would be calculated on the full value of the subject land (annual rent = full value of land × rate of return). If the EF is 40 percent, the right-of-way facility (and its operation) is only partially encumbering the right-of-way area so that other uses could theoretically co-exist alongside the right-of-way facility. The land use rent for such a facility would be calculated on only 40 percent of the full value of the subject land (annual rent = full value of land × 40 percent × by rate of return).

Two comments received on this topic suggested that an EF could be as low as 10–15 percent if the right-of-way facility is located on undevelopable terrain; a 25 percent EF be used for a transmission line that does not impact development of land (''set-back areas''); a 50 percent EF be used if development is restricted, but not prohibited, or if other land uses are still possible; and a 70 percent EF be used if development or other uses are severely restricted. Another commenter stated that the EF should be lowered to 25–50 percent for power lines because in the private sector, an electrical utility typically makes a one-time payment of 50 percent fair market land value for a perpetual easement, allowing other use(s) within the corridor as long as the use(s) do not interfere with the power line. The commenter also stated that most of the uses that the BLM authorizes can also be conducted within a power line corridor without interfering with the power line and without restricting the additional use. One commenter encouraged BLM to use a lower EF than 70 percent, based on common real estate practice relating to utility easements. The commenter stated that when utilities negotiate the purchase price for easements on private land, they typically apply a factor of 50 percent or less to the fee simple value of the land involved, to reflect that the utility easement is less than fee ownership and has a reduced impact. This commenter further stated that the BLM should use a 50 percent or lower encumbrance (Impact Adjustment) factor and should allow a right-of-way applicant to demonstrate that an even lower impact factor should apply.

The BLM reviewed several appraisal reports (prepared by the DOI's Appraisal Services Directorate) for right-of-way facilities located on Federal lands which showed an EF ranging from 25 percent (for buried telephone lines) to 100 percent (for major oil pipelines and electrical transmission lines). The BLM also reviewed one appraisal report that was prepared by a contractor for the BLM. The contractor did an independent solicitation of industry practices regarding this factor and again found anecdotal evidence that EFs vary from 25 percent to 100 percent, with 50 to 75 percent being the most common. One holder provided anecdotal evidence that its company typically used a 40 percent EF for buried facilities and a 60 percent EF for above ground facilities when negotiating land use rental terms for its facilities across private lands. One holder contracted with a private appraisal firm to determine an appropriate EF for a major

pipeline and found that a 75 percent EF is fairly typical for major projects. Finally, our review showed that many state and Federal agencies have established an EF by statute or by policy, usually in the 70 percent to 100 percent range.

The BLM recognizes that the EF is closely related to the type of right-of-way facility authorized, as well as how it is operated and administered. However, to assign a specific EF for each type of facility, or type of terrain, would be counter-productive to the purpose of using a schedule in the first place, i.e., for administrative simplicity and the cost savings that a schedule provides to both the BLM and the applicant/holder in determining rent for right-of-way facilities on public lands. In determining an appropriate EF, consideration should be given to the fact that the BLM grants rights-of-way for a specified term, usually 20 to 30 years. The rights granted are subject to provisions for renewal, relinquishment, abandonment, termination, or modification during the term of the grant. The EF should also recognize that the grants issued for right-of-way facilities are non-exclusive, i.e., the BLM reserves the right to authorize other uses within a right-of-way area, as long as the uses are compatible. Given these considerations, and the research and analysis cited above, along with consideration of public comments, the BLM has determined that a 50 percent EF (in both the current and proposed per acre linear rent schedule, the EF is and would be applied to the upper limit of each zone value) is a reasonable and appropriate component for use in the rent formula for linear right-of-way facilities located on public lands. The BLM welcomes any additional comments regarding the proposed use of a 50 percent EF, especially since this is a significant reduction from the 80 percent and 70 percent EFs used in the current per acre rent schedule.

Rate of Return

The rate of return component used in the Per Acre Rent Schedule reflects the relationship of income to property value, as modified by any adjustments to property value, such as the EF discussed above. The BLM reviewed a number of appraisal reports that indicated that the rate of return for the land can vary from 7 to 12 percent, and is typically around 10 percent. These rates take into account certain risk considerations, i.e., the possibility of not receiving or losing future income benefits, and do not normally include an allowance for inflation. However, a holder seeking a right-of-way from the BLM must show that it is financially able to construct and operate the facility. In addition, the BLM can require surety or performance bonds from the holder to ensure compliance with the terms and conditions of the authorization, including any rental obligations. This reduces the risk and should allow the BLM to utilize a ''safe rate,'' e.g., the prevailing rate on insured savings accounts or guaranteed government securities that include an allowance for inflation.

The rate of return for the current rent schedule is 6.41 percent, which was the 1-year Treasury Securities ''Constant Maturity'' rate for June 30, 1986. Two commenters stated that this rate of return is an acceptable rate of return for right-of-way uses on public lands. Another commenter stated that the Treasury-bill (T-bill) rate of 6.41 percent in the current rent schedule is not unreasonably high given current T-bill rates around 5 percent. This commenter also stated that an annual adjustment of the T-bill rate would lead to uncertainty in rental fees, which would have a negative impact on utilities and customers, and duplicates the changes reflected in the Gross Domestic Product (GDP) index. Land values tend to move opposite to the T-bill rate, so including this update in the formula would lead to overly-large rental rates. According to this commenter, a better approach would be to use the 10-year average of the 1-year T-bill rates. Three commenters supported updating the rate of return annually, using some multi-year average of the 1-year T-bill rates. The commenters said that this approach would provide for a current rate of return, while avoiding abrupt changes.

Given the above considerations, the BLM has determined that an initial rate of return based on the 10-year average of the U.S. 30-year Treasury bond yield rate would be reasonable since most right-of-way authorizations are issued for a term of 30 years. The ''initial'' rate would be effective for a 10-year period, and then would adjust automatically to the then existing 10-year average of the U.S. 30-year Treasury bond yield rate. This method of establishing the rate of return eliminates a ''one-point-in-time'' high or low rate with a rate that reflects an average over the preceding decade. The proposed rule would allow for use of the 10-year average of the U.S. 20-year Treasury bond yield rate if the 30-year U.S. Treasury bond yield rate is not available. The BLM welcomes any comments regarding the method that we propose to establish the initial rate of return and how we propose to update it each 10-year period.

2002 (Base Year) Per Acre Rent Schedule

Based upon the above discussion, the Per Acre Rent Schedule for the base year, calendar year 2002, is shown in Table 4:

TABLE 4.—2002 PER ACRE RENT SCHEDULE

County zone number and per acre zone value	Encumbrance factor (percent)	Initial rate of return—10-year average—30-year T-Bond (1992–2001) (percent)	Per acre rent for all types of linear right-of-way facilities issued under either FLPMA or MLA or their predecessors. To be adjusted annually for changes in the Consumer Price Index for All Urban Consumers (CPI–U)
Zone 1 $250	50	6.47	$8.09
Zone 2 $500	50	6.47	$16.18
Zone 3 $1,000	50	6.47	$32.35
Zone 4 $1,500	50	6.47	$48.53
Zone 5 $2,000	50	6.47	$64.70
Zone 6 $3,000	50	6.47	$97.05

TABLE 4.—2002 PER ACRE RENT SCHEDULE—Continued

County zone number and per acre zone value	Encumbrance factor (percent)	Initial rate of return—10-year average—30-year T-Bond (1992–2001) (percent)	Per acre rent for all types of linear right-of-way facilities issued under either FLPMA or MLA or their predecessors. To be adjusted annually for changes in the Consumer Price Index for All Urban Consumers (CPI–U)
Zone 7 $5,000	50	6.47	$161.75
Zone 8 $10,000	50	6.47	$323.50
Zone 9 $20,000	50	6.47	$647.00
Zone 10 $30,000	50	6.47	$970.50
Zone 11 $50,000	50	6.47	$1,617.50
Zone 12 $100,000	50	6.47	$3,235.00

As discussed above, the most recent NASS Census data available is for calendar year 2002 and that data is therefore used to develop the initial or base Per Acre Rent Schedule. Proposed section 2806.20 explains that the base 2002 Per Acre Rent Schedule would be adjusted annually in accordance with section 2806.22(a) and that it would be revised in accordance with sections 2806.22(b) and (c) at the end of each 10-year period starting with the base year of 2002. These adjustments to the 2002 Per Acre Rent Schedule, as well as the proposed Per Acre Rent Schedule for 2007 are discussed below. Section 2806.20 further explains that counties (or other geographical areas) would be assigned to an appropriate zone in accordance with section 2806.21. Finally, section 2806.20 explains that you may obtain a copy of the current Per Acre Rent Schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov.* Because current schedules are easily available, the BLM does not intend to publish an updated Per Acre Rent Schedule each year in the **Federal Register**.

Section 2806.21 When and how are counties or other geographical areas assigned to a County Zone Number and Per Acre Zone Value?

This section explains that counties (or other geographical areas) would be assigned to a county zone number and per acre zone value in the Per Acre Rent Schedule based upon their average per acre land and building value published in the Census of Agriculture by the NASS. The initial assignment of counties to the zones in the base year (2002) Per Acre Rent Schedule is based on data contained in the most recent NASS Census (2002). For example, San Juan County, New Mexico, has a 2002 NASS Census average per acre land and building value of $324. Since this amount falls between $251 and $500, San Juan County is assigned to Zone 2 on the Per Acre Rent Schedule. The 2002 NASS Census per acre land and building value for each county and the corresponding zone number in the Per Acre Rent Schedule are listed for informational purposes at the end of this proposed rule.

This proposed section further explains that subsequent assignments of counties would occur every 5 years following the publication of the NASS Census. The next scheduled NASS Census will be for calendar year 2007, but the data will not be published until June 2009. If the average per acre land and building value of San Juan County stays between $251 and $500 in the 2007 NASS Census, San Juan County would remain in Zone 2 on the Per Acre Rent Schedule. However, if the average per acre land and building value were to drop to $240, San Juan County would be reassigned to Zone 1 on the Per Acre Rent Schedule used for calendar year 2010. Likewise, if the average per acre land and building value were to increase to $540, San Juan County would be reassigned to Zone 3 on the Per Acre Rent Schedule used for calendar year 2010.

Section 2806.22 When and how does the Per Acre Rent Schedule change?

This section explains that the BLM would adjust the per acre rent in section 2806.20 for all types of linear right-of-way facilities in each zone each calendar year based on the difference in the U.S. Department of Labor CPI–U, from January of one year to January of the following year.

The annual price index component used in the Per Acre Rent Schedule allows the rent per acre amount to stay current with inflationary or deflationary trends. If the rent schedule were not based on the ''zone'' concept, where county per acre land values were placed into a corresponding zone value, the price index adjustment would not be necessary, assuming the county per acre land values were kept current. However, since the Act directs the BLM to ''revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way use to reflect current values of land in each zone,'' the proposed rule retains the zone concept as well as the annual price index adjustment.

The current Per Acre Rent Schedule is adjusted annually by the change in the Implicit Price Deflator, Gross Domestic Product index (IDP–GDP) from the second quarter to the second quarter. From the initial rent schedule in 1987 to the rent schedule for 2007, the change in the IPD–GDP index increased the rent per acre amounts by 62.2 percent. In comparison, the CPI–U index increased 85.8 percent for the same period. Because the growth rate for the IDP–GDP is generally less than that for the CPI–U, one ANPR commenter suggested using half of the CPI–U index rather than the current 100 percent of the IDP–GDP as the CPI–U is more easily available. The commenter said that halving the CPI–U number is in line with the lesser IDP–GDP and allows for a normalization of the annual index adjustment while still allowing for increases with inflation.

Two ANPR commenters stated that the payment due date (January 1) comes less than one month after the payment

amount is announced in December. The commenters recommended using an earlier-published index than the current one (July of each year). Another commenter stated that the IDP–GDP is reported as a national number only and does not reflect any potential regional changes in the price level. As such, the Consumer Price Index may offer an alternative index to that of using the IDP–GDP.

When in 1995 the BLM and the FS finalized the rent schedule for communication uses and facilities located on public and NFS lands, the agencies chose to use the CPI–U as the annual index to keep the per acre rental amounts current with inflationary and deflationary trends. The CPI–U was chosen because it is the most common index used by economists and the Federal Government to reflect inflationary and deflationary trends in the economy as a whole; it is the most recognizable and familiar index to the American consumer; and it can be easily obtained from published sources by both Federal agencies and the American public. For these reasons, the BLM has chosen to use the difference in the CPI–U, from January of one year to January of the following year, as the annual price index for the Per Acre Rent Schedule in the proposed rule. In addition to being a reasonable index, using the difference in the CPI–U, from January of one year to January of the following year (instead of from July of one year to July of the following year), would provide nearly a full year's notification to holders of the change in the annual index and the impact that the change might have on the following year's rental amount. Table 5 shows the Per Acre Rent Schedules for the years 2002 through 2007, using the CPI–U index (Note: Rent paid for years 2002—2007 under the current schedule would not be recalculated using the rates in Table 5).

TABLE 5.—2002–2007 PER ACRE RENT SCHEDULES

County zone number and per acre zone value	2002 Per acre rent (base year)	2003 Per acre rent (1.1 percent CPI–U Increase from January 2001 to January 2002)	2004 Per acre rent (2.6 percent CPI–U Increase from January 2002 to January 2003)	2005 Per acre rent (1.9 percent CPI–U Increase from January 2003 to January 2004)	2006 Per acre rent (3.0 percent CPI–U Increase from January 2004 to January 2005)	2007 Per acre rent (4.0 percent CPI–U Increase from January 2005 to January 2006)
Zone 1—$250	$8.09	$8.18	$8.39	$8.55	$8.80	$9.16
Zone 2—$500	16.18	16.35	16.78	17.10	17.61	18.31
Zone 3—$1,000	32.35	32.71	33.56	34.19	35.22	36.63
Zone 4—$1,500	48.53	49.06	50.33	51.29	52.83	54.94
Zone 5—$2,000	64.70	65.41	67.11	68.39	70.44	73.26
Zone 6—$3,000	97.05	98.12	100.67	102.58	105.66	109.89
Zone 7—$5,000	161.75	163.53	167.78	170.97	176.10	183.14
Zone 8—$10,000	323.50	327.06	335.56	341.94	352.20	366.28
Zone 9—$20,000	647.00	654.12	671.12	683.88	704.39	732.57
Zone 10—$30,000	970.50	981.18	1,006.69	1,025.81	1,056.59	1,098.85
Zone 11—$50,000	1,617.50	1,635.29	1,677.81	1,709.69	1,760.98	1,831.42
Zone 12—$100,000	3,235.00	3,270.59	3,355.62	3,419.38	3,521.96	3,662.84

Table 5 displays the per acre rent values for each county zone for the 2002 base year and each subsequent year after application of the annual index. The annual index adjustments would continue until the Per Acre Rent Schedule is revised under paragraph (b) of this section. The per acre rent values would then be recalculated based on the revised zone values and rate of return, but maintaining the 50 percent EF. The annual index adjustments would then continue on an annual basis until the next potential revision to the Per Acre Rent Schedule 10 years later. In the event that the NASS Census stops being published, or is otherwise unavailable, then the only changes to the rent schedule would be the annual index adjustment and the revision of the rate of return under paragraph (c) of this section.

Section 2806.22 also explains that the BLM would review the NASS Census data from the 2012 NASS Census, and each subsequent 10-year period, and if appropriate, revise the number of county zones and the per acre zone value. Any revision must include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and must reasonably reflect their average per acre land and building values contained in the NASS Census. The BLM may revise the number of zones and the per acre zone value in the 2002 base Per Acre Rent Schedule (section 2806.20(a)) following the publication of the 2012 NASS Census. Since the 2012 NASS Census data will not be available until early 2014, based on current timeframes, any revision would be applicable for the calendar year 2015 rent schedule. In the event that the NASS Census data becomes available in mid-year 2013, the revisions could be applicable for the calendar year 2014 Per Acre Rent Schedule. However, this is unlikely due to the extensive data verification process that is undertaken by NASS. Although the NASS Census occurs each 5-year period, the revision to the number of zones and the per acre zone value will occur each 10-year period after publication of the NASS Census in 2012, 2022, 2032, and so forth. Based on historic trends in average per acre land values, the BLM does not foresee that it would be necessary to revise the Per Acre Rent Schedule after each NASS Census period; the BLM finds, however, that it would likely be necessary to revise the Per Acre Rent Schedule after every other NASS Census period (each 10-year period) in order to keep the schedule current with existing per acre land values.

This section further explains that the BLM would revise the Per Acre Rent Schedule at the end of calendar year 2011 and at the end of each 10-year period thereafter to reflect the average rate of return for the preceding 10-year period for the 30-year Treasury bond (or the 20-year Treasury bond if the 30-year Treasury bond is not available). The initial rate of return for the 2002 base rent schedule is 6.47 percent, which is the average 30-year Treasury bond yield

rate for the 10-year period from 1992 through 2001. The subsequent rate of return would be determined by the average 30-year Treasury bond yield rate for the 10-year period from 2002 through 2011 and would apply to the updated rent schedule for calendar year 2013.

The adjustments provided by this section would keep the Per Acre Rent Schedule current relative to average per acre land value as directed by the Act. In addition, since the adjustments would be based on easily accessible public information, the changes should not be either burdensome to administer or surprising in their outcome.

Section 2806.23 How will BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

Proposed sections 2806.23(a) and (b) are similar to and replace current sections 2806.22(a) and (b), respectively. Proposed section 2806.23(a) explains that (except as provided by sections 2806.25 and 2806.26) the BLM calculates rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way area that fall in each zone and multiplying the result by the number of years in the rental period. The proposed rent calculation methodology is identical to the current rent calculation methodology; only the components of the formula (average per acre land value; county zones; the EF; and rate of return) would be revised. For example, an existing pipeline right-of-way in New Mexico occupies 0.74 acres of public land in Chaves County and 4.8 acres of public land in Eddy County. The 2002 NASS Census indicates that the average per acre land and building value for Chaves County is $212 (Zone 1 on the Per Acre Rent Schedule) and $255 for Eddy County (or Zone 2 on the Per Acre Rent Schedule). The per acre rent value for calendar year 2007 for Zone 1 is 9.16 and for Zone 2 it is $18.31. The 2007 annual rent for the portion of the right-of-way in Zone 1 (Chaves County) is $7.33 (0.74 acres (rounded up to 0.8 acres) multiplied by $9.16 = $7.33). The 2007 annual rent for the portion of the right-of-way in Zone 2 (Eddy County) is $87.89 (4.8 acres multiplied by $18.31 = $87.89). The total 2007 rent for the entire grant would be $95.22. If the holder is not an individual, given that the annual rent is $1,000 or less, the holder has the option to pay for the entire remaining term of the grant, or to pay rent at 10-year intervals, not to exceed the term of the grant (see section 2806.24).

Lastly, this section explains that if the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

Section 2806.24 How must I make rental payments for a linear grant?

Proposed section 2806.24(a) explains that for linear grants, except those issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the total rent amount for the entire term of the grant or any remaining years.

(2) *Multiple payments.* If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not 15 years.

(ii) *Payments by all others.* If your annual rent is $1,000 or less, you must pay rent at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $1,000, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

Proposed section 2806.24(a) would replace the rent payment options in current section 2806.23(a). Currently, only individual grant-holders with annual rent in excess of $100 have the option to pay their rent annually or at multi-year intervals of their choice. All other grant holders must pay a one-time rent payment for the term of the grant or pay rent at 10-year intervals not to exceed the term of the grant. These provisions were incorporated in the 2005 regulations to help reduce or eliminate costs associated with the billing and collection of annual rent to both the BLM and the holder. However, many holders have pointed out since implementation of these provisions that making rent payments, especially for existing grants, for 10 to 30-year terms (100 years for grants issued in perpetuity) can be an extreme financial hardship, especially for small business entities operating on limited annual budgets.

For FLPMA authorizations, the BLM has some ability to address these issues under the ''undue hardship'' provisions in current section 2806.15(c), but this process can be burdensome on the holders, requires approval of the appropriate BLM State Director, and is not available to holders of MLA authorizations. Several holders of MLA authorizations pointed out that the annual rent payment for some of their grants exceed $10,000, and in at least one case, the annual rent is in excess of $100,000, which would require them to make minimum rent payments between $100,000 and $1,000,000 for a 10-year rental payment period. These holders have suggested that corporations and business entities be given rent payment options similar to those of individuals, except with a higher annual rental threshold of $500 or $1,000, instead of the $100 threshold available to individual holders.

Three commenters on the ANPR said they supported flexible term-payment schedules (annual payments, 5-year payments, 10-year payments) for all authorizations, especially those with annual rent greater than $500. Several commenters said that the BLM should include a 3 to 6 year phase-in period, along with more flexible rent payment periods, in order to provide relief from a large or unexpected increase in individual rental payments.

In response to the holders' concerns with the BLM's existing limited rent payment options, as well as possible concerns of higher rental payments from revision of the current Per Acre Rent Schedule, the BLM is proposing more flexible rent payment options, in addition to the phase-in provisions discussed above. Under the proposed rule, the holder retains the option to pay rent for the entire term of the grant, except for grants issued in perpetuity. No changes in rent payment options are proposed for those holders who are considered ''individuals'' with the exception that if the annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. The proposed rule would eliminate the options for individuals with annual rent greater than $100 to pay at multiple-year intervals of their choice. An ''individual'' does not include any business entity, e.g., partnerships, corporations, associations, or any similar business arrangements. However, the BLM agrees that ''non-individuals'' need to have more flexible rent payment options, especially for those holders whose annual rent payment is in excess of $1,000. Under this proposal, when this threshold is met, the holder has the option to pay its rent on an annual basis, or at 10-year intervals, not to exceed the term of the

grant. For example, the holder of a 25-year grant (a grant issued on May 25, 2005, for a 25-year period would expire on December 31, 2029) whose annual rent is $2,000 would have the option upon grant issuance to make annual payments of $2,000 plus annual index adjustments (the initial rent period could be for a 7-month period or a rent payment of $1,166.67). The holder could also choose to make a payment in advance for 10 years (total payment of $19,166.67 (9 years + 7 months); for 20 years (total payment of $39,167 (19 years + 7 months); or for the entire 25 years (total payment of $49,166.67 (24 years + 7 months), but not for any other multi-year period. If the holder's annual rent is $1,000 or less, the holder (non-individual) would pay rent at 10-year intervals, not to exceed the term of the grant.

Proposed section 2806.24(b) explains that for linear grants issued in perpetuity (except as noted in sections 2806.25 and 2806.26), you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *Payments by individuals*. If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed 30 years. Under this provision, you would have the option to pay for a 10-year term, a 20-year term, or a 30-year term. No other terms would be available. If your annual rent is greater than $100, you may pay annually or at 10-year intervals (10-year term, 20-year term, or 30-year term), not to exceed 30 years. Again, no other terms would be available.

(2) *Payments by all others*. If your annual rent is $1,000 or less, you must pay rent at 10-year intervals, not to exceed 30 years. Under this section, you would have the option to pay for a 10-year term, a 20-year term, or a 30-year term. No other terms would be available. If your annual rent is greater than $1,000, you may pay annually or at 10-year intervals (10-year term, 20-year term, or 30-year term), not to exceed 30 years. No other terms would be available.

Proposed section 2806.24(b) would replace current section 2806.23(c), which gives non-individual holders of a perpetual grant only one rent payment option, that is, a one-time payment based on the annual rent (either determined from the Per Acre Rent Schedule or from an appraisal) multiplied by 100. Holders (non-individuals) of perpetual grants have no other option under current rules but to pay a one-time payment that many find burdensome. Under the 1987 regulations, holders of perpetual grants paid either annually or for a 5-year period, but could not make a one-time payment. This was especially problematic when public land encumbered by a perpetual grant was transferred out of Federal ownership. The 2005 regulations provided for the one-time payment option (see section 2806.23(c)), but did not offer other rent payment options, which are necessary for proper administration of those perpetual grants already in existence prior to 2005, and which encumber land that the BLM intends to administer. Although the term of a FLPMA grant can be any length, it is the BLM's policy to strictly adhere to the factors listed in current section 2805.11(b) to establish a reasonable term. The factors that must be considered in establishing a reasonable term include the: (1) Public purpose served; (2) Cost and useful life of the facility; (3) Time limitations imposed by licenses or permits required by other Federal agencies and state, tribal, or local governments; and (4) Time necessary to accomplish the purpose of the grant. The BLM's own land use planning horizon is generally only 20 to 30 years, so it is seldom in the public interest to issue land use authorizations which exceed this horizon. In addition, the term of MLA grants can not exceed 30 years (see current section 2885.11(a)).

Although the BLM should now rarely issue grants in perpetuity, except when the land encumbered by the grant is being transferred out of Federal ownership (see proposed section 2806.25), we must still be able to effectively administer grants that were issued in perpetuity under prior authorities (generally pre-FLPMA authorities and the MLA prior to 1973). Holders of these grants have requested flexible rent payment options. Proposed section 2806.24(b) provides rent payment options that are available to holders of existing perpetual rights-of-way and which are deemed necessary to properly administer perpetual grants when the land is not being transferred out of Federal ownership. In addition, proposed sections 2806.25 and 2806.26 allow you to make a one-time payment for perpetual grants and perpetual easements, respectively, when the land encumbered by the grant or easement is being transferred out of Federal ownership.

Proposed section 2806.24(c) is the same as current section 2806.23(b), which explains that the BLM considers the first partial calendar year in the initial rent payment period to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

Section 2806.25 How may I make rental payments when land encumbered by my perpetual linear grant (other than an easement issued under § 2807.15(c)) is being transferred out of Federal ownership?

Proposed section 2806.25 explains how you may make one-time rental payments for your perpetual linear grant (other than an easement issued under section 2807.15(c) (see section 2806.26)) when land encumbered by your grant is being transferred out of Federal ownership. Section 2806.25(a) explains that if you have an existing perpetual grant (whether issued under FLPMA or its predecessors) and the land your grant encumbers is being transferred out of Federal ownership, you may make a one-time rental payment. You are not required to make a one-time rental payment, but if you choose to do so, the BLM would determine your one-time payment for a perpetual right-of-way grant by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data. Under this calculation, the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula below. The formula for this calculation is: One-time rental payment = annual rent/(Y − CR), where:

(1) Annual rent = current annual rent applicable to the subject property from the Per Acre Rent Schedule;
(2) Y = yield rate (rate of return) determined by the most recent 10-year average of the annual 30-year Treasury Bond Rate as of January of each year; and
(3) CR = annual percent change in rent as determined by the most recent 10-year average of the difference in the CPI–U Index from January of one year to January of the following year.

Section 2806.25(b) explains how you must make a one-time payment for term grants converted to a perpetual grant under section 2807.15(c). If the land your grant encumbers is being transferred out of Federal ownership and you request a conversion of your term grant to a perpetual right-of-way grant, you would be required to make a one-time rental payment in accordance with section 2806.25(a).

Section 2806.25(c) explains that in paragraphs (a) and (b) of this section, the annual rent is determined from the Per Acre Rent Schedule (see section 2806.20(c)) as updated under section 2806.22. However, the per acre zone value and zone number used in this annual rental determination would be

based on the per acre zone value from acceptable market information or an appraisal, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census.

Section 2806.25(d) explains that when no acceptable market information is available or when no appraisal has been completed for the land transfer action or when the BLM requests it, you must prepare an appraisal report in accordance with Federal appraisal standards.

Section 2806.25 is a new section that explains how one-time rental payments would be determined for perpetual grants (other than an easement issued under section 2807.15(c)) when the land your grant encumbers is being transferred out of Federal ownership. It is important to note that you are under no obligation to make a one-time rental payment for your existing perpetual grant when the land your grant encumbers is being transferred out of Federal ownership. If you have an existing term or perpetual grant and you have made either annual or multi-year payments under section 2806.24, and the land your grant encumbers is to be transferred out of Federal ownership, and you choose not to make a one-time rental payment to the BLM, you would negotiate future rental payments for your grant with the new land owner at the appropriate time. However, if you desire to make a one-time payment to the BLM prior to the transfer of the land, and you have an existing perpetual grant, section 2806.25(a) would allow the BLM to determine the one-time rental payment by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data. Under this calculation, the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula below. The formula for this calculation is: One-time rental payment = annual rent/(Y − CR), where:

(1) Annual rent = current annual rent applicable to the subject property from the Per Acre Rent Schedule;
(2) Y = yield rate (rate of return) determined by the most recent 10-year average of the annual 30-year Treasury Bond Rate as of January of each year; and
(3) CR = annual percent change in rent as determined by the most recent 10-year average of the difference in the CPI–U Index from January of one year to January of the following year.

For example, if the most recent 10-year average of the annual 30-Year Treasury Bond rate as of January of each year is 6.47 percent and the most recent 10-year average of the difference in the CPI–U index from January of one year to January of the following year is 2.47 percent, then the overall capitalization rate is 4 percent (6.47 − 2.47 = 4). The one-time rental payment for a perpetual right-of-way grant with an annual rent of $36.63 (annual rent for 1 acre of right-of-way area located in Zone 3 for 2007) would be determined by dividing the annual rent ($36.63) by the overall capitalization rate (.04) or $915.75. This methodology of calculating rent is known as the income capitalization approach.

The BLM also considered other methods to determine a one-time rental payment, including an administrative approach similar to current section 2806.23(c)(1), where a one-time payment is determined by multiplying the annual rent by 100. Under this approach, a one-time payment for the same right-of-way grant described above with an annual rent payment of $36.63 would be $3,663 ($36.63 multiplied by 100), instead of $915.75. While this approach is reasonable when using the current per acre rent schedule, it could generate an excessively high one-time payment when using current land values as directed by the Act. The BLM also considered using a discounted cash flow (DCF) method to calculate the present value of the projected annual rent payments over a 100-year term, assuming annual rent payments are made in advance. The DCF approach would generate a one-time payment similar to the income capitalization approach. In the above example, a one-time rental payment using the DCF method for the same annual rent payment figure of $36.63 would be $953.24 compared to $915.75 using the income capitalization approach. In general, the DCF formula is more complex and prone to rounding inconsistencies, as compared to the income capitalization formula, which is fairly straightforward and simple to use.

Given the above considerations, the BLM believes that the income capitalization approach is the most reasonable and correct methodology for converting an annual rent payment (with an annual adjustment factor) to a one-time payment for a perpetual term. The variables in the formula are the rate of return and the percent change in rent. These variables could be determined on a case-by-case basis. However, to provide some certainty, and since the Per Acre Rent Schedule already utilizes these components, the BLM believes that using a 10-year average for each component will normalize these variables and avoid either abnormally high or low values that can result from using a one point in time figure.

Section 2806.25(b) addresses the situation where there is an existing term grant and you ask BLM to convert it to a perpetual FLPMA grant under section 2807.15(c). If you made this request, the BLM would treat it as an application for an amendment under current section 2807.20. If the BLM approved your request to change the term of your grant, the BLM would determine the mandatory one-time rental payment as explained in paragraph (a) of this section.

Section 2806.25(c) provides that if the land your grant encumbers is being transferred out of Federal ownership and you have a perpetual grant and have requested a one-time rental payment, or you have requested the BLM to amend your grant to a perpetual grant and seek a one-time rental payment, the BLM would base the per acre zone value and zone number used in the annual rental determination on the per acre land value from the market information or an appraisal report used for the land transfer action and not the county average per acre land and building value from the NASS Census. The BLM believes that when the land a grant encumbers is being transferred out of Federal ownership, the most accurate and current market data should be used to determine the one-time rental payment. For example, for Clark County, Nevada, the average per acre land and building value from the 2002 NASS Census is $3,567 (Zone 7 on the 2002 Per Acre Rent Schedule or $161.75 per acre rent). If an appraisal report for a competitive sale concluded that the 2002 average per acre land value is instead $175,000 per acre, then the annual per acre rent would be $3,235.00 (or Zone 12 on the per acre rent schedule). The BLM would not use the actual appraised per acre value or the actual per acre sale value to determine the annual per acre rent, but instead would use the actual appraised per acre value to determine the appropriate zone number on the Per Acre Rent Schedule. The zone number then determines the appropriate per acre rent under proposed section 2806.25.

Section 2806.25(d) explains that when no acceptable market information is available, and no appraisal has been completed for the land transfer action, or when the BLM requests it, you must prepare an appraisal report, at your expense, in accordance with Federal appraisal standards. The BLM will only require you to prepare an appraisal report when other acceptable market data is not available. If you must provide an appraisal report, the DOI's

Appraisal Policy Manual, dated October 1, 2006 sets forth the DOI's appraisal policies. Addendum Number 3 to DOI's Appraisal Policy Manual specifically provides guidance concerning land valuation, alternative methods of valuation, and appraisals prepared by third (i.e., non-Federal) parties. It is the DOI's policy that all valuation services (whether performed by DOI appraisers or by non-DOI appraisers providing valuation services under a DOI contract or on behalf of a private third party, such as a right-of-way holder) must conform to the current Uniform Standards of Professional Appraisal Practice (USPAP) and the current Uniform Standards for Federal Land Acquisitions (USFLA). The USPAP, promulgated by the Appraisal Standards Board of the Appraisal Foundation, is updated and published on a regular basis. The USFLA, promulgated by the Interagency Land Acquisition Conference, was last published on December 20, 2000.

If you have provided an appraisal report, the BLM State Director will refer it to the DOI's Appraisal Services Directorate (ASD). The ASD will review the appraisal report to determine if it meets USPAP and USFLA standards and advise the BLM State Director accordingly. The BLM State Director will then use the data in the appraisal report to determine the zone value and zone number used in the calculation of the one-time rent payment provided by paragraphs (a) and (b). If you are adversely affected by this decision, you may appeal the rent decision under section 2801.10 of this part.

The BLM specifically requests comments on whether an appraisal report, if required, should also address the appropriate EF, in addition to determining per acre land values. The EF from an appraisal report could be different from the 50 percent used in the Per Acre Rent Schedule, depending on the type of facility being authorized (see EF discussion earlier in the preamble). (The rate of return (6.47 percent—see Table 4) would not change, except as provided by section 2806.22(c)). For example, if the average per acre land and building value from the NASS Census is $700 (Zone 3 on the 2002 Per Acre Rent Schedule or $32.35 per acre rent) and an appraisal report concluded that the 2002 per acre land value is instead $400 per acre (Zone 2 or a $50 value), but the appraisal report determines that the EF is 85 percent, then the annual per acre rent would equal $27.50 ($500 multiplied by 0.85 multiplied by 6.47 percent). The one-time payment would then be determined under paragraph (a) of this section.

Sections 2806.25(c) and (d) replace sections 2806.20(c) and (d) of the current regulations which allowed the BLM to use an alternate means to compute your rent, if the rent determined by comparable commercial practices or by an appraisal would be ten or more times the rent from the schedule. We propose these changes to comply with the Act, which requires the BLM to use a Per Acre Rent Schedule based upon land values to determine rent for linear right-of-way grants located on public land.

Section 2806.26 How may I make rental payments when land encumbered by my perpetual easement issued under § 2807.15(c) is being transferred out of Federal ownership?

Section 2806.26(a) addresses the situation where there is an existing term or perpetual grant and you ask BLM to convert it to a perpetual easement as provided by section 2807.15(c). If you make this request, the BLM would treat it as an application for an amendment under current section 2807.20. Under this proposal, if the BLM approved your request to convert your term or perpetual grant to a perpetual easement, the BLM would use the appraisal data from the DOI's Appraisal Services Directorate for the land transfer action (i.e., direct or indirect land sales, land exchanges, and other land disposal actions) and other market information to determine the one-time rental payment for perpetual easements.

Section 2806.26(b) explains that when no appraisal or acceptable market information is available for the land transfer action or when the BLM requests it, you must prepare a report required under section 2806.25(d).

Section 2806.26 is a new section made necessary by the BLM's recent policy to provide for perpetual easements to existing right-of-way holders who want to convert their term or perpetual grant to an easement when the land their grant encumbers is to be transferred out of Federal ownership under section 2807.15(c). The BLM has worked closely with its right-of-way customers and holders to develop an easement document (and policy) which is similar to the easement document that a utility company might acquire across private land. Under this policy (posted on the Internet at *http://www.blm.gov* in June 2007), easements (similar to easements that utility companies would acquire for similar purposes across private land) would only be issued to you when land your grant encumbers is to be transferred out of Federal ownership. Since in these cases the BLM would not administer the easement (because the land your easement would encumber would no longer be public land), the BLM believes that the one-time payment should be determined by an appraisal or acceptable market information used to determine the per acre land value for the land disposal action. The one-time rental payment determined in this manner would reflect the value of the rights transferred to you based upon similar transactions in the private sector, and may, or may not, be the same as a one-time payment for a perpetual grant determined under section 2806.25(b).

The term ''right-of-way'' is defined by FLPMA (43 U.S.C. 1702(f)) to include easements, leases, permits, or licenses to occupy, use, or traverse public lands granted for the purposes listed in Title V of FLPMA. Most grants that the BLM issues under FLPMA are set forth on standard form 2800–14 and denoted ''Right-of-Way Grant/Temporary Use Permit.'' These grants are not regarded as easements by the agency, absent some indication to the contrary. Section 506 of FLPMA, 43 U.S.C. 1766, however, clearly contemplates the issuance of easements and provides that any effort to suspend or terminate these instruments be accompanied by the procedural safeguards of 5 U.S.C. 554. Please specifically comment on the need for perpetual easements when encumbered lands are to be transferred out of Federal ownership. The nature of a pre-FLPMA instrument for the purposes identified in Title V is not easily determined because of the variety of statutes authorizing such.

The provisions of the MLA at 30 U.S.C. 185 do not expressly authorize the grant of easements, unlike FLPMA's provisions at 43 U.S.C. 1702(f), 1761(a), and 1766. Both statutes, however, provide for the procedural safeguards of 5 U.S.C. 554 in the event of suspension or termination of the authorization. Whether the BLM may issue a term easement under the MLA in those circumstances when encumbered land is to be transferred out of Federal ownership is an issue on which your comments are requested. Please also comment on whether there is a need for a term easement in such circumstances and how the one-time rent payment should be determined. If the BLM were to issue a term easement under the MLA in those circumstances when encumbered land is to be transferred out of Federal ownership, we would propose to determine the one-time rent payment as described under section 2806.26.

Subpart 2807—Grant Administration and Operation

The BLM is proposing changes to the section of this subpart that deals with administration and operations of grants.

Section 2807.15 How is grant administration affected if the land my grant encumbers is transferred to another Federal agency or out of Federal ownership?

This section explains how grant administration is affected if the land your grant encumbers is transferred to another Federal agency or out of Federal ownership. Proposed section 2807.15 is similar to current section 2807.15. In the proposed rule, current paragraph (c) is split into paragraphs (c) and (d) to make it clearer.

Proposed section 2807.15(a) explains that if there is a proposal to transfer the land your grant encumbers to another Federal agency, the BLM may, after reasonable notice to you, transfer administration of your grant for the lands the BLM formerly administered to another Federal agency, unless doing so would diminish your rights. If the BLM determined your rights would be diminished by such a transfer, the BLM can still transfer the land, but retain administration of your grant under existing terms and conditions.

Proposed section 2807.15(b) explains that if there is a proposal to transfer the land your grant encumbers out of Federal ownership, the BLM may, after reasonable notice to you and in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant. In this case, administration of your grant for the lands the BLM formerly administered is transferred to the new owner of the land.

(2) Transfer the land, but the BLM retains administration of your grant; or

(3) Reserve to the United States the land your grant encumbers, and the BLM retains administration of your grant.

Proposed section 2807.15(c) explains that if there is a proposal to transfer the land your grant encumbers out of Federal ownership, you may negotiate new grant terms and conditions with the BLM. This may include increasing the term of your grant, should you request it, to a perpetual grant or providing for an easement. These changes would become effective prior to the time the land is transferred out of Federal ownership.

Proposed section 2807.15(d) explains that you and the new owner of the land may agree to negotiate new grant terms and conditions at any time after the land encumbered by your grant is transferred out of Federal ownership.

Current paragraph (c) would be revised to delete the cross reference to section 2806.23(c), which specified how you made rental payments for perpetual grants. Section 2806.23 would be replaced by proposed sections 2806.24, 2806.25, and 2806.26. We removed the cross-reference to section 2806.23(c) because the cross-reference is no longer pertinent to the subject matter of this section. In addition, we moved to proposed paragraph (d) and edited for clarification purposes, the language in existing paragraph (c) that discusses negotiation of new grant terms and conditions. Finally, we added an explanatory sentence to paragraph (c) that states that any changes which are negotiated between you and the BLM regarding your grant, including conversion of your existing term grant to a perpetual grant or perpetual easement, are effective prior to the time the land is transferred out of Federal ownership.

Part 2880—Rights-of-Way Under The Mineral Leasing Act

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

This proposal would revise five existing sections of this subpart and would add two new sections.

Section 2885.11 What terms and conditions must I comply with?

Proposed section 2885.11(a) explains that all grants, except those issued for a term of 3 years or less, would terminate on December 31 of the final year of the grant. Current section 2885.11(a) states that all grants with a term of 1 year or longer would terminate on December 31 of the final year of the grant. This proposed correction would allow short-term grants and TUPs to terminate on the day before their anniversary date. This revision would provide the holder of a 3-year grant or TUP with a full 3-year term to conduct activities authorized by the short-term right-of-way grant or TUP, instead of the 2 full years plus the partial first year under the current section. Current section 2885.21(b) and proposed section 2885.21(c) both explain that the BLM considers the first partial calendar year in the initial rent payment period to be the first year of the term. Therefore, a 2-year grant or TUP, issued under the current regulations, has a term period of 2 years plus the time period remaining in the calendar year of issuance. A 2-year grant or TUP has a term period of 1 year plus the time period remaining in the calendar year of issuance. Depending on when the grant or TUP is issued, the actual term could be just over 2 years for a 3-year grant or TUP and could be just over 1 year for a 2-year grant or TUP. Under the proposed rule, all grants and TUPs, except those issued for a term of 3 years or less would terminate on December 31 of the final year of the grant or TUP. The proposed changes to this section would allow the holder to use short-term grants and TUPs for the full period of the grant. For example, if a 3-year grant or TUP were issued under the proposed rule on October 1, 2008, it would terminate on September 30, 2011, instead of December 31, 2010, under the current rule. If a 2-year grant or TUP were issued under the proposed rule on October 1, 2008, it would terminate on September 30, 2010, instead of December 31, 2009, under the current rule. In most cases, the BLM would assess a one-time rental bill for the term of the grant which would lessen any administrative impact which might otherwise result from this revision. This change is also consistent with proposed section 2805.11(b)(2). Please refer to the preamble discussion for proposed section 2805.11(b)(2) for further information on this revision.

Section 2885.12 What rights does a grant or TUP convey?

Current section 2885.12(e) states that you have a right to assign your grant or TUP to another, provided that you obtain the BLM's prior written approval. The BLM is proposing to add the phrase ''unless your grant or TUP specifically states that such approval is unnecessary'' to this section to indicate that the BLM's prior written approval may be unnecessary in certain cases. In most cases, assignments would continue to be subject to the BLM's written approval. However, with the proposed change, the BLM could amend existing grants and TUPs to allow future assignments without the BLM's prior written approval. This may be especially important to the future administration of a grant when the land encumbered by a grant or TUP is being transferred out of Federal ownership, and there is a request to increase the term of your grant or TUP under section 2886.15(c).

Section 2885.19 What is the rent for a linear right-of-way grant?

Proposed section 2885.19 would replace current section 2885.19. Proposed section 2885.19(a) explains that the BLM would use the Per Acre Rent Schedule to calculate the rent. In addition, paragraph (a) would explain that counties (or other geographical areas) would be assigned to a county

zone number and per acre zone value based upon their average per acre land and building value published in the NASS Census. The initial assignment of counties to the zones in the base year (2002) Per Acre Rent Schedule would be based upon data contained in the most recent NASS Census (2002). Subsequent assignments of counties would occur every 5 years following the publication of the NASS Census. Paragraph (a) further explains that the Per Acre Rent Schedule would be adjusted periodically as follows:

(1) The BLM would adjust the per acre rent values in section 2885.19(b) for all types of linear right-of-way facilities in each zone each calendar year based on the difference in the CPI–U from January of one year to January of the following year.

(2) The BLM would review the NASS Census data from the 2012 NASS Census, and each subsequent 10-year period, and as appropriate, revise the number of county zones and the per acre zone values. Any revision would include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and would reasonably reflect their average per acre land and building values contained in the NASS Census.

(3) The BLM would revise the Per Acre Rent Schedule at the end of calendar year 2011 and at the end of each 10-year period thereafter to reflect the average rate of return for the preceding 10-year period for the 30-year Treasury bond yield (or the 20-year Treasury bond yield if the 30-year Treasury bond yield is not available).

The above revision mechanisms would replace current paragraphs (b) and (c) of section 2885.19.

Proposed section 2885.19(b) would replace current section 2885.19(d) and explains that you may obtain a copy of the current Per Acre Rent Schedule from any BLM state or field office or by writing to the BLM and requesting a copy. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov.*

Section 2885.20 How will BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

Proposed sections 2885.20(a) and (c) are similar to and would replace current sections 2885.20(a) and (b), respectively. Proposed section 2885.20(a) explains that, except as provided by section 2885.22, the BLM calculates your rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way or TUP area that fall in each zone. Under this section you would multiply the result of that calculation by the number of years in the rental period. The proposed rent calculation methodology is identical to the current rent calculation methodology; only the components (average per acre land values, county zones, the EF, and rate of return) would be revised. Please refer to the preamble discussion for section 2806.23(a) for details and examples of how this process would work.

Proposed section 2885.20(b) explains that if you pay rent annually and the payment of your new rental amount would cause you undue financial hardship, you may qualify for a one-time, 2-year phase-in period. The BLM may require you to submit information to support your claim. If the BLM approved the phase-in, payment of the amount in excess of the previous year's rent would be phased-in by equal increments over a 2-year period. In addition, the BLM would adjust the total calculated rent for year 2 of the phase-in period by the annual index provided by section 2885.19(a)(1).

The BLM received six comments in response to the ANPR which generally supported a phase-in provision. Three commenters said that any rental increases greater than $1,000 should be phased-in over 5 years. One commenter said that a 6-year phase-in period would be appropriate for all rental increases. The commenter suggested no change for the first year, followed by five 20 percent annual increases. One commenter supported a phase-in period and potential relief from increased payment amounts, but offered no specific options.

The BLM does not agree with the commenters that a phase-in provision is always necessary or reasonable when implementing a new or revised rent schedule, especially when other existing avenues to mitigate large rental increases are available to most holders. Under current section 2806.15(c), the BLM State Director may waive or reduce your rent payment, if the BLM determines that paying the full rent for your FLPMA grant will cause you undue hardship and it is in the public interest to waive or reduce your rent. However, this provision is not available to holders of MLA authorizations under existing regulations.

The national average per acre land and building value has increased 261 percent over the past 20 years (NASS Annual Report, August 2007). The BLM is proposing a 266 percent increase in the average annual per acre rental fee for the typical grant. Thus, the increase in average per acre rent values closely tracts the increase in average per acre land values over the past 20 years and should not be unexpected or cause undue hardship to most holders. The BLM also realizes that the average per acre land values in some states and counties may have increased by 500 percent, 1000 percent, or more. These increases are substantial, and may cause undue financial hardship to some holders, even if they are fully aware of current land values in their local area. Therefore, the BLM is proposing a limited one-time, 2-year phase-in provision which would provide the holders of MLA authorizations hardship provisions similar to those currently available to holders of FLPMA authorizations.

The proposed MLA phase-in provision would only apply in situations where rent is paid on an annual basis, and the increase in the rental fee is so substantial (500 percent or greater increase), that payment of the new rental amount would likely cause undue financial hardship. In such cases, payment of the amount in excess of the previous year's rent would be phased-in by equal increments over a 2-year period. In addition, the BLM would adjust the total calculated rent for year two of the phase-in period by the annual index provided by section 2885.19(a)(1). For example, if a right-of-way holder's 2006 annual rental was $190 and the new annual rental for 2007 is $1,247 (a 557% increase), then the phase-in amount would be $1,057 ($1,247 − $190 = $1057). Therefore, 2007's rental amount would be $718.50 (2006's rent plus half the phase-in amount or $190 + $528.50 = $718.50). If the annual index adjustment for 2008 is 3 percent, then the rent for 2008 would be 2007's assessed rent, plus the remaining equal increment of the rental increase, multiplied by 1.03 (which accounts for the 3 percent annual index adjustment) or $1,284.41 ($718.50 + $528.50 = $1,247 × 1.03 = $1,284.41). Table 6 summarizes this phase-in example, as well as a second example with another 557 percent increase, a third example with a 938 percent increase, and a final example with a 4,291 percent increase:

TABLE 6.—EXAMPLES OF ANNUAL RENTAL PAYMENTS WITH PROPOSED PHASE-IN PROVISION

Year	Prior year's rent	New rental amount and percent increase	Phase-in amount: ½ of increase in excess of prior year's rent	Amount of 3 percent annual adjustment	Annual rent with phase-in	Annual rent without phase-in
First	$190	$1,247 (557%)	$528.50	None	$718.50	$1,247
Second	718.50	Not Applicable	528.50	37.41	1,284.41	1,284.41
First	11,157	73,313 (557%)	31,078	None	42,235	73,313
Second	42,235	Not Applicable	31,078	2,199.39	75,512.39	75,512.39
First	10,430	108,281 (938%)	48,925.50	None	59,355.50	108,281
Second	59,355.50	Not Applicable	48,925.50	3,248.43	111,529.43	111,529.43
First	140	6,146 (4291%)	3,003	None	3,143	6,146
Second	3,143	Not Applicable	3,003	184.38	6,330.38	6,330.38

Total rent savings for the 2-year phase-in period in the first example above is $528.50; in the second example the rent savings is $31,078; in the third example the rent savings is $48,925.50; and in the fourth example the rent savings is $3,003. The annual rent for year 2009 and succeeding years would be 100 percent of the rental amount as determined by that year's annual index-adjusted rent schedule.

The BLM specifically requests comments on whether any phase-in provision is necessary, and if so, what alternative information, including holder qualifications or thresholds other than the percentage increase, might the BLM use to support a longer phase-in period, or to support a phase-in model that specifically addresses financial hardship due to potentially large rental increases. For example, should the BLM allow individuals and/or small business entities to phase-in rent payments for increases in the new rental amount of 500 percent (see Table 6), while all other holders would have to have their new rental amount increase at least 1,000 percent to qualify for the one-time, 2-year phase-in provision.

The BLM does not expect the proposed rental increases to be financially burdensome for most holders. In 2006, less than 1 percent of the total MLA bills would qualify for a phase-in provision based upon a minimum increase in rent of 1,000 percent or more over that which the holder paid the previous year. Using the 500 percent increase standard, only 3.7 percent of the total MLA bills would qualify for the phase-in option as proposed. Only 13.9 percent of the total MLA bills would qualify for a phase-in option with significantly lesser standards, such as a 100 percent or more increase and a rental that exceeds $1,000. As such, the BLM believes that a 2 year phase-in period, in conjunction with more flexibility in the rental payment options (see proposed sections 2806.24 and 2885.21), would provide appropriate relief from any large, unexpected increases in rental payments that are due to implementation of the revised linear rent schedule.

Finally, proposed section 2885.20(c) explains that if the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

Section 2885.21 How must I make rental payments for a linear grant or TUP?

Proposed section 2885.21(a) explains that for TUPs you must make a one-time nonrefundable payment for the term of the TUP. For grants, except those which have been issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the total rent amount for the entire term of the grant or any remaining years;

(2) *Multiple payments.* If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a remaining term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multi-year period.

(ii) *Payments by all others.* If your annual rent is $1,000 or less, you must pay rent at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $1,000, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

Proposed section 2885.21(a) would replace the rent payment options found in current section 2885.21(a). The primary difference is that under proposed section 2885.21(a), individuals that hold a grant with an annual rent greater than $100 would have the option to pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multi-year period. Currently, individuals that hold a grant with an annual rent greater than $100 would have the option to pay annually or for any multi-year period. The BLM is proposing this change to make the rent payment options for individuals consistent with those available to non-individuals, except for the annual threshold levels of $100 and $1,000, respectively. Please refer to the preamble discussion for proposed section 2806.24(a) for further rationale for these revisions and examples of various rent payment periods.

Proposed section 2885.21(b) explains how you must make rent payments for perpetual grants issued prior to November 16, 1973, except as provided by proposed section 2885.22(b). Current section 2885.21 did not recognize that MLA grants issued prior to November 16, 1973, could have been issued for any term period, including a perpetual term. Under the MLA, grants issued after November 16, 1973, have a maximum term of 30 years. We added proposed section 2885.21(b) to explain that if you have an existing perpetual grant, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed 30 years.

(2) *Payments by all others.* If your annual rent is $1,000 or less, you must pay rent at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $1,000, you may pay annually or at 10-year intervals, not to exceed 30 years.

Proposed section 2885.21(c) is nearly identical to current section 2885.21(b). This section explains that the BLM considers the first partial calendar year in the initial rent payment period to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

Section 2885.22 How may I make rental payments when land encumbered by my perpetual linear grant is being transferred out of Federal ownership?

Proposed section 2885.22 explains how you would make one-time rental payments for your perpetual linear grant when land encumbered by your perpetual grant is being transferred out of Federal ownership.

Proposed section 2885.22(a) explains how the BLM would determine a one-time rent payment for perpetual MLA grants issued prior to November 16, 1973, when land encumbered by your grant is being transferred out of Federal ownership. If you have a perpetual grant and the land your grant encumbers is being transferred out of Federal ownership, you may choose to make a one-time rental payment. The BLM will determine the one-time payment for perpetual right-of-way grants by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data. The overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula below. The formula for this calculation is: One-time payment = annual rent/(Y − CR), where:

(1) Annual rent = current annual rent applicable to a subject property from the Per Acre Rent Schedule;
(2) Y = yield rate (rate of return) determined by the most recent 10-year average of the annual 30-Year Treasury Bond Rate as of January of each year; and
(3) CR = annual percent change in rent as determined by the most recent 10-year average of the difference in the CPI–U Index from January of one year to January of the following year.

The annual rent would be determined from the Per Acre Rent Schedule (see section 2885.19(b)), as updated under section 2885.19(a)(1), (2), and (3) of this chapter. However, the per acre zone value and zone number used in the annual rental determination would be based on the per acre value from acceptable market information or an appraisal, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census.

When no acceptable market information is available and no appraisal has been completed for the land transfer action, or when the BLM requests it, you must prepare an appraisal report as required under section 2806.25(d) of this chapter.

Please refer to the preamble discussion for proposed section 2806.25 for additional details regarding one-time rent payments for perpetual grants when the land your grant encumbers is being transferred out of Federal ownership.

Subpart 2886—Operations on MLA Grants and TUPs

The BLM is proposing changes to one section of this subpart that deals with administration and operations of grants and TUPs.

Section 2886.15 How is grant or TUP administration affected if the BLM land may grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership?

This section would explain how grant administration is affected if the BLM land your grant encumbers is transferred to another Federal agency or out of Federal ownership. Proposed section 2886.15 is similar to current section 2886.15. In the proposed rule, current paragraph (c) is split into paragraphs (c) and (d) to make it clearer.

Proposed section 2886.15(c) explains that if there is a proposal to transfer BLM the land your grant encumbers out of Federal ownership, you may negotiate new grant terms and conditions with the BLM. This may include increasing the term of your grant, should you request it, to a 30-year term or replacing your TUP with a grant. These changes would become effective prior to the time the land is transferred out of Federal ownership.

Proposed section 2886.15(d) explains that you and the new owner of the land may agree to negotiate new grant terms and conditions at any time after the land encumbered by your grant or TUP is transferred out of Federal ownership.

Subpart 2888—Trespass

This rule would revise one section of this subpart having to do with trespass.

Section 2888.10 What is trespass?

Proposed section 2888.10 is identical to current section 2888.10 except for a minor edit to paragraph (c). Proposed section 2888.10(c) does not include the previous reference in section 2888.10 that the rental exemption provisions of part 2800 do not apply to grants issued under this part. This reference is no longer necessary because we added language to proposed section 2806.14(b), which explains that the rent exemptions listed in proposed section 2806.14 do not apply if you are in trespass. This would include trespass actions covered under proposed section 2888.10. Please refer to the preamble discussion for proposed section 2806.14(b) for further details on the reasons for this change.

PART 2920—LEASES, PERMITS, AND EASEMENTS

Subpart 2920—Lease, Permits, and Easements: General Provisions

The rule would revise two sections of this subpart having to do with reimbursement of costs and with fees.

Section 2920.6 Reimbursement of Costs

Current section 2920.6(b) would be revised to delete from the second sentence the phrase ''except that any permit whose total rental is less than $250 shall be exempt from reimbursement of costs requirements.'' Proposed section 2920.6(b) explains that the reimbursement of costs for authorizations issued under part 2920 would be in accordance with the provisions of sections 2804.14 and 2805.16, which provide for the reimbursement of processing and monitoring costs. Previously, any permit whose total rent was less than $250 would have been exempt from reimbursement of processing and monitoring costs.

Section 2920.8 Fees

Current section 2920.8(b) provides that each request for renewal, transfer, or assignment of a lease or easement be accompanied by a non-refundable processing fee of $25. Also, the authorized officer may waive or reduce this fee for requests for permit renewals which can be processed with a minimal amount of work. Proposed section 2920.8(b) would amend the current section by making each request for renewal, transfer, or assignment of a lease or easement subject to both a non-refundable processing and monitoring fee determined in accordance with section 2804.14 and section 2805.16. The second sentence of the current section, which allows the authorized officer to waive or reduce this fee for permit renewals, would be deleted because fees for actions processed with a minimal amount of work are

accounted for in current sections 2804.14 and 2805.16. These revisions are corrections to the 2005 right-of-way rule which established a schedule for processing and monitoring fees for applications and grants issued under parts 2800, 2880, and 2920. These revisions are necessary to provide the correct cross references to the appropriate processing and monitoring fees found in sections 2804.14 and 2805.16 for actions taken under part 2920.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget will make the final determination as to its significance under Executive Order 12866.

a. This rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. A cost-benefit and economic analysis has not been prepared. However, the following economic analysis and calculations supports this conclusion.

Estimated Economic Effects. The rule could potentially increase rental revenues collected by the BLM and conversely, increase costs to grant holders, by an estimated maximum of $14.7 million each year (plus annual CPI–U adjustments).

Background

The definition of the baseline is an important step in evaluating the economic effects of a regulation. The baseline is taken to be the regulations currently in place. A baseline assumption is that under the status quo, right-of-way activity on Federal lands would continue at least at current levels. Given that the proposed regulation incorporates many suggestions received from industry on the ANPR, continued right-of-way activity on Federal lands seems a reasonable assumption.

Current Right-of-Way Activity

In 2006 the BLM administered 10,859 rights-of-way subject to linear rent, held by over 1,600 entities, covering approximately 329,000 acres in 15 states. Some right-of-way holders have a single grant, while others hold hundreds of individual grants. Individual right-of-way holdings may be as small as 0.01 acre or larger than 22,000 acres. The top 18 grant-holders (by acreage) account for more than one-half of the total acreage. Eighty percent of the total right-of-way acreage is held by about four percent of all grant-holders, while the smallest 1,000 grant-holders account for less than one percent of total right-of-way acreage. The breakdown by rental payments is similar to the breakdown by acreage.

Original Rent Schedule

The original 1987 rent schedule was intended to reduce the need for individual appraisals, establish consistent rationale for determination of rental, reduce the differences between procedures used by the FS and the BLM, resolve conflicts which led to numerous appeals of rental determinations, and reduce both government and industry administrative costs. The right-of-way rental rates assessed in 2006 were derived from the 1987 rule's schedule, presented in Tables 7 and 8.

Table 7 – Current Per Acre Rent Schedule for electric transmission and distribution lines, telephone lines, non-energy related pipelines, and other linear rights-of-way.

Current Rule $1987\ ZoneValue \times 70\% \times 6.41\% \times GDP\text{-}IPD_{1987}^{2006}$		
Zone	***1987 Zone Value***	***2006 Actual Zone Rent***
Zone 1	*$50*	*$3.51*
Zone 2	*$100*	*$7.01*
Zone 3	*$200*	*$14.05*
Zone 4	*$300*	*$21.08*
Zone 5	*$400*	*$28.10*
Zone 6	*$500*	*$35.12*
Zone 7	*$600*	*$42.17*
Zone 8	*$1,000*	*$70.23*

Table 8 – Current Per Acre Rent Schedule for oil, gas and other energy-related pipelines, roads, ditches, and canals.

Current Rule $1987\ ZoneValue \times 80\% \times 6.41\% \times GDP\text{-}IPD_{1987}^{2006}$		
Zone	***1987 Zone Value***	***2006 Actual Zone Rent***
Zone 1	*$50*	*$4.01*
Zone 2	*$100*	*$8.01*
Zone 3	*$200*	*$16.08*
Zone 4	*$300*	*$24.06*
Zone 5	*$400*	*$32.14*
Zone 6	*$500*	*$40.13*
Zone 7	*$600*	*$48.15*
Zone 8	*$1,000*	*$80.25*

Zone rent for 2006 is based on zone rent for 1987. Zone rent per acre for 1987 is found by determining the correct zone for a right-of-way, then multiplying the zone value (i.e., the upper bracket for land values per acre within a zone) by the EF (70 percent for electric and telephone lines; 80 percent for energy-related pipelines and roads) and the return on investment (6.41 percent). This 1987 zone rent is converted to 2006 zone rent using the change in the IPD-GDP between 1987 and 2006 (approximately a 57 percent increase).

Proposed Rent Schedule

The zone brackets in the updated schedule are set to accommodate all U.S. counties and the Commonwealth of Puerto Rico, based upon their average per acre land and building value published in the most recent NASS Census. The average per acre land and building values for the 3,080 counties identified in the NASS Census, range from a low of $75 to a high of nearly $100,000. Table 9 shows the zone brackets for the twelve zones in the proposed rule.

TABLE 9.—RENTAL ZONES, BASED ON 2002 NASS CENSUS AVERAGE PER ACRE COUNTY LAND AND BUILDING VALUES

2002 Land and building values	Zone
$1 to $250	Zone 1.
$251 to $500	Zone 2.
$501 to $1,000	Zone 3.

TABLE 9.—RENTAL ZONES, BASED ON 2002 NASS CENSUS AVERAGE PER ACRE COUNTY LAND AND BUILDING VALUES—Continued

2002 Land and building values	Zone
$1,001 to $1,500	Zone 4.
$1,501 to $2,000	Zone 5.
$2,001 to $3,000	Zone 6.
$3,001 to $5,000	Zone 7.
$5,001 to $10,000	Zone 8.
$10,001 to $20,000	Zone 9.
$20,001 to $30,000	Zone 10.
$30,001 to $50,000	Zone 11.
$50,001 to $100,000	Zone 12.

Each of the 3,080 counties identified in the NASS Census is assigned to a zone, based on the average per acre land and building value as determined by the most recent NASS Census. At the time of this proposed regulation, the most current NASS Census provides 2002 data. The next NASS Census will provide 2007 data, and is due to be published in 2009.

Determining Right-of-Way Rent

Proposed annual right-of-way rent for 2002 is based on the following factors:

1. Schedule zone, determined by the right-of-way county's 2002 average per acre land and building value;
2. EF (set at 50 percent for all linear rights-of-way);
3. Government's rate of return, set at the average of the 30-year Treasury bond rate, taken over the previous ten years from the date of the NASS Census land and building value; and
4. Total acreage within the right-of-way area.

The zone rent is adjusted annually by the change in the Gross Domestic Product, Implicit Price Deflator index.

Table 10 shows the calculation of the right-of-way rental rate for each zone for the 2002 base rent year. The annual per acre rental rate is determined by multiplying the county zone value (upper limit) by the EF and the rate of return. The EF is a measure of the degree that a particular type of facility encumbers a right-of-way area or excludes other types of land uses and is set at 50 percent. The rate of return represents the return the Government could reasonably expect for the use of public assets, and is set at the average of the 30-year Treasury bond taken over the previous ten years from the most recent NASS Census data. Given current NASS Census data from 2002, the 30-year Treasury bond has a 10-year average (1992–2001) of 6.47 percent. Table 5 also displays the per acre rent values for each county zone for the 2002 base year and each subsequent year after application of the annual index.

TABLE 10.—2002 BASE YEAR—PER ACRE RENT SCHEDULE

Zone number	Maximum zone value	Right-of-way annual rental rate*
Zone 1	$250	$8.09
Zone 2	500	16.18
Zone 3	1,000	32.35
Zone 4	1,500	48.53
Zone 5	2,000	64.70
Zone 6	3,000	97.05
Zone 7	5,000	161.75
Zone 8	10,000	323.50
Zone 9	20,000	647.00
Zone 10	30,000	970.50
Zone 11	50,000	1,617.50
Zone 12	100,000	3,235.00

*Per acre right-of-way rent for one year calculated assuming a 50 percent EF and 6.47 percent rate of return.

The total amount a right-of-way grant holder is billed also depends on the number of acres within the right-of-way area that fall within each zone and the years in the rent payment period. Once the per acre rent has been determined for a particular right-of-way, this amount is multiplied by the total acreage in the right-of-way, and by the number of years in the rent payment period.

Phase-in Provision

The BLM has included a limited one-time, 2-year phase-in provision in the proposed rule for MLA authorizations. If a right-of-way grant holder pays rent annually and the payment of the new rental amount would cause the holder undue financial hardship, the holder may qualify for a one-time, 2-year phase-in period. The BLM may require the holder to submit information to support its claim. If approved by the BLM, payment of the amount in excess of the previous year's rent may be phased-in by equal increments over a 2-year period. In addition, the BLM will adjust the total calculated rent for year two of the phase-in period by the annual index provided by section 2885.19(a)(1).

Estimated Impacts of the Proposed Schedule

The proposed increase in rental fees could potentially impact all holders of right-of-way grants, as well as the energy industry and, ultimately, energy consumers. To the extent that right-of-way grant-holders continue to maintain facilities on public land whose value has increased since 1987, there will also be an increase in rental fees to the U.S. Treasury. Some of the increase in fees may be passed on to energy consumers in the form of higher utility bills, but we expect that if there is any increase, as explained below, it will be minimal.

Tierney and Hibbard (2006) conducted a study (see Tierney, S.F., and Hibbard, P.J., 2006, Energy Policy Act Section 1813 Comments: Report of the Ute Indian Tribe of the Uintah and Ouray Reservation for Submission to the U.S. Departments of Energy and Interior, Boston, MA) of the contribution of right-of-way costs to end-user energy prices, finding that:

1. Right-of-way costs in general are a minor component of regulated electric transmission and gas transportation rates, regardless of how land value changes by location or with time;
2. When viewed from the perspective of end-use consumer prices, the costs to acquire rights-of-way are de minimis; and
3. In the case of gas markets and competitive electricity markets, changes to right-of-way costs generally affect commodity supplier profits, not retail prices.

Based on this analysis, there will likely be no significant impact on consumers as a result of the changes this rule would make to existing regulations.

Estimated Costs under the Proposed Schedule

The expected response to an increase in a good's price is a decrease in the quantity demanded of that good. Thus, if the net effect of the proposed regulation is to raise a right-of-way grant holder's full cost of maintaining a right-of-way on public land, it would be reasonable to predict a decrease in the number of right-of-way applications. Nevertheless, given the finding by Tierney and Hibbard (2006) that right-of-way costs in general (not restricted to Federal lands) are a minor portion of total energy transportation costs, no significant decrease in energy right-of-way activity is expected. The BLM also believes for the same reasons that no significant decrease in non-energy right-of-way activity would occur due to the proposed increase in right-of-way costs.

Assuming that right-of-way activity is relatively insensitive to the rental fee, it is possible to estimate the payments that would have been due to the BLM (U.S. Treasury) in FY 2006 had the proposed schedule been in effect. The following analyses are based on data from the BLM's automated lands billing system (Land and Realty Authorization Module).

In 2006, the BLM issued bills for 10,859 linear right-of-way grants. More than half of these bills were for rent payment periods of 5 years or more. The total amount billed for these linear grants was $6.3 million. Had these rights-of-way been paid under the new schedule (for the same rent payment

periods), the total collected would have been $21 million, an increase of approximately $14.7 million, or 233 percent. The BLM expects that it would continue to issue approximately the same number of bills for the same number of annual authorizations each year, while the number of bills for multi-year rental payments would continue to decline. It is expected that those authorizations with annual rental payments in excess of $1,000 would continue to be billed on an annual basis, although the holder would have the option to pay for ten-year terms or the entire term of the grant. Under the proposed rule, the holder would have to pay for a minimum 10-year period if the annual rental payment is $1,000 or less for a non-individual or $100 or less for an individual. Under the 1987 regulations, the maximum rental payment term was 5 years. The 2005 rule requires the holder to pay for the term of the grant, or at 10-year intervals, unless the holder is an individual whose annual rent is greater than $100, in which case, annual payments can be made.

Table 11 lists the 15 states and the total linear right-of-way acreage within each state that was billed for rent in 2006. If this acreage (329,000) were billed on just an annual basis, the total rent assessed using the current Per Acre Rent Schedule and current regulations would be $4,623,420. If this same acreage were assessed annual rent in 2006 using the proposed Per Acre Rent Schedule, the total rent would be $16,348,250, an increase of $11,724,830. Changes in rental payments are due in large part to changes in land values underlying the rights-of-way which have occurred since the current per acre rent schedule was implemented in 1987. According to the 2006 NASS annual report, between 1987 and 2006 U.S. per acre farm real estate values increased by 217 percent on average. Table 11 illustrates a proposed increase in annual rent payments of 254 percent, which tracks well with the changes in land values in the United States over the last 20 years.

TABLE 11.—LINEAR RIGHT-OF-WAY ACRES BY STATE: CURRENT AND PROPOSED RENT

[Fiscal Year 2006]

State	Acres	1 Year rental (current rates)	1 Year rental (proposed rates)
AZ	22,735.70	$428,956.65	$2,255,043.65
CA	40,671.88	718,721.45	4,408,957.67
CO	17,853.74	299,078.72	766,377.15
ID	21,579.61	333,387.97	1,232,313.05
MT	5,990.19	77,949.18	116,253.60
ND	140.29	1,110.85	1,459.82
NE	132.86	931.35	1,169.17
NM	64,677.15	640,553.60	1,113,541.84
NV	51,378.64	1,129,048.42	3,657,587.97
OR	9,424.63	115,253.99	741,020.48
SD	136.20	2,911.30	3,775.76
TX	81.64	653.94	8,625.98
UT	17,074.50	172,155.07	582,868.96
WA	147.68	2,311.31	16,098.17
WY	76,982.60	700,396.04	1,443,156.56
Total	329,007.31	4,623,419.84	16,348,249.83

Table 12 provides the percent change in land values and the percent change in rent receipts for the fourteen counties having over 5,000 billed acres in rights-of-way, as of 2006. Taken together, these fourteen counties account for over 49 percent of all right-of-way acres billed by the BLM in 2006, and over 55 percent of the rent collected for 2006. San Bernardino County, California (see Table 12), is a good example of how land values in some counties have risen dramatically in the last twenty years. This southern California county had 23,367 acres of public land encumbered by authorized right-of-way facilities which were billed for rent in 2006 using the current rent schedule. The current schedule is based on a 1987 land value of $200 per acre for San Bernardino County, meaning that these holdings were valued at a total of $4.7 million in 1987. Applying the IPD–GDP factor used in the current schedule increases the value of this land to $6.7 million in 2002. The 2002 NASS land and building data lists San Bernardino County at $2,144 per acre, for a total value of $50.1 million. This data indicates that in this example the government is basing linear right-of-way rents on only 13.4 percent of the 2002 land value, largely due to the rapid increase in land values in southern California since 1987. Furthermore, the NASS annual reports show that between 2002 and 2006 farm real estate values have increased an average of 57 percent nationwide. A continued trend of rising real estate values would lead to further undervaluation by the current schedule. As a result, had the BLM used the proposed Per Acre Rent Schedule to assess rent for linear right-of-way acres in San Bernardino County in FY 2006, rental receipts would have increased more than 600 percent (see Table 12).

In contrast, land values in most counties in New Mexico and Wyoming, where the majority of linear rights-of-way are located, have increased at a much slower rate than the national average. Had the proposed rent schedule been in effect for 2006, most counties in these two states would experience only modest increases in rents due. For example, in San Juan County, New Mexico, where between 1987 and 2006 the value of land has increased by over 200 percent, rents would increase by 122 percent. In Sweetwater County, Wyoming, where between 1987 (per BLM's per acre rent schedule) and 2006 (per the NASS Census data) land values have actually fallen, rents would be almost flat, increasing by only 14 percent. These lower land values in New Mexico and Wyoming would result in only a 74 percent and a 106 percent increase, respectively, in the total rental receipts, statewide, for 2006 (as compared to a 513 percent increase for California and a 254 percent increase for all BLM states) when using the proposed Per Acre Rent Schedule as

compared with the total rental receipts for 2006 when using the current Per Acre Rent Schedule (see Table 11).

TABLE 12.—PERCENT CHANGE IN LAND VALUES AND RENT RECEIPTS BY COUNTIES WITH 5,000 OR MORE ACRES BILLED FOR RIGHT-OF-WAY FACILITIES ON PUBLIC LAND IN FY 2006

County	State	Right-of-way acres	1987 assigned land value	2002 NASS census land value	Percent change in land value	2006 assessed rent using current schedule	2006 assessed rent using proposed schedule	Percent increase in rent receipts
Sweetwater	WY	24,533	$100	$98	−2	$189,951	$215,893	14
San Bernardino	CA	23,367	200	2,144	972	341,002	2,468,923	624
San Juan	NM	18,025	100	324	224	143,127	317,423	122
Eddy	NM	17,557	100	255	155	136,204	309,178	127
Clark [a]	NV	12,539	50	3,567	7,034	45,210	2,208,137	4,784
Lincoln	WY	11,824	100	906	806	88,470	416,425	371
Maricopa	AZ	8,973	400	3,026	657	258,062	1,580,107	512
Lea	NM	7,987	100	156	56	62,084	70,288	13
Carbon	WY	7,129	100	214	114	54,266	62,737	16
Rio Blanco	CO	6,803	200	669	235	108,316	239,585	121
Fremont	WY	6,274	100	311	211	48,387	110,477	128
Sublette	WY	5,728	100	733	633	44,118	201,744	357
Rio Arriba	NM	5,718	200	328	64	91,749	100,695	10
Eureka	NV	5,002	50	230	360	17,657	44,020	149
Subtotal		161,459	133	997	651	1,628,603	8,345,632	412
Clark County Sub-Zones	NV	920	14,001 [b]	3,567	−75	920,227	161,920	−82
Total		162,379	212.04 [c]	1,017 [c]	380	2,548,830	8,507,552	234

[a] Entries for Clark County do not include rights-of-way in Clark County "unique zones".
[b] 1987 Assigned Land Value for Clark County "unique zones" is a weighted average across all 8 unique zones.
[c] Land Values (Total) are a weighted average across all 14 counties and 8 "unique zones".

While the land values in certain counties in New Mexico and Wyoming increased modestly from 1987 to 2002, the land values in Clark County, Nevada, as shown in Table 12, increased dramatically (7,034 percent) during this time period. Much of this increase can be attributed to the tremendous growth rate and demand for undeveloped land in and surrounding Las Vegas, Nevada, the largest city in Clark County as well as the state of Nevada. In recognition of these higher land values in the Las Vegas area, a "unique zone" Per Acre Rent Schedule with eight zones whose land values ranged from $4,000 to $75,000 per acre was established in 1987 by the 1987 regulations. The annual per acre rent values ranged from $280 to $6,000 (in 2006). The BLM uses the "unique zone" Per Acre Rent Schedule (see Section II Background of this preamble for additional information on the "unique zone" Per Acre Rent Schedule) to assess rent ($920,227 in 2006) for 81 rights-of-way in the Las Vegas area which were granted within the "unique zone" areas prior to 2002. In addition, another 225 rights-of-way are located within the Las Vegas "unique zone" area, but the BLM uses the 1987 Per Acre Rent Schedule to determine annual rent for these rights-of-way in accordance with Washington Office Instruction Memorandum 2002–172. Had the BLM used the "unique zone" rates to determine rent for these 225 grants, an additional $2.56 million would have been collected in 2006 (based on an average rent payment of $11,360 for each of the 81 right-of-ways subject to the "unique zone" rates in 2006). So instead of $45,210 in assessed rent for linear rights-of-way in Clark County for 2006, as shown in Table 12, a more appropriate figure for comparison purposes, using the "unique zone" rates for all 306 rights-of-way located within these high land value areas, would be approximately $3.5 million. Under the proposed Per Acre Rent Schedule, that figure would then decrease to $2.04 million, resulting in a 146 percent decrease in rental receipts, instead of the 4,784 percent increase as shown in Table 12.

In summary, the proposed rule could potentially increase rental revenues collected by the BLM and conversely, increase costs to grant holders, by an estimated maximum of $14.7 million each year (plus annual CPI–U adjustments) when all authorizations and rent payment periods are considered (using 2006 as a sample year). For 2006, the BLM assessed rent for rights-of-way on 329,000 acres of public land. If this acreage were billed only on an annual basis, the BLM would have assessed rent in the amount of $4,623,420 using the current Per Acre Rent Schedule. Under the proposed rule, the BLM would assess rent in the amount of $16,348,250, an increase of $11,724,830. These proposed increases in rental receipts would reasonably reflect the increase in land values which have occurred from 1987 to the present.

In addition to revising the current Per Acre Rent Schedule, the proposed rule would make minor revisions to parts 2800 and 2880 to make existing regulations consistent with the statutory rent schedule changes discussed above. There are also a number of minor corrections and changes in the proposed rule that are not directly related to the rent schedule. These proposed changes are limited in scope and address trespass penalties, new rent payment options (including how one-time payments are to be determined for perpetual right-of-way grants and easements), annual rental payments, phased-in rental increases, and reimbursements of monitoring costs and processing fees for leases and permits issued under 43 CFR part 2920. These latter items would correct some existing errors in the current regulations and clarify others. All these changes are within the scope of the BLM's existing authority to administer rights-of-way under the FLPMA and the MLA and

would have only minor economic impact.

b. This rule would not create serious inconsistencies or otherwise interfere with other agencies' actions. Since 1987, the BLM and the FS have both used the same Per Acre Rent Schedule to establish rent for linear right-of-way facilities located on public land and NFS land. The Act requires both the BLM and the FS to make the same revisions to the 1987 per acre rental fee zone value schedule by state, county, and type of linear right-of-way use to reflect current values of land in each zone. The BLM has worked closely with the FS in assuring the maximum consistency possible between the policies of the two agencies with respect to approving and administering linear rights-of-way, including the assessment of rent for these facilities. The FS plans to adopt the BLM Per Acre Rent Schedule.

c. The proposed rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does increase rental fees, but only in amounts necessary to ensure compliance with the Act. The increases in rental fees would not be retroactive, but they would apply to new authorizations and to existing grant-holders who hold grants subject to rent at the grant's next rental due payment period. Flexible rent payment options and phase-in provisions would significantly lessen any impact that increased rental fees may have on grant-holders. Rent exemption and reduction provisions found in the current rule would still apply. However, the proposed rule clarifies that if an entity is found to be in trespass on public land, the rental exemptions and/or waiver of rent provisions would not apply to settlement of the trespass action.

d. The proposed rule would not raise novel legal or policy issues. The Act requires the BLM and the FS to update and revise current per acre rent schedules to reflect current land values. Both agencies currently collect rental fees for linear rights-of-way using a per acre rent schedule established in 1987. The Act did not specify how to revise the land values or what data should be used. The proposed rule would use average per acre land and building values published every 5 years in the NASS Census. Other Federal and state agencies regularly use the NASS Census data when necessary to use average per acre land values for a particular state or county. Congress, likewise, endorsed the use of this data for rental determination purposes when it passed the ''National Forest Organizational Camp Fee Improvement Act of 2003'' (Pub. L. 108–7) (16 U.S.C. 6232). The BLM believes that the rental fees arrived at by the use of the NASS Census data is the most efficient and reasonable method to revise the current Per Acre Rent Schedule, as well as to meet other mandates under the FLPMA and the MLA that require that the U.S. receive fair market value of the use of the public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?
2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example: **§ 2806.20 What is the rent for a linear right-of-way grant**).
5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act (NEPA)

The BLM has determined that this proposed rule, which primarily updates the current linear rent schedule, is of an administrative, financial, and/or procedural nature whose environmental effects is too broad, speculative, or conjectural to lend itself to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the NEPA, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Number 1.10. Updates to the current linear rent schedule also qualify as a categorical exclusion under Number 1.3 of the same appendix. Number 1.3 categorically excludes ''[r]outine financial transactions including such things as salaries and expenses * * * fees, bonds, and royalties.'' In addition, the proposed rule does not meet any of the 12 criteria for extraordinary circumstances listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

We have also examined this rule to determine whether it requires consultation under Section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1532). The ESA requires an agency to consult with the Fish and Wildlife Service or National Marine Fisheries Service to insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

We have determined that this rule will have no effect on listed or proposed species or on designated or proposed critical habitat under the ESA and therefore consultation under section 7 of the ESA is not required. Our determination is based in part on the fact that nothing in the rule changes existing processes and procedures that ensure the protection of listed or proposed species or designated or proposed critical habitat. Existing processes and procedures have been in effect since BLM promulgated right-of-way regulations in 1979–80. Any further compliance with the ESA will occur when an application for a right-of-way is filed with BLM.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The BLM has estimated that approximately 18 percent of all applicants and grantees (approximately

5 percent of MLA applicants and grantees and approximately 23 percent of FLPMA applicants and grantees) may qualify as small entities. As discussed above, rental fees, in most cases, are not a significant cost for the industries impacted, including small entities.

Table 13 shows the small business size standards for industries that may be affected by these rules. This table lists industry size standards for eligibility for Small Business Administration (SBA) programs from SBA regulations (see 13 CFR 121.201). The SBA size standards are typically stated either as the average number of employees, or the average annual receipts of a business concern. Standards are grouped using the North American Industrial Classification System 2002 (NAICS). This listing is based on descriptions from the U.S. Bureau of the Census 2002 NAICS codes and is not exhaustive.

TABLE 13.—SBA SIZE STANDARDS FOR AFFECTED INDUSTRIES AS OF JULY 31, 2006

NAICS code	Description	Size standard
113110	Timber Tract Operations	$6.5 million.
113210	Gathering of forest products	$6.5 million.
113310	Logging	500 employees.
211111	Crude petroleum and natural gas extraction	500 employees
211112	Natural gas liquid extraction	500 employees.
221111	Hydroelectric power generation	*
221112	Fossil fuel electric power generation	*
221113	Nuclear electric power generation	*
221119	Other electric power generation	*
221121	Electric Bulk Power Transmission and Control	*
221122	Electric Power Distribution	*
221210	Natural Gas Distribution	500 employees.
221310	Water Supply and Distribution System	$6.5 million.
486110	Pipeline Transportation: Crude Oil	1,500 employees.
486210	Pipeline Transportation: Natural Gas	$6.5 million.
486910	Pipeline Transportation: Refined Petroleum Products	1,500 employees.
486990	Pipeline Transportation: All other products	$21.5 million.

* Firm, including affiliates, is primarily engaged in generation, transmission, or distribution of electric energy for sale, and total electric output for the preceding fiscal year ≤ 4 million megawatt-hours.

The BLM does not officially track right-of-way costs, but grant holders in 2003 estimated that construction costs for pipeline facilities were between $300,000 (12″ pipeline) to $1.5 million per mile (36″ pipeline); construction costs for rocked logging roads were between $40,000/mile for a ridge top road to $150,000/mile for a full bench road or an average of $70,000/mile for a road through moderate terrain; and construction costs for electric distribution and transmission lines were between $24,000/mile (24kV distribution line) to $1 million/mile (500kV transmission line). Larger projects would typically require more land area to site than minor projects. Since rent is based on the number of acres that the right-of-way facility encumbers, larger projects would also involve higher rental payments than would minor projects. However, compared to the cost of constructing a typical right-of-way facility, total rent and the rental fee increases under the proposed rule are relatively small (see 70 FR 21056 for further information on typical project costs).

Any of the industries listed in Table 13 may hold right-of-way grants with the BLM, under either FLPMA or MLA, as a part of their business practices. For example, bulk electric power transmission firms will use rights-of-way to distribute their electricity. Firms may be eligible for various SBA programs, but the size-limit is specific to each industry, and identified by the industry codes. The limit may be based on gross sales, the number of employees, or other factors. It is estimated that about 5.3 percent (or 1,416 of 26,711) of existing MLA grantees may be eligible for SBA programs and about 22.9 percent (or 14,280 of 62,358) of FLPMA grantees may be eligible for SBA programs (see 70 FR 21056). Whether they choose to join the SBA programs is strictly an individual firm's decision.

The proportion of grantees eligible for SBA programs indicates that there is an opportunity for small businesses in BLM's right-of-way program. However, the burden of increased rental fees is not expected to have a significant economic impact on a substantial number of small entities or fall disproportionately on small businesses. Moreover, any entity which believes that it might be adversely affected by the rental fee increases to its FLPMA right-of-way grant may qualify for a waiver or reduction of rental fees under any of the provisions, including hardship, found at 43 CFR 2806.15. Therefore, the BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). This rule:

a. Would not have an annual effect on the economy of $100 million or more. See the Executive Order 12866 discussion above.

b. Would not result in major cost or price increases for consumers, industries, government agencies, or regions. As discussed above, when compared to the cost of constructing a right-of-way project, the rental fee increases contained in this proposed rule are relatively small and therefore should not cause any major increase in costs or prices. In addition, any applicant or holder of an FLPMA authorization that believes that the rental fee increases will cause difficulty may benefit from the rent waiver or reduction provisions under 43 CFR 2806.15, especially the hardship provision.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule should result in no change in any of the above factors. See the Executive Order 12866 discussion above regarding the economic effects of the proposed rental fee increases. In

general, the rental fee increases would be small in comparison with the overall costs of constructing, maintaining, operating, and terminating large projects located within right-of-way areas. With the possible exception of MLA grants for pipelines, the projects located on right-of-way grants support domestic, not foreign, activities and do not involve products and services which are exported. The MLA pipelines may transport oil and gas and their related products destined for foreign markets, but the proposed increase in rental fees, compared to the cost of, and profits from, running an oil and gas pipeline that would feed into a foreign market, is minimal.

Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate on state, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more per year; nor does this proposed rule have a significant or unique effect on small governments. The rule would impose no requirements approaching $100 million annually on any of these entities. We have already shown, in the previous paragraphs of this section of the preamble, that the changes proposed in this rule would not have effects approaching $100 million per year on the economy. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act at 2 U.S.C. 1532.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule does not have takings implications and is not government action capable of interfering with constitutionally protected property rights. A right-of-way application is not private property. The BLM has discretion under the governing statutes to issue a grant or not (see 30 U.S.C. 185(a) and 43 U.S.C. 1761(a)). Once a grant is issued, a holder's continued use of the Federal land covered by the grant is conditioned upon compliance with various statutes, regulations, and terms and conditions, including the payment of rent. Consistent with the FLPMA and the MLA, violation of the relevant statutes, regulations, or terms and conditions of the grant can result in termination of the grant before the end of the grant's term. The holder of a grant acknowledges this possibility in accepting a grant. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule 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 levels of government. Qualifying states and local governments continue to be exempt from paying rent for a right-of-way grant issued under FLPMA. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, we have determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this proposed rule does not include policies that have tribal implications. The BLM may only issue right-of-way grants across public lands that it manages or across Federal lands held by two or more Federal agencies. Indian tribes have jurisdiction over their own lands, subject to the Secretary's trust responsibility. To our knowledge, no Indian tribes are involved in any multi-agency grants.

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

In accordance with Executive Order 13211, the BLM has determined that the proposed rule is not a significant energy action. The proposed rule is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant effect on energy supply, distribution or use, including a shortfall in supply or price increase. In addition, the proposed rule has not been designated as a significant energy action by the Chief of the Office of Information and Regulatory Affairs. However, since the proposed rent schedule is based on average per acre land values which have generally increased over the past 20 years, rental receipts would be expected to increase in a like proportion, but still remain a minor component of overall costs and/or rates. In addition, the rule preserves existing rental exemption and waiver provisions, provides an on-going phase-in provision, and provides more flexible rent payment options that are lacking in the current rule.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this proposed rule would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would provide that the programs, projects, and activities are consistent with protecting public health and safety. This proposed rule does not change any provisions of the BLM's current right-of-way rule which facilitates cooperative conservation in the authorization and administration of right-of-way facilities on public lands. The proposed rule maintains all alternatives for maximum protection of right-of-way facilities when the land encumbered by the facilities is proposed for transfer out of Federal ownership. The grant holder would also have the opportunity to negotiate new terms and conditions with the new land owner, if the holder so desires. The proposed rule does not reduce or eliminate any current provision which requires the BLM to coordinate and consult with other affected and/or interested parties in the granting or administering of right-of-way facilities on public land, including the requirements that the BLM places on right-of-way holders to protect public health and safety, as well as public resources and environmental quality.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the proposed rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0189, which expires on November 30, 2008.

Authors

The principal authors of this proposed rule are Bil Weigand, BLM Idaho State Office, and Rick Stamm, BLM Washington Office, assisted by Ian Senio of BLM's Division of Regulatory Affairs, Washington Office, Christian Crowley, Office of Policy Analysis, Office of the Secretary, and Michael Hickey of the Office of the Solicitor.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Penalties, Public lands and rights-of-way, and Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedures, Common carriers, Pipelines, Public lands rights-of-way, and Reporting and recordkeeping requirements.

43 CFR Part 2920

Penalties, Public lands, and Reporting and recordkeeping requirements.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

Accordingly, the BLM proposes to amend 43 CFR parts 2800, 2880, and 2920 as set forth below:

PART 2800—RIGHTS–OF–WAY UNDER THE FEDERAL LAND POLICY MANAGEMENT ACT

1. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1763, and 1764.

2. Amend § 2805.11 by revising paragraph (b)(2) to read as follows:

§ 2805.11 What does a grant contain?

* * * * *

(b) * * *

(2) All grants, except those issued for a term of 3 years or less and those issued in perpetuity, will terminate on December 31 of the final year of the grant.

* * * * *

3. Amend § 2805.14 by revising paragraph (f) to read as follows:

§ 2805.14 What rights does a grant convey?

* * * * *

(f) Assign the grant to another, provided that you obtain the BLM's prior written approval, unless your grant specifically states that such approval is unnecessary.

4. Amend § 2806.14 by redesignating the introductory text and paragraphs (a), (b), (b)(1), (b)(2), (c), and (d) as paragraphs (a) introductory text, (a)(1), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(3), and (a)(4), respectively, and by adding a new paragraph (b) to read as follows:

§ 2806.14 Under what circumstances am I exempt from paying rent?

* * * * *

(b) The exemptions in this section do not apply if you are in trespass.

5. Revise § 2806.20 to read as follows:

§ 2806.20 What is the rent for a linear right-of-way grant?

(a) Except as described in § 2806.26 of this chapter, the BLM will use the Per Acre Rent Schedule (see paragraph (c) of this section) to calculate rent for all linear right-of-way authorizations, regardless of the granting authority (FLPMA, MLA, and their predecessors). Counties (or other geographical areas) are assigned to an appropriate zone in accordance with § 2806.21. The BLM will adjust the per acre rent values in the schedule annually in accordance with § 2806.22(a), and it will revise the schedule at the end of each 10-year period starting with the base year of 2002 in accordance with §§ 2806.22(b) and (c).

(b) The annual per acre rent for all types of linear right-of-way facilities is the product of three factors: The per acre zone value multiplied by the encumbrance factor multiplied by the rate of return.

(c) You may obtain a copy of the current Per Acre Rent Schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov.*

6. Redesignate §§ 2806.21, 2806.22, and 2806.23 as §§ 2806.22, 2806.23, and 2806.24, respectively, and add new § 2806.21 to read as follows:

§ 2806.21 When and how are counties or other geographical areas assigned to a County Zone Number and Per Acre Zone Value?

Counties (or other geographical areas) are assigned to a County Zone Number and Per Acre Zone Value based upon their average per acre land and building value published in the Census of Agriculture (Census) by the National Agricultural Statistics Service (NASS). The initial assignment of counties to the zones in the base year (2002) Per Acre Rent Schedule is based upon data contained in the most recent NASS Census (2002). Subsequent assignments of counties will occur every 5 years following the publication of the NASS Census.

7. Revise redesignated § 2806.22 to read as follows:

§ 2806.22 When and how does the Per Acre Rent Schedule change?

(a) The BLM will adjust the per acre rent values in § 2806.20 for all types of linear right-of-way facilities in each zone each calendar year based on the difference in the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI-U), from January of one year to January of the following year.

(b) The BLM will review the NASS Census data from the 2012 NASS Census, and each subsequent 10-year period, and as appropriate, revise the number of county zones and the per acre zone values. Any revision must include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and must reasonably reflect their average per acre land and building values contained in the NASS Census.

(c) The BLM will revise the Per Acre Rent Schedule at the end of calendar year 2011 and at the end of each 10-year period thereafter to reflect the average rate of return for the preceding 10-year period for the 30-year Treasury bond yield (or the 20-year Treasury bond yield if the 30-year Treasury bond yield is not available).

8. Revise redesignated § 2806.23 to read as follows:

§ 2806.23 How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

(a) Except as provided by §§ 2806.25 and 2806.26, the BLM calculates your rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way area that fall in each zone and multiplying the result by the number of years in the rental period.

(b) If the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

9. Revise redesignated § 2806.24 to read as follows:

§ 2806.24 How must I make rental payments for a linear grant?

(a) *Term grants.* For linear grants, except those issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the total rent amount for the entire term of the grant or any remaining years.

(2) *Multiple payments.* If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For

example, if you have a grant with a remaining term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multi-year period.

(ii) *Payments by all others.* If your annual rent is $1,000 or less, you must pay rent at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $1,000, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

(b) *Perpetual grants.* For linear grants issued in perpetuity (except as noted in §§ 2806.25 and 2806.26), you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed 30 years.

(2) *Payments by all others.* If your annual rent is $1,000 or less, you must pay rent at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $1,000, you may pay annually or at 10-year intervals, not to exceed 30 years.

(c) *Proration of payments.* The BLM considers the first partial calendar year in the initial rent payment period to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

10. Add new §§ 2806.25 and 2806.26 to read as follows:

§ 2806.25 How may I make rental payments when land encumbered by my perpetual linear grant (other than an easement issued under § 2807.15(c)) is being transferred out of Federal ownership?

(a) *One-time payment option for existing perpetual grants.* If you have a perpetual grant and the land your grant encumbers is being transferred out of Federal ownership, you may choose to make a one-time rental payment. The BLM will determine the one-time payment for a perpetual grant by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data, where the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula in paragraphs (a)(1), (2), and (3) of this section. The formula for this calculation is: One-time Rental Payment = Annual Rent /(Y − CR), where:

(1) Annual Rent = Current Annual Rent Applicable to the Subject Property From the Per Acre Rent Schedule;

(2) Y = Yield Rate (rate of return) Determined by the Most Recent 10–Year Average of the Annual 30–Year Treasury Bond Rate as of January of each year; and

(3) CR = Annual Percent Change in Rent as Determined by the Most Recent 10–Year Average of the difference in the CPI-U Index from January of one year to January of the following year.

(b) *One-time payment for grants converted to perpetual grants under § 2807.15(c).* If the land your grant encumbers is being transferred out of Federal ownership, and you request a conversion of your grant to a perpetual right-of-way grant, you must make a one-time rental payment in accordance with § 2806.25(a).

(c) In paragraphs (a) and (b) of this section, the annual rent is determined from the Per Acre Rent Schedule (see § 2806.20(c)) as updated under § 2806.22. However, the per acre zone value and zone number used in this annual rental determination will be based on the per acre zone value from acceptable market information or an appraisal, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census.

(d) When no acceptable market information is available and no appraisal has been completed for the land transfer action or when the BLM requests it, you must:

(1) Prepare an appraisal report using Federal appraisal standards, at your expense, that explains how you estimated the land value per acre and the encumbrance factor; and

(2) Submit the appraisal report for consideration by the BLM State Director with jurisdiction over the lands encumbered by your authorization. If you are adversely affected by this decision, you may appeal this decision under § 2801.10 of this part.

§ 2806.26 How may I make rental payments when land encumbered by my perpetual easement issued under § 2807.15(c) is being transferred out of Federal ownership?

(a) *Perpetual easements.* The BLM will use the appraisal report for the land transfer action (i.e., direct or indirect land sales, land exchanges, and other land disposal actions) and other acceptable market information to determine the one-time rental payment for a perpetual easement issued under § 2807.15(c).

(b) When no acceptable market information is available and no appraisal has been completed for the land transfer action or when the BLM requests it, you must prepare an appraisal report as required under § 2806.25(d).

11. Amend § 2807.15 by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 2807.15 How is grant administration affected if the land my grant encumbers is transferred to another Federal agency or out of Federal ownership?

* * * * *

(c) If there is a proposal to transfer the land your grant encumbers out of Federal ownership, the BLM may negotiate new grant terms and conditions with you. This may include increasing the term of your grant, should you request it, to a perpetual grant or providing for an easement. These changes become effective prior to the time the land is transferred out of Federal ownership.

(d) You and the new land owner may agree to negotiate new grant terms and conditions any time after the land encumbered by your grant is transferred out of Federal ownership.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

12. The authority citation for part 2880 continues to read as follows:

Authority: 30 U.S.C. 185 and 189.

13. Amend § 2885.11 by revising the first sentence of paragraph (a) to read as follows:

§ 2885.11 What terms and conditions must I comply with?

(a) *Duration.* All grants, except those issued for a term of 3 years or less, will terminate on December 31 of the final year of the grant. * * *

* * * * *

14. Amend § 2885.12 by revising paragraph (e) to read as follows:

§ 2885.12 What rights does a grant or TUP convey?

* * * * *

(e) Assign the grant or TUP to another, provided that you obtain the BLM's prior written approval, unless your grant or TUP specifically states that such approval is unnecessary.

15. Revise § 2885.19 to read as follows:

§ 2885.19 What is the rent for a linear right-of-way grant?

(a) The BLM will use the Per Acre Rent Schedule (see paragraph (b) of this section) to calculate the rent. Counties (or other geographical areas) are assigned to a County Zone Number and Per Acre Zone Value based upon their average per acre land and building value published in the NASS Census. The

initial assignment of counties to the zones in the base year (2002) Per Acre Rent Schedule is based upon data contained in the most recent NASS Census (2002). Subsequent assignments of counties will occur every 5 years following the publication of the NASS Census. The Per Acre Rent Schedule is also adjusted periodically as follows:

(1) The BLM will adjust the per acre rent values in §§ 2806.20 and 2885.19(b) for all types of linear right-of-way facilities in each zone each calendar year based on the difference in the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI–U), from January of one year to January of the following year.

(2) The BLM will review the NASS Census data from the 2012 NASS Census, and each subsequent 10-year period, and as appropriate, revise the number of county zones and the per acre zone values. Any revision must include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and must reasonably reflect their average per acre land and building values contained in the NASS Census.

(3) The BLM will revise the Per Acre Rent Schedule at the end of calendar year 2011 and at the end of each 10-year period thereafter to reflect the average rate of return for the preceding 10-year period for the 30-year Treasury bond yield (or the 20-year Treasury bond yield if the 30-year Treasury bond yield is not available).

(b) You may obtain a copy of the current Per Acre Rent Schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov.*

16. Revise § 2885.20 to read as follows:

§ 2885.20 How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

(a) Except as provided by § 2885.22, the BLM calculates your rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way or TUP area that fall in each zone and multiplying the result by the number of years in the rental period.

(b) If you pay rent annually and the payment of your new rental amount would cause you undue financial hardship, you may qualify for a one-time, 2-year phase-in period. The BLM may require you to submit information to support your claim. If approved by the BLM, payment of the amount in excess of the previous year's rent may be phased-in by equal increments over a 2-year period. In addition, the BLM will adjust the total calculated rent for year 2 of the phase-in period by the annual index provided by § 2885.19(a)(1).

(c) If the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

17. Revise § 2885.21 to read as follows:

§ 2885.21 How must I make rental payments for a linear grant or TUP?

(a) *Term grants or TUPs.* For TUPs you must make a one-time nonrefundable payment for the term of the TUP. For grants, except those which have been issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the total rent amount for the entire term of the grant or any remaining years.

(2) *Multiple payments.* If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a remaining term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multi-year period.

(ii) *Payments by all others.* If your annual rent is $1,000 or less, you must pay rent at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $1,000, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

(b) *Perpetual grants issued prior to November 16, 1973.* You must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed 30 years.

(2) *Payments by all others.* If your annual rent is $1,000 or less, you must pay rent at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $1,000, you may pay annually or at 10-year intervals, not to exceed 30 years.

(c) *Proration of payments.* The BLM considers the first partial calendar year in the initial rent payment period to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

18. Redesignate §§ 2885.22, 2885.23, and 2885.24 as §§ 2885.23, 2885.24, and 2885.25, respectively, and add new § 2885.22 to read as follows:

§ 2885.22 How may I make rental payments when land encumbered by my perpetual linear grant is being transferred out of Federal ownership?

(a) *One-time payment option for existing perpetual grants issued prior to November 16, 1973.* If you have a perpetual grant and the land your grant encumbers is being transferred out of Federal ownership, you may choose to make a one-time rental payment. The BLM will determine the one-time payment for perpetual right-of-way grants by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data, where the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula in paragraphs (a)(1), (2), and (3) of this section. The formula for this calculation is: One-time Payment = Annual Rent/(Y − CR), where:

(1) Annual Rent = Current Annual Rent Applicable to the Subject Property From the Per Acre Rent Schedule;

(2) Y = Yield Rate Determined by the Most Recent 10-Year Average of the Annual 30-Year Treasury Bond Rate as of January of each year; and

(3) CR = Annual Percent Change in Rent as Determined by the Most Recent 10-Year Average of the difference in the CPI–U Index from January of one year to January of the following year.

(b) In paragraph (a) of this section, the annual rent is determined from the Per Acre Rent Schedule (see § 2885.19(b)), as updated under § 2885.19(a)(1), (2), and (3) of this chapter. However, the per acre zone value and zone number used in this annual rental determination will be based on the per acre value from acceptable market information or an appraisal, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census.

(c) When no acceptable market information is available and no

appraisal has been completed for the land transfer action, or when the BLM requests it, you must prepare an appraisal report as required under § 2806.25(d) of this chapter.

19. Amend § 2886.15 by revising paragraph (c) and adding new paragraph (d) to read as follows:

§ 2886.15 How is grant or TUP administration affected if the BLM land my grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership?

* * * * *

(c) If there is a proposal to transfer the land your grant or TUP encumbers out of Federal ownership, the BLM may negotiate new grant or TUP terms and conditions with you. This may include increasing the term of your grant, should you request it, to a 30-year term or replacing your TUP with a grant. These changes become effective prior to the time the land is transferred out of Federal ownership.

(d) You and the new landowner may agree to negotiate new grant or TUP terms and conditions any time after the land encumbered by your grant is transferred out of Federal ownership.

20. Amend § 2888.10 by revising paragraph (c) to read as follows:

§ 2888.10 What is trespass?

* * * * *

(c) The BLM will administer trespass actions for grants and TUPs as set forth in §§ 2808.10(c), and 2808.11 of this chapter.

* * * * *

PART 2920—LEASES, PERMITS, AND EASEMENTS

21. The authority citation for part 2920 continues to read as follows:

Authority: 43 U.S.C. 1740.

22. Amend § 2920.6(b) by revising the second sentence of paragraph (b) to read as follows:

§ 2920.6 Reimbursement of costs.

* * * * *

(b) * * * The reimbursement of costs shall be in accordance with the provisions of §§ 2804.14 and 2805.16 of this title.

* * * * *

23. Amend § 2920.8 by revising paragraph (b) to read as follows:

§ 2920.8 Fees.

* * * * *

(b) *Processing and monitoring fee.* Each request for renewal, transfer, or assignment of a lease or easement shall be accompanied by a non-refundable processing and monitoring fee determined in accordance with the provisions of §§ 2804.14 and 2805.16 of this title.

Note—The following 2002 NASS Census per acre land and building value and rent schedule zones is printed for information only and will not appear in Title 43 of the Code of Federal Regulations.

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE

State	County	2002 L/B values	Rent schedule zone
Alabama	Autauga	$1,879	5
Alabama	Baldwin	2,502	6
Alabama	Barbour	1,197	4
Alabama	Bibb	1,712	5
Alabama	Blount	2,556	6
Alabama	Bullock	1,432	4
Alabama	Butler	1,547	5
Alabama	Calhoun	2,598	6
Alabama	Chambers	994	3
Alabama	Cherokee	1,542	5
Alabama	Chilton	1,796	5
Alabama	Choctaw	1,283	4
Alabama	Clarke	1,303	4
Alabama	Clay	1,390	4
Alabama	Cleburne	1,921	5
Alabama	Coffee	1,201	4
Alabama	Colbert	1,380	4
Alabama	Conecuh	1,109	4
Alabama	Coosa	1,350	4
Alabama	Covington	1,616	5
Alabama	Crenshaw	1,330	4
Alabama	Cullman	3,167	7
Alabama	Dale	1,422	4
Alabama	Dallas	1,173	4
Alabama	DeKalb	2,392	6
Alabama	Elmore	1,968	5
Alabama	Escambia	1,426	4
Alabama	Etowah	2,856	6
Alabama	Fayette	1,108	4
Alabama	Franklin	1,415	4
Alabama	Geneva	1,513	5
Alabama	Greene	1,102	4
Alabama	Hale	1,164	4
Alabama	Henry	1,199	4
Alabama	Houston	1,342	4
Alabama	Jackson	2,197	6
Alabama	Jefferson	2,607	6
Alabama	Lamar	1,161	4
Alabama	Lauderdale	1,807	5
Alabama	Lawrence	1,716	5
Alabama	Lee	2,280	6

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Alabama	Limestone	2,212	6
Alabama	Lowndes	1,144	4
Alabama	Macon	1,315	4
Alabama	Madison	2,161	6
Alabama	Marengo	1,001	4
Alabama	Marion	1,484	4
Alabama	Marshall	2,725	6
Alabama	Mobile	3,361	7
Alabama	Monroe	1,367	4
Alabama	Montgomery	1,948	5
Alabama	Morgan	2,812	6
Alabama	Perry	955	3
Alabama	Pickens	1,252	4
Alabama	Pike	1,423	4
Alabama	Randolph	1,898	5
Alabama	Russell	1,304	4
Alabama	Shelby	2,795	6
Alabama	St. Clair	2,364	6
Alabama	Sumter	1,018	4
Alabama	Talladega	2,567	6
Alabama	Tallapoosa	1,448	4
Alabama	Tuscaloosa	1,972	5
Alabama	Walker	1,731	5
Alabama	Washington	1,493	4
Alabama	Wilcox	1,013	4
Alabama	Winston	1,887	5
Alaska	Aleutian Islands Area**	107	1
Alaska	Anchorage Area**	2,299	6
Alaska	Fairbanks Area**	655	3
Alaska	Juneau Area**	44,679	11
Alaska	Kenai Peninsula**	1,412	4
Arizona	Apache	145	1
Arizona	Cochise	631	3
Arizona	Coconino	161	1
Arizona	Gila	275	2
Arizona	Graham	480	2
Arizona	Greenlee	1,505	5
Arizona	La Paz	629	3
Arizona	Maricopa	3,026	7
Arizona	Mohave	435	2
Arizona	Navajo	179	1
Arizona	Pima	295	2
Arizona	Pinal	1,230	4
Arizona	Santa Cruz	1,434	4
Arizona	Yavapai	621	3
Arizona	Yuma	4,544	7
Arkansas	Arkansas	1,400	4
Arkansas	Ashley	1,364	4
Arkansas	Baxter	1,697	5
Arkansas	Benton	3,031	7
Arkansas	Boone	1,809	5
Arkansas	Bradley	1,898	5
Arkansas	Calhoun	1,278	4
Arkansas	Carroll	1,670	5
Arkansas	Chicot	1,171	4
Arkansas	Clark	1,431	4
Arkansas	Clay	1,626	5
Arkansas	Cleburne	1,722	5
Arkansas	Cleveland	2,195	6
Arkansas	Columbia	1,559	5
Arkansas	Conway	1,672	5
Arkansas	Craighead	1,720	5
Arkansas	Crawford	1,757	5
Arkansas	Crittenden	1,290	4
Arkansas	Cross	1,385	4
Arkansas	Dallas	1,304	4
Arkansas	Desha	1,103	4
Arkansas	Drew	1,255	4
Arkansas	Faulkner	1,823	5
Arkansas	Franklin	1,589	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Arkansas	Fulton	1,019	4
Arkansas	Garland	2,260	6
Arkansas	Grant	1,716	5
Arkansas	Greene	1,556	5
Arkansas	Hempstead	1,396	4
Arkansas	Hot Spring	1,553	5
Arkansas	Howard	1,647	5
Arkansas	Independence	1,243	4
Arkansas	Izard	1,153	4
Arkansas	Jackson	1,184	4
Arkansas	Jefferson	1,216	4
Arkansas	Johnson	2,234	6
Arkansas	Lafayette	1,067	4
Arkansas	Lawrence	1,275	4
Arkansas	Lee	1,033	4
Arkansas	Lincoln	1,146	4
Arkansas	Little River	1,121	4
Arkansas	Logan	1,522	5
Arkansas	Lonoke	1,389	4
Arkansas	Madison	1,371	4
Arkansas	Marion	1,312	4
Arkansas	Miller	1,045	4
Arkansas	Mississippi	1,351	4
Arkansas	Monroe	1,169	4
Arkansas	Montgomery	1,499	4
Arkansas	Nevada	1,075	4
Arkansas	Newton	1,495	4
Arkansas	Ouachita	1,428	4
Arkansas	Perry	1,772	5
Arkansas	Phillips	1,045	4
Arkansas	Pike	1,787	5
Arkansas	Poinsett	1,590	5
Arkansas	Polk	1,713	5
Arkansas	Pope	1,946	5
Arkansas	Prairie	1,245	4
Arkansas	Pulaski	1,767	5
Arkansas	Randolph	1,291	4
Arkansas	Saline	2,393	6
Arkansas	Scott	1,584	5
Arkansas	Searcy	994	3
Arkansas	Sebastian	2,146	6
Arkansas	Sevier	1,698	5
Arkansas	Sharp	1,022	4
Arkansas	St. Francis	1,217	4
Arkansas	Stone	1,013	4
Arkansas	Union	2,138	6
Arkansas	Van Buren	1,425	4
Arkansas	Washington	2,779	6
Arkansas	White	1,586	5
Arkansas	Woodruff	1,135	4
Arkansas	Yell	1,277	4
California	Alameda	2,787	6
California	Alpine	2,500	6
California	Amador	1,941	5
California	Butte	4,401	7
California	Calaveras	1,791	5
California	Colusa	2,636	6
California	Contra Costa	8,044	8
California	Del Norte	4,291	7
California	El Dorado	2,846	6
California	Fresno	3,612	7
California	Glenn	2,396	6
California	Humboldt	1,187	4
California	Imperial	2,976	6
California	Inyo	971	3
California	Kern	1,816	5
California	Kings	3,643	7
California	Lake	4,981	7
California	Lassen	694	3
California	Los Angeles	15,544	9

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
California	Madera	3,120	7
California	Marin	3,657	7
California	Mariposa	1,005	4
California	Mendocino	2,346	6
California	Merced	3,826	7
California	Modoc	692	3
California	Mono	1,561	5
California	Monterey	3,248	7
California	Napa	19,350	9
California	Nevada	3,418	7
California	Orange	10,661	9
California	Placer	4,849	7
California	Plumas	1,022	4
California	Riverside	4,830	7
California	Sacramento	4,485	7
California	San Benito	1,878	5
California	San Bernardino	2,144	6
California	San Diego	7,635	8
California	San Francisco	32,239	11
California	San Joaquin	6,673	8
California	San Luis Obispo	2,676	6
California	San Mateo	5,979	8
California	Santa Barbara	3,684	7
California	Santa Clara	2,887	6
California	Santa Cruz	9,335	8
California	Shasta	1,733	5
California	Sierra	1,512	5
California	Siskiyou	1,435	4
California	Solano	3,834	7
California	Sonoma	11,058	9
California	Stanislaus	6,068	8
California	Sutter	4,064	7
California	Tehama	1,658	5
California	Trinity	639	3
California	Tulare	3,949	7
California	Tuolumne	1,664	5
California	Ventura	8,839	8
California	Yolo	3,645	7
California	Yuba	3,444	7
Colorado	Adams	901	3
Colorado	Alamosa	1,206	4
Colorado	Arapahoe	853	3
Colorado	Archuleta	1,277	4
Colorado	Baca	292	2
Colorado	Bent	320	2
Colorado	Boulder	7,639	8
Colorado	Broomfield*	756	3
Colorado	Chaffee	2,093	6
Colorado	Cheyenne	324	2
Colorado	Clear Creek	1,665	5
Colorado	Conejos	838	3
Colorado	Costilla	501	3
Colorado	Crowley	282	2
Colorado	Custer	1,552	5
Colorado	Delta	2,093	6
Colorado	Denver*	756	3
Colorado	Dolores	946	3
Colorado	Douglas	3,065	7
Colorado	Eagle	1,509	5
Colorado	El Paso	880	3
Colorado	Elbert	694	3
Colorado	Fremont	1,044	4
Colorado	Garfield	1,293	4
Colorado	Gilpin	2,787	6
Colorado	Grand	1,206	4
Colorado	Gunnison	1,853	5
Colorado	Hinsdale	2,926	6
Colorado	Huerfano	429	2
Colorado	Jackson	520	3
Colorado	Jefferson	4,896	7

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Colorado	Kiowa	307	2
Colorado	Kit Carson	464	2
Colorado	La Plata	1,020	4
Colorado	Lake	1,381	4
Colorado	Larimer	2,311	6
Colorado	Las Animas	243	1
Colorado	Lincoln	251	2
Colorado	Logan	560	3
Colorado	Mesa	1,426	4
Colorado	Mineral	1,562	5
Colorado	Moffat	416	2
Colorado	Montezuma	516	3
Colorado	Montrose	1,180	4
Colorado	Morgan	801	3
Colorado	Otero	382	2
Colorado	Ouray	1,505	5
Colorado	Park	784	3
Colorado	Phillips	718	3
Colorado	Pitkin	5,926	8
Colorado	Prowers	417	2
Colorado	Pueblo	491	2
Colorado	Rio Blanco	669	3
Colorado	Rio Grande	1,827	5
Colorado	Routt	1,890	5
Colorado	Saguache	709	3
Colorado	San Juan*	756	3
Colorado	San Miguel	962	3
Colorado	Sedgwick	735	3
Colorado	Summit	1,766	5
Colorado	Teller	1,284	4
Colorado	Washington	417	2
Colorado	Weld	1,379	4
Colorado	Yuma	573	3
Connecticut	Fairfield	26,164	10
Connecticut	Hartford	13,193	9
Connecticut	Litchfield	8,611	8
Connecticut	Middlesex	12,457	9
Connecticut	New Haven	13,630	9
Connecticut	New London	6,889	8
Connecticut	Tolland	5,665	8
Connecticut	Windham	6,577	8
Delaware	Kent	3,498	7
Delaware	New Castle	5,681	8
Delaware	Sussex	3,951	7
Florida	Alachua	3,222	7
Florida	Baker	3,954	7
Florida	Bay	2,626	6
Florida	Bradford	2,485	6
Florida	Brevard	2,385	6
Florida	Broward	20,423	10
Florida	Calhoun	1,596	5
Florida	Charlotte	1,726	5
Florida	Citrus	2,498	6
Florida	Clay	2,482	6
Florida	Collier	2,660	6
Florida	Columbia	1,515	5
Florida	Dade	9,726	8
Florida	DeSoto	2,415	6
Florida	Dixie	1,803	5
Florida	Duval	6,061	8
Florida	Escambia	2,383	6
Florida	Flagler	1,634	5
Florida	Franklin	1,165	4
Florida	Gadsden	2,421	6
Florida	Gilchrist	2,322	6
Florida	Glades	1,849	5
Florida	Gulf	1,886	5
Florida	Hamilton	1,419	4
Florida	Hardee	2,341	6
Florida	Hendry	3,846	7

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Florida	Hernando	5,093	8
Florida	Highlands	2,256	6
Florida	Hillsborough	5,410	8
Florida	Holmes	1,610	5
Florida	Indian River	2,969	6
Florida	Jackson	1,478	4
Florida	Jefferson	1,850	5
Florida	Lafayette	1,343	4
Florida	Lake	4,290	7
Florida	Lee	3,293	7
Florida	Leon	2,085	6
Florida	Levy	1,899	5
Florida	Liberty	1,366	4
Florida	Madison	1,536	5
Florida	Manatee	3,142	7
Florida	Marion	4,992	7
Florida	Martin	2,604	6
Florida	Monroe	20,695	10
Florida	Nassau	4,773	7
Florida	Okaloosa	2,539	6
Florida	Okeechobee	2,037	6
Florida	Orange	3,931	7
Florida	Osceola	1,690	5
Florida	Palm Beach	3,348	7
Florida	Pasco	3,863	7
Florida	Pinellas	31,732	11
Florida	Polk	2,899	6
Florida	Putnam	2,480	6
Florida	Santa Rosa	2,649	6
Florida	Sarasota	2,995	6
Florida	Seminole	6,137	8
Florida	St. Johns	4,315	7
Florida	St. Lucie	3,239	7
Florida	Sumter	2,405	6
Florida	Suwannee	2,503	6
Florida	Taylor	1,292	4
Florida	Union	1,318	4
Florida	Volusia	4,357	7
Florida	Wakulla	2,891	6
Florida	Walton	1,889	5
Florida	Washington	2,288	6
Georgia	Appling	1,566	5
Georgia	Atkinson	1,419	4
Georgia	Bacon	2,180	6
Georgia	Baker	1,751	5
Georgia	Baldwin	2,344	6
Georgia	Banks	5,033	8
Georgia	Barrow	5,785	8
Georgia	Bartow	2,914	6
Georgia	Ben Hill	1,432	4
Georgia	Berrien	1,680	5
Georgia	Bibb	2,354	6
Georgia	Bleckley	1,647	5
Georgia	Brantley	1,602	5
Georgia	Brooks	1,602	5
Georgia	Bryan	1,687	5
Georgia	Bulloch	1,629	5
Georgia	Burke	1,344	4
Georgia	Butts	2,036	6
Georgia	Calhoun	1,298	4
Georgia	Camden	1,615	5
Georgia	Candler	1,354	4
Georgia	Carroll	3,897	7
Georgia	Catoosa	3,877	7
Georgia	Charlton	1,933	5
Georgia	Chatham	2,062	6
Georgia	Chattahoochee	1,476	4
Georgia	Chattooga	1,699	5
Georgia	Cherokee	8,357	8
Georgia	Clarke	4,092	7

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Georgia	Clay	1,027	4
Georgia	Clayton	5,439	8
Georgia	Clinch	1,693	5
Georgia	Cobb	9,113	8
Georgia	Coffee	1,584	5
Georgia	Colquitt	1,583	5
Georgia	Columbia	4,048	7
Georgia	Cook	1,864	5
Georgia	Coweta	5,540	8
Georgia	Crawford	1,992	5
Georgia	Crisp	1,745	5
Georgia	Dade	2,061	6
Georgia	Dawson	4,574	7
Georgia	Decatur	1,653	5
Georgia	DeKalb	6,478	8
Georgia	Dodge	1,026	4
Georgia	Dooly	1,304	4
Georgia	Dougherty	1,329	4
Georgia	Douglas	5,803	8
Georgia	Early	1,319	4
Georgia	Echols	1,602	5
Georgia	Effingham	1,740	5
Georgia	Elbert	2,142	6
Georgia	Emanuel	1,225	4
Georgia	Evans	1,655	5
Georgia	Fannin	3,549	7
Georgia	Fayette	5,006	8
Georgia	Floyd	2,650	6
Georgia	Forsyth	7,482	8
Georgia	Franklin	4,557	7
Georgia	Fulton	5,806	8
Georgia	Gilmer	4,590	7
Georgia	Glascock	1,563	5
Georgia	Glynn	1,804	5
Georgia	Gordon	3,896	7
Georgia	Grady	1,824	5
Georgia	Greene	2,908	6
Georgia	Gwinnett	6,474	8
Georgia	Habersham	5,286	8
Georgia	Hall	5,384	8
Georgia	Hancock	1,178	4
Georgia	Haralson	2,827	6
Georgia	Harris	1,887	5
Georgia	Hart	3,394	7
Georgia	Heard	2,175	6
Georgia	Henry	4,226	7
Georgia	Houston	2,197	6
Georgia	Irwin	1,417	4
Georgia	Jackson	5,565	8
Georgia	Jasper	2,249	6
Georgia	Jeff Davis	1,509	5
Georgia	Jefferson	1,323	4
Georgia	Jenkins	1,337	4
Georgia	Johnson	1,587	5
Georgia	Jones	2,110	6
Georgia	Lamar	2,450	6
Georgia	Lanier	1,181	4
Georgia	Laurens	1,359	4
Georgia	Lee	1,544	5
Georgia	Liberty	2,325	6
Georgia	Lincoln	2,657	6
Georgia	Long	1,454	4
Georgia	Lowndes	2,046	6
Georgia	Lumpkin	6,096	8
Georgia	Macon	1,687	5
Georgia	Madison	4,630	7
Georgia	Marion	1,539	5
Georgia	McDuffie	1,991	5
Georgia	McIntosh	1,618	5
Georgia	Meriwether	1,998	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Georgia	Miller	1,638	5
Georgia	Mitchell	1,448	4
Georgia	Monroe	2,169	6
Georgia	Montgomery	1,400	4
Georgia	Morgan	3,517	7
Georgia	Murray	3,028	7
Georgia	Muscogee	3,225	7
Georgia	Newton	4,116	7
Georgia	Oconee	4,845	7
Georgia	Oglethorpe	3,328	7
Georgia	Paulding	6,524	8
Georgia	Peach	2,375	6
Georgia	Pickens	5,781	8
Georgia	Pierce	1,537	5
Georgia	Pike	3,751	7
Georgia	Polk	2,398	6
Georgia	Pulaski	1,401	4
Georgia	Putnam	2,723	6
Georgia	Quitman	1,362	4
Georgia	Rabun	6,087	8
Georgia	Randolph	1,204	4
Georgia	Richmond	2,917	6
Georgia	Rockdale	5,718	8
Georgia	Schley	1,586	5
Georgia	Screven	1,355	4
Georgia	Seminole	1,547	5
Georgia	Spalding	4,594	7
Georgia	Stephens	4,447	7
Georgia	Stewart	1,406	4
Georgia	Sumter	1,421	4
Georgia	Talbot	1,705	5
Georgia	Taliaferro	1,666	5
Georgia	Tattnall	1,987	5
Georgia	Taylor	1,611	5
Georgia	Telfair	1,561	5
Georgia	Terrell	1,356	4
Georgia	Thomas	1,548	5
Georgia	Tift	2,035	6
Georgia	Toombs	1,528	5
Georgia	Towns	3,878	7
Georgia	Treutlen	1,371	4
Georgia	Troup	1,625	5
Georgia	Turner	1,619	5
Georgia	Twiggs	1,451	4
Georgia	Union	5,435	8
Georgia	Upson	2,235	6
Georgia	Walker	2,554	6
Georgia	Walton	6,507	8
Georgia	Ware	1,523	5
Georgia	Warren	1,352	4
Georgia	Washington	1,537	5
Georgia	Wayne	1,794	5
Georgia	Webster	1,430	4
Georgia	Wheeler	1,214	4
Georgia	White	6,020	8
Georgia	Whitfield	2,460	6
Georgia	Wilcox	1,313	4
Georgia	Wilkes	1,743	5
Georgia	Wilkinson	1,382	4
Georgia	Worth	1,558	5
Hawaii	Hawaii	2,822	6
Hawaii	Honolulu	8,358	8
Hawaii	Kauai	3,989	7
Hawaii	Maui	4,112	7
Idaho	Ada	3,471	7
Idaho	Adams	568	3
Idaho	Bannock	731	3
Idaho	Bear Lake	790	3
Idaho	Benewah	1,212	4
Idaho	Bingham	1,151	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Idaho	Blaine	1,304	4
Idaho	Boise	1,010	4
Idaho	Bonner	2,909	6
Idaho	Bonneville	1,303	4
Idaho	Boundary	2,391	6
Idaho	Butte	879	3
Idaho	Camas	697	3
Idaho	Canyon	4,219	7
Idaho	Caribou	676	3
Idaho	Cassia	986	3
Idaho	Clark	647	3
Idaho	Clearwater	1,285	4
Idaho	Custer	1,836	5
Idaho	Elmore	719	3
Idaho	Franklin	1,078	4
Idaho	Fremont	1,148	4
Idaho	Gem	1,234	4
Idaho	Gooding	2,535	6
Idaho	Idaho	745	3
Idaho	Jefferson	1,758	5
Idaho	Jerome	1,887	5
Idaho	Kootenai	2,265	6
Idaho	Latah	1,400	4
Idaho	Lemhi	1,228	4
Idaho	Lewis	830	3
Idaho	Lincoln	943	3
Idaho	Madison	2,283	6
Idaho	Minidoka	2,000	5
Idaho	Nez Perce	853	3
Idaho	Oneida	667	3
Idaho	Owyhee	689	3
Idaho	Payette	1,735	5
Idaho	Power	986	3
Idaho	Shoshone	3,442	7
Idaho	Teton	2,462	6
Idaho	Twin Falls	1,946	5
Idaho	Valley	1,524	5
Idaho	Washington	736	3
Illinois	Adams	2,030	6
Illinois	Alexander	1,305	4
Illinois	Bond	2,103	6
Illinois	Boone	3,424	7
Illinois	Brown	1,662	5
Illinois	Bureau	2,655	6
Illinois	Calhoun	1,558	5
Illinois	Carroll	2,377	6
Illinois	Cass	2,102	6
Illinois	Champaign	2,890	6
Illinois	Christian	2,530	6
Illinois	Clark	1,950	5
Illinois	Clay	1,585	5
Illinois	Clinton	2,466	6
Illinois	Coles	2,716	6
Illinois	Cook	6,286	8
Illinois	Crawford	1,713	5
Illinois	Cumberland	2,123	6
Illinois	De Witt	3,012	7
Illinois	DeKalb	3,759	7
Illinois	Douglas	2,970	6
Illinois	DuPage	5,056	8
Illinois	Edgar	2,341	6
Illinois	Edwards	1,591	5
Illinois	Effingham	2,170	6
Illinois	Fayette	1,714	5
Illinois	Ford	2,608	6
Illinois	Franklin	1,573	5
Illinois	Fulton	1,886	5
Illinois	Gallatin	1,497	4
Illinois	Greene	1,855	5
Illinois	Grundy	3,096	7

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Illinois	Hamilton	1,622	5
Illinois	Hancock	2,544	6
Illinois	Hardin	1,736	5
Illinois	Henderson	2,253	6
Illinois	Henry	2,458	6
Illinois	Iroquois	2,402	6
Illinois	Jackson	1,672	5
Illinois	Jasper	2,008	6
Illinois	Jefferson	1,333	4
Illinois	Jersey	2,152	6
Illinois	Jo Daviess	2,190	6
Illinois	Johnson	1,363	4
Illinois	Kane	3,857	7
Illinois	Kankakee	2,812	6
Illinois	Kendall	4,206	7
Illinois	Knox	2,380	6
Illinois	La Salle	3,106	7
Illinois	Lake	4,655	7
Illinois	Lawrence	1,766	5
Illinois	Lee	2,998	6
Illinois	Livingston	2,658	6
Illinois	Logan	2,808	6
Illinois	Macon	3,057	7
Illinois	Macoupin	2,363	6
Illinois	Madison	2,477	6
Illinois	Marion	1,608	5
Illinois	Marshall	2,704	6
Illinois	Mason	2,183	6
Illinois	Massac	1,251	4
Illinois	McDonough	2,247	6
Illinois	McHenry	4,262	7
Illinois	McLean	2,912	6
Illinois	Menard	2,421	6
Illinois	Mercer	2,216	6
Illinois	Monroe	2,542	6
Illinois	Montgomery	2,033	6
Illinois	Morgan	2,400	6
Illinois	Moultrie	2,952	6
Illinois	Ogle	3,131	7
Illinois	Peoria	2,754	6
Illinois	Perry	1,423	4
Illinois	Piatt	2,981	6
Illinois	Pike	1,840	5
Illinois	Pope	1,155	4
Illinois	Pulaski	1,418	4
Illinois	Putnam	2,888	6
Illinois	Randolph	1,939	5
Illinois	Richland	1,794	5
Illinois	Rock Island	2,642	6
Illinois	Saline	1,538	5
Illinois	Sangamon	2,829	6
Illinois	Schuyler	1,599	5
Illinois	Scott	2,053	6
Illinois	Shelby	2,341	6
Illinois	St. Clair	2,759	6
Illinois	Stark	2,631	6
Illinois	Stephenson	2,388	6
Illinois	Tazewell	2,862	6
Illinois	Union	1,944	5
Illinois	Vermilion	2,467	6
Illinois	Wabash	1,722	5
Illinois	Warren	2,518	6
Illinois	Washington	1,900	5
Illinois	Wayne	1,239	4
Illinois	White	1,609	5
Illinois	Whiteside	2,540	6
Illinois	Will	4,652	7
Illinois	Williamson	2,011	6
Illinois	Winnebago	2,956	6
Illinois	Woodford	2,993	6

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Indiana	Adams	2,880	6
Indiana	Allen	3,349	7
Indiana	Bartholomew	2,958	6
Indiana	Benton	2,494	6
Indiana	Blackford	2,200	6
Indiana	Boone	3,194	7
Indiana	Brown	2,766	6
Indiana	Carroll	2,733	6
Indiana	Cass	2,389	6
Indiana	Clark	3,276	7
Indiana	Clay	2,026	6
Indiana	Clinton	2,728	6
Indiana	Crawford	1,825	5
Indiana	Daviess	2,025	6
Indiana	Dearborn	3,242	7
Indiana	Decatur	2,641	6
Indiana	DeKalb	2,203	6
Indiana	Delaware	2,540	6
Indiana	Dubois	2,316	6
Indiana	Elkhart	3,803	7
Indiana	Fayette	2,292	6
Indiana	Floyd	3,666	7
Indiana	Fountain	2,217	6
Indiana	Franklin	2,491	6
Indiana	Fulton	2,045	6
Indiana	Gibson	2,280	6
Indiana	Grant	2,532	6
Indiana	Greene	2,000	5
Indiana	Hamilton	4,062	7
Indiana	Hancock	3,220	7
Indiana	Harrison	2,568	6
Indiana	Hendricks	3,403	7
Indiana	Henry	2,738	6
Indiana	Howard	3,064	7
Indiana	Huntington	2,492	6
Indiana	Jackson	2,443	6
Indiana	Jasper	2,436	6
Indiana	Jay	2,552	6
Indiana	Jefferson	2,397	6
Indiana	Jennings	2,179	6
Indiana	Johnson	3,776	7
Indiana	Knox	2,156	6
Indiana	Kosciusko	2,720	6
Indiana	LaGrange	3,544	7
Indiana	Lake	3,392	7
Indiana	LaPorte	2,653	6
Indiana	Lawrence	1,575	5
Indiana	Madison	2,816	6
Indiana	Marion	4,413	7
Indiana	Marshall	2,357	6
Indiana	Martin	1,938	5
Indiana	Miami	2,406	6
Indiana	Monroe	2,444	6
Indiana	Montgomery	2,424	6
Indiana	Morgan	3,161	7
Indiana	Newton	2,392	6
Indiana	Noble	2,742	6
Indiana	Ohio	3,262	7
Indiana	Orange	1,901	5
Indiana	Owen	2,031	6
Indiana	Parke	2,051	6
Indiana	Perry	1,809	5
Indiana	Pike	2,051	6
Indiana	Porter	3,150	7
Indiana	Posey	2,237	6
Indiana	Pulaski	2,321	6
Indiana	Putnam	2,426	6
Indiana	Randolph	2,122	6
Indiana	Ripley	2,517	6
Indiana	Rush	2,624	6

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Indiana	Scott	2,223	6
Indiana	Shelby	2,801	6
Indiana	Spencer	1,941	5
Indiana	St. Joseph	2,914	6
Indiana	Starke	2,045	6
Indiana	Steuben	2,292	6
Indiana	Sullivan	1,975	5
Indiana	Switzerland	2,439	6
Indiana	Tippecanoe	2,864	6
Indiana	Tipton	3,265	7
Indiana	Union	2,475	6
Indiana	Vanderburgh	2,562	6
Indiana	Vermillion	2,291	6
Indiana	Vigo	2,165	6
Indiana	Wabash	2,540	6
Indiana	Warren	2,445	6
Indiana	Warrick	2,399	6
Indiana	Washington	2,238	6
Indiana	Wayne	2,224	6
Indiana	Wells	2,356	6
Indiana	White	2,535	6
Indiana	Whitley	2,515	6
Iowa	Adair	1,464	4
Iowa	Adams	1,421	4
Iowa	Allamakee	1,524	5
Iowa	Appanoose	926	3
Iowa	Audubon	1,840	5
Iowa	Benton	2,374	6
Iowa	Black Hawk	2,786	6
Iowa	Boone	2,151	6
Iowa	Bremer	2,588	6
Iowa	Buchanan	2,449	6
Iowa	Buena Vista	2,465	6
Iowa	Butler	2,233	6
Iowa	Calhoun	2,460	6
Iowa	Carroll	2,210	6
Iowa	Cass	1,639	5
Iowa	Cedar	2,081	6
Iowa	Cerro Gordo	2,114	6
Iowa	Cherokee	2,274	6
Iowa	Chickasaw	2,169	6
Iowa	Clarke	995	3
Iowa	Clay	2,252	6
Iowa	Clayton	1,903	5
Iowa	Clinton	2,309	6
Iowa	Crawford	1,903	5
Iowa	Dallas	2,537	6
Iowa	Davis	1,136	4
Iowa	Decatur	945	3
Iowa	Delaware	2,375	6
Iowa	Des Moines	2,216	6
Iowa	Dickinson	1,936	5
Iowa	Dubuque	2,134	6
Iowa	Emmet	1,906	5
Iowa	Fayette	2,160	6
Iowa	Floyd	2,278	6
Iowa	Franklin	2,154	6
Iowa	Fremont	1,610	5
Iowa	Greene	2,093	6
Iowa	Grundy	2,576	6
Iowa	Guthrie	1,813	5
Iowa	Hamilton	2,324	6
Iowa	Hancock	2,095	6
Iowa	Hardin	2,463	6
Iowa	Harrison	1,692	5
Iowa	Henry	2,019	6
Iowa	Howard	1,992	5
Iowa	Humboldt	2,487	6
Iowa	Ida	2,059	6
Iowa	Iowa	1,706	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Iowa	Jackson	1,849	5
Iowa	Jasper	2,040	6
Iowa	Jefferson	1,492	4
Iowa	Johnson	2,377	6
Iowa	Jones	2,202	6
Iowa	Keokuk	1,519	5
Iowa	Kossuth	2,338	6
Iowa	Lee	1,778	5
Iowa	Linn	2,577	6
Iowa	Louisa	2,150	6
Iowa	Lucas	1,093	4
Iowa	Lyon	2,356	6
Iowa	Madison	1,757	5
Iowa	Mahaska	1,852	5
Iowa	Marion	1,491	4
Iowa	Marshall	2,009	6
Iowa	Mills	1,803	5
Iowa	Mitchell	2,222	6
Iowa	Monona	1,792	5
Iowa	Monroe	1,008	4
Iowa	Montgomery	1,420	4
Iowa	Muscatine	2,283	6
Iowa	O'Brien	2,545	6
Iowa	Osceola	2,475	6
Iowa	Page	1,256	4
Iowa	Palo Alto	2,356	6
Iowa	Plymouth	2,267	6
Iowa	Pocahontas	2,377	6
Iowa	Polk	2,156	6
Iowa	Pottawattamie	2,028	6
Iowa	Poweshiek	1,832	5
Iowa	Ringgold	1,015	4
Iowa	Sac	2,438	6
Iowa	Scott	3,003	7
Iowa	Shelby	2,044	6
Iowa	Sioux	2,655	6
Iowa	Story	2,342	6
Iowa	Tama	2,253	6
Iowa	Taylor	1,226	4
Iowa	Union	1,309	4
Iowa	Van Buren	1,220	4
Iowa	Wapello	1,540	5
Iowa	Warren	1,468	4
Iowa	Washington	2,271	6
Iowa	Wayne	1,001	4
Iowa	Webster	2,206	6
Iowa	Winnebago	2,101	6
Iowa	Winneshiek	1,808	5
Iowa	Woodbury	1,794	5
Iowa	Worth	2,153	6
Iowa	Wright	2,479	6
Kansas	Allen	821	3
Kansas	Anderson	899	3
Kansas	Atchison	1,057	4
Kansas	Barber	441	2
Kansas	Barton	591	3
Kansas	Bourbon	720	3
Kansas	Brown	1,164	4
Kansas	Butler	1,002	4
Kansas	Chase	618	3
Kansas	Chautauqua	535	3
Kansas	Cherokee	968	3
Kansas	Cheyenne	480	2
Kansas	Clark	395	2
Kansas	Clay	907	3
Kansas	Cloud	604	3
Kansas	Coffey	755	3
Kansas	Comanche	408	2
Kansas	Cowley	775	3
Kansas	Crawford	875	3

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Kansas	Decatur	485	2
Kansas	Dickinson	666	3
Kansas	Doniphan	1,281	4
Kansas	Douglas	2,010	6
Kansas	Edwards	579	3
Kansas	Elk	496	2
Kansas	Ellis	528	3
Kansas	Ellsworth	518	3
Kansas	Finney	616	3
Kansas	Ford	578	3
Kansas	Franklin	1,240	4
Kansas	Geary	859	3
Kansas	Gove	449	2
Kansas	Graham	453	2
Kansas	Grant	664	3
Kansas	Gray	791	3
Kansas	Greeley	504	3
Kansas	Greenwood	552	3
Kansas	Hamilton	465	2
Kansas	Harper	623	3
Kansas	Harvey	928	3
Kansas	Haskell	744	3
Kansas	Hodgeman	512	3
Kansas	Jackson	832	3
Kansas	Jefferson	1,067	4
Kansas	Jewell	656	3
Kansas	Johnson	1,978	5
Kansas	Kearny	479	2
Kansas	Kingman	683	3
Kansas	Kiowa	441	2
Kansas	Labette	746	3
Kansas	Lane	468	2
Kansas	Leavenworth	1,589	5
Kansas	Lincoln	439	2
Kansas	Linn	1,003	4
Kansas	Logan	417	2
Kansas	Lyon	778	3
Kansas	Marion	731	3
Kansas	Marshall	917	3
Kansas	McPherson	1,151	4
Kansas	Meade	584	3
Kansas	Miami	1,755	5
Kansas	Mitchell	724	3
Kansas	Montgomery	884	3
Kansas	Morris	632	3
Kansas	Morton	466	2
Kansas	Nemaha	998	3
Kansas	Neosho	763	3
Kansas	Ness	413	2
Kansas	Norton	447	2
Kansas	Osage	899	3
Kansas	Osborne	497	2
Kansas	Ottawa	577	3
Kansas	Pawnee	563	3
Kansas	Phillips	461	2
Kansas	Pottawatomie	722	3
Kansas	Pratt	633	3
Kansas	Rawlins	416	2
Kansas	Reno	875	3
Kansas	Republic	819	3
Kansas	Rice	667	3
Kansas	Riley	1,035	4
Kansas	Rooks	448	2
Kansas	Rush	472	2
Kansas	Russell	430	2
Kansas	Saline	748	3
Kansas	Scott	555	3
Kansas	Sedgwick	1,197	4
Kansas	Seward	647	3
Kansas	Shawnee	1,265	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Kansas	Sheridan	596	3
Kansas	Sherman	622	3
Kansas	Smith	663	3
Kansas	Stafford	764	3
Kansas	Stanton	573	3
Kansas	Stevens	677	3
Kansas	Sumner	682	3
Kansas	Thomas	607	3
Kansas	Trego	462	2
Kansas	Wabaunsee	726	3
Kansas	Wallace	444	2
Kansas	Washington	804	3
Kansas	Wichita	503	3
Kansas	Wilson	770	3
Kansas	Woodson	589	3
Kansas	Wyandotte	3,915	7
Kentucky	Adair	1,784	5
Kentucky	Allen	1,789	5
Kentucky	Anderson	2,407	6
Kentucky	Ballard	1,695	5
Kentucky	Barren	1,609	5
Kentucky	Bath	1,373	4
Kentucky	Bell	1,326	4
Kentucky	Boone	3,633	7
Kentucky	Bourbon	2,664	6
Kentucky	Boyd	1,446	4
Kentucky	Boyle	2,136	6
Kentucky	Bracken	1,534	5
Kentucky	Breathitt	923	3
Kentucky	Breckinridge	1,507	5
Kentucky	Bullitt	2,742	6
Kentucky	Butler	1,537	5
Kentucky	Caldwell	1,156	4
Kentucky	Calloway	1,862	5
Kentucky	Campbell	3,836	7
Kentucky	Carlisle	1,410	4
Kentucky	Carroll	2,071	6
Kentucky	Carter	1,496	4
Kentucky	Casey	1,168	4
Kentucky	Christian	1,696	5
Kentucky	Clark	2,182	6
Kentucky	Clay	959	3
Kentucky	Clinton	1,529	5
Kentucky	Crittenden	1,043	4
Kentucky	Cumberland	1,038	4
Kentucky	Daviess	2,041	6
Kentucky	Edmonson	1,176	4
Kentucky	Elliott	906	3
Kentucky	Estill	1,112	4
Kentucky	Fayette	4,589	7
Kentucky	Fleming	1,273	4
Kentucky	Floyd	1,536	5
Kentucky	Franklin	2,350	6
Kentucky	Fulton	1,450	4
Kentucky	Gallatin	2,155	6
Kentucky	Garrard	1,852	5
Kentucky	Grant	2,545	6
Kentucky	Graves	1,659	5
Kentucky	Grayson	1,378	4
Kentucky	Green	1,522	5
Kentucky	Greenup	1,204	4
Kentucky	Hancock	1,333	4
Kentucky	Hardin	1,895	5
Kentucky	Harlan	2,249	6
Kentucky	Harrison	1,867	5
Kentucky	Hart	1,387	4
Kentucky	Henderson	1,933	5
Kentucky	Henry	2,398	6
Kentucky	Hickman	1,498	4
Kentucky	Hopkins	1,301	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Kentucky	Jackson	1,194	4
Kentucky	Jefferson	4,917	7
Kentucky	Jessamine	3,699	7
Kentucky	Johnson	1,522	5
Kentucky	Kenton	3,775	7
Kentucky	Knott	1,599	5
Kentucky	Knox	1,545	5
Kentucky	Larue	1,936	5
Kentucky	Laurel	2,305	6
Kentucky	Lawrence	910	3
Kentucky	Lee	1,139	4
Kentucky	Leslie	786	3
Kentucky	Letcher	1,038	4
Kentucky	Lewis	894	3
Kentucky	Lincoln	1,745	5
Kentucky	Livingston	1,024	4
Kentucky	Logan	1,593	5
Kentucky	Lyon	1,187	4
Kentucky	Madison	2,266	6
Kentucky	Magoffin	1,120	4
Kentucky	Marion	1,771	5
Kentucky	Marshall	1,757	5
Kentucky	Martin	610	3
Kentucky	Mason	1,889	5
Kentucky	McCracken	1,753	5
Kentucky	McCreary	2,246	6
Kentucky	McLean	1,696	5
Kentucky	Meade	2,068	6
Kentucky	Menifee	1,942	5
Kentucky	Mercer	2,852	6
Kentucky	Metcalfe	1,594	5
Kentucky	Monroe	1,312	4
Kentucky	Montgomery	1,912	5
Kentucky	Morgan	969	3
Kentucky	Muhlenberg	1,261	4
Kentucky	Nelson	2,154	6
Kentucky	Nicholas	1,260	4
Kentucky	Ohio	1,716	5
Kentucky	Oldham	4,562	7
Kentucky	Owen	1,664	5
Kentucky	Owsley	1,319	4
Kentucky	Pendleton	1,479	4
Kentucky	Perry	1,137	4
Kentucky	Pike	1,114	4
Kentucky	Powell	1,813	5
Kentucky	Pulaski	1,871	5
Kentucky	Robertson	1,073	4
Kentucky	Rockcastle	1,737	5
Kentucky	Rowan	1,330	4
Kentucky	Russell	1,953	5
Kentucky	Scott	3,146	7
Kentucky	Shelby	3,221	7
Kentucky	Simpson	2,021	6
Kentucky	Spencer	2,540	6
Kentucky	Taylor	1,689	5
Kentucky	Todd	1,734	5
Kentucky	Trigg	1,476	4
Kentucky	Trimble	1,510	5
Kentucky	Union	1,730	5
Kentucky	Warren	2,054	6
Kentucky	Washington	1,776	5
Kentucky	Wayne	2,216	6
Kentucky	Webster	1,410	4
Kentucky	Whitley	1,530	5
Kentucky	Wolfe	1,111	4
Kentucky	Woodford	3,755	7
Louisiana	Acadia	1,773	5
Louisiana	Allen	1,229	4
Louisiana	Ascension	2,779	6
Louisiana	Assumption	1,597	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Louisiana	Avoyelles	1,300	4
Louisiana	Beauregard	1,339	4
Louisiana	Bienville	1,529	5
Louisiana	Bossier	1,668	5
Louisiana	Caddo	1,428	4
Louisiana	Calcasieu	1,425	4
Louisiana	Caldwell	1,350	4
Louisiana	Cameron	1,438	4
Louisiana	Catahoula	1,164	4
Louisiana	Claiborne	1,586	5
Louisiana	Concordia	1,127	4
Louisiana	De Soto	1,278	4
Louisiana	East Baton Rouge	3,074	7
Louisiana	East Carroll	1,194	4
Louisiana	East Feliciana	1,927	5
Louisiana	Evangeline	1,261	4
Louisiana	Franklin	1,191	4
Louisiana	Grant	1,332	4
Louisiana	Iberia	1,883	5
Louisiana	Iberville	1,852	5
Louisiana	Jackson	2,627	6
Louisiana	Jefferson	2,204	6
Louisiana	Jefferson Davis	1,089	4
Louisiana	La Salle	1,688	5
Louisiana	Lafayette	3,161	7
Louisiana	Lafourche	1,470	4
Louisiana	Lincoln	1,953	5
Louisiana	Livingston	2,916	6
Louisiana	Madison	1,105	4
Louisiana	Morehouse	1,172	4
Louisiana	Natchitoches	1,363	4
Louisiana	Orleans	43,753	11
Louisiana	Ouachita	1,743	5
Louisiana	Plaquemines	2,889	6
Louisiana	Pointe Coupee	1,423	4
Louisiana	Rapides	1,704	5
Louisiana	Red River	895	3
Louisiana	Richland	1,045	4
Louisiana	Sabine	1,894	5
Louisiana	St. Bernard	4,246	7
Louisiana	St. Charles	4,152	7
Louisiana	St. Helena	1,982	5
Louisiana	St. James	1,300	4
Louisiana	St. John the Baptist	3,410	7
Louisiana	St. Landry	1,384	4
Louisiana	St. Martin	1,666	5
Louisiana	St. Mary	1,477	4
Louisiana	St. Tammany	3,907	7
Louisiana	Tangipahoa	2,780	6
Louisiana	Tensas	1,055	4
Louisiana	Terrebonne	1,823	5
Louisiana	Union	1,974	5
Louisiana	Vermilion	1,632	5
Louisiana	Vernon	1,813	5
Louisiana	Washington	2,201	6
Louisiana	Webster	2,887	6
Louisiana	West Baton Rouge	1,965	5
Louisiana	West Carroll	1,781	5
Louisiana	West Feliciana	1,817	5
Louisiana	Winn	1,584	5
Maine	Androscoggin	2,421	6
Maine	Aroostook	897	3
Maine	Cumberland	4,043	7
Maine	Franklin	1,459	4
Maine	Hancock	1,960	5
Maine	Kennebec	1,924	5
Maine	Knox	2,833	6
Maine	Lincoln	2,744	6
Maine	Oxford	2,397	6
Maine	Penobscot	1,266	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Maine	Piscataquis	1,015	4
Maine	Sagadahoc	2,873	6
Maine	Somerset	1,305	4
Maine	Waldo	1,668	5
Maine	Washington	856	3
Maine	York	3,761	7
Maryland	Allegany	2,447	6
Maryland	Anne Arundel	7,475	8
Maryland	Baltimore	6,824	8
Maryland	Calvert	3,980	7
Maryland	Caroline	2,951	6
Maryland	Carroll	5,629	8
Maryland	Cecil	5,799	8
Maryland	Charles	3,342	7
Maryland	Dorchester	2,704	6
Maryland	Frederick	5,325	8
Maryland	Garrett	2,179	6
Maryland	Harford	4,903	7
Maryland	Howard	6,071	8
Maryland	Kent	3,380	7
Maryland	Montgomery	5,979	8
Maryland	Prince George's	6,531	8
Maryland	Queen Anne's	3,144	7
Maryland	Somerset	2,516	6
Maryland	St. Mary's	2,831	6
Maryland	Talbot	4,203	7
Maryland	Washington	3,804	7
Maryland	Wicomico	3,413	7
Maryland	Worcester	2,394	6
Massachusetts	Barnstable	21,421	10
Massachusetts	Berkshire	5,639	8
Massachusetts	Bristol	12,750	9
Massachusetts	Dukes	11,343	9
Massachusetts	Essex	14,560	9
Massachusetts	Franklin	3,989	7
Massachusetts	Hampden	6,404	8
Massachusetts	Hampshire	6,601	8
Massachusetts	Middlesex	20,975	10
Massachusetts	Nantucket	50,824	12
Massachusetts	Norfolk	15,960	9
Massachusetts	Plymouth	12,635	9
Massachusetts	Suffolk	56,021	12
Massachusetts	Worcester	7,378	8
Michigan	Alcona	2,157	6
Michigan	Alger	1,556	5
Michigan	Allegan	3,159	7
Michigan	Alpena	1,939	5
Michigan	Antrim	2,589	6
Michigan	Arenac	2,033	6
Michigan	Baraga	1,241	4
Michigan	Barry	2,557	6
Michigan	Bay	2,573	6
Michigan	Benzie	3,075	7
Michigan	Berrien	3,898	7
Michigan	Branch	2,452	6
Michigan	Calhoun	2,314	6
Michigan	Cass	2,280	6
Michigan	Charlevoix	3,178	7
Michigan	Cheboygan	2,079	6
Michigan	Chippewa	1,304	4
Michigan	Clare	2,051	6
Michigan	Clinton	2,371	6
Michigan	Crawford	2,537	6
Michigan	Delta	1,445	4
Michigan	Dickinson	1,407	4
Michigan	Eaton	2,838	6
Michigan	Emmet	2,983	6
Michigan	Genesee	3,853	7
Michigan	Gladwin	2,177	6
Michigan	Gogebic	1,821	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Michigan	Grand Traverse	4,139	7
Michigan	Gratiot	2,020	6
Michigan	Hillsdale	2,400	6
Michigan	Houghton	1,326	4
Michigan	Huron	1,998	5
Michigan	Ingham	2,879	6
Michigan	Ionia	2,786	6
Michigan	Iosco	2,280	6
Michigan	Iron	1,494	4
Michigan	Isabella	2,004	6
Michigan	Jackson	2,902	6
Michigan	Kalamazoo	3,535	7
Michigan	Kalkaska	2,175	6
Michigan	Kent	4,023	7
Michigan	Keweenaw	2,218	6
Michigan	Lake	2,213	6
Michigan	Lapeer	3,867	7
Michigan	Leelanau	4,684	7
Michigan	Lenawee	2,516	6
Michigan	Livingston	4,782	7
Michigan	Luce	1,367	4
Michigan	Mackinac	1,547	5
Michigan	Macomb	6,107	8
Michigan	Manistee	2,222	6
Michigan	Marquette	1,632	5
Michigan	Mason	1,983	5
Michigan	Mecosta	2,202	6
Michigan	Menominee	1,322	4
Michigan	Midland	2,607	6
Michigan	Missaukee	2,199	6
Michigan	Monroe	3,152	7
Michigan	Montcalm	2,205	6
Michigan	Montmorency	1,937	5
Michigan	Muskegon	3,008	7
Michigan	Newaygo	2,689	6
Michigan	Oakland	7,428	8
Michigan	Oceana	2,701	6
Michigan	Ogemaw	2,159	6
Michigan	Ontonagon	1,138	4
Michigan	Osceola	2,050	6
Michigan	Oscoda	2,220	6
Michigan	Otsego	2,419	6
Michigan	Ottawa	4,352	7
Michigan	Presque Isle	1,997	5
Michigan	Roscommon	3,186	7
Michigan	Saginaw	2,068	6
Michigan	Sanilac	2,097	6
Michigan	Schoolcraft	1,638	5
Michigan	Shiawassee	2,163	6
Michigan	St. Clair	3,970	7
Michigan	St. Joseph	2,314	6
Michigan	Tuscola	2,297	6
Michigan	Van Buren	2,806	6
Michigan	Washtenaw	4,739	7
Michigan	Wayne	6,829	8
Michigan	Wexford	2,779	6
Minnesota	Aitkin	879	3
Minnesota	Anoka	6,025	8
Minnesota	Becker	951	3
Minnesota	Beltrami	734	3
Minnesota	Benton	2,024	6
Minnesota	Big Stone	1,041	4
Minnesota	Blue Earth	2,168	6
Minnesota	Brown	1,967	5
Minnesota	Carlton	1,036	4
Minnesota	Carver	2,956	6
Minnesota	Cass	957	3
Minnesota	Chippewa	1,502	5
Minnesota	Chisago	2,897	6
Minnesota	Clay	1,070	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Minnesota	Clearwater	626	3
Minnesota	Cook	1,764	5
Minnesota	Cottonwood	1,780	5
Minnesota	Crow Wing	1,105	4
Minnesota	Dakota	3,453	7
Minnesota	Dodge	2,341	6
Minnesota	Douglas	1,272	4
Minnesota	Faribault	2,104	6
Minnesota	Fillmore	1,754	5
Minnesota	Freeborn	2,197	6
Minnesota	Goodhue	2,396	6
Minnesota	Grant	1,285	4
Minnesota	Hennepin	5,558	8
Minnesota	Houston	1,305	4
Minnesota	Hubbard	868	3
Minnesota	Isanti	2,294	6
Minnesota	Itasca	998	3
Minnesota	Jackson	1,858	5
Minnesota	Kanabec	1,287	4
Minnesota	Kandiyohi	1,602	5
Minnesota	Kittson	563	3
Minnesota	Koochiching	703	3
Minnesota	Lac qui Parle	1,222	4
Minnesota	Lake	1,733	5
Minnesota	Lake of the Woods	590	3
Minnesota	Le Sueur	2,245	6
Minnesota	Lincoln	1,164	4
Minnesota	Lyon	1,451	4
Minnesota	Mahnomen	671	3
Minnesota	Marshall	611	3
Minnesota	Martin	2,047	6
Minnesota	McLeod	2,095	6
Minnesota	Meeker	1,793	5
Minnesota	Mille Lacs	1,731	5
Minnesota	Morrison	1,338	4
Minnesota	Mower	1,959	5
Minnesota	Murray	1,545	5
Minnesota	Nicollet	2,263	6
Minnesota	Nobles	1,679	5
Minnesota	Norman	835	3
Minnesota	Olmsted	2,214	6
Minnesota	Otter Tail	1,047	4
Minnesota	Pennington	524	3
Minnesota	Pine	1,269	4
Minnesota	Pipestone	1,407	4
Minnesota	Polk	828	3
Minnesota	Pope	1,233	4
Minnesota	Ramsey	19,011	9
Minnesota	Red Lake	630	3
Minnesota	Redwood	1,722	5
Minnesota	Renville	1,889	5
Minnesota	Rice	2,732	6
Minnesota	Rock	1,395	4
Minnesota	Roseau	527	3
Minnesota	Scott	3,496	7
Minnesota	Sherburne	2,816	6
Minnesota	Sibley	2,234	6
Minnesota	St. Louis	1,377	4
Minnesota	Stearns	1,579	5
Minnesota	Steele	2,126	6
Minnesota	Stevens	1,472	4
Minnesota	Swift	1,250	4
Minnesota	Todd	1,164	4
Minnesota	Traverse	1,131	4
Minnesota	Wabasha	1,875	5
Minnesota	Wadena	1,015	4
Minnesota	Waseca	2,345	6
Minnesota	Washington	5,200	8
Minnesota	Watonwan	1,858	5
Minnesota	Wilkin	1,068	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Minnesota	Winona	1,989	5
Minnesota	Wright	2,772	6
Minnesota	Yellow Medicine	1,286	4
Mississippi	Adams	1,004	4
Mississippi	Alcorn	1,355	4
Mississippi	Amite	1,572	5
Mississippi	Attala	1,285	4
Mississippi	Benton	970	3
Mississippi	Bolivar	1,098	4
Mississippi	Calhoun	953	3
Mississippi	Carroll	991	3
Mississippi	Chickasaw	923	3
Mississippi	Choctaw	1,174	4
Mississippi	Claiborne	1,203	4
Mississippi	Clarke	1,710	5
Mississippi	Clay	1,130	4
Mississippi	Coahoma	1,157	4
Mississippi	Copiah	1,646	5
Mississippi	Covington	1,572	5
Mississippi	DeSoto	1,961	5
Mississippi	Forrest	2,709	6
Mississippi	Franklin	1,644	5
Mississippi	George	3,023	7
Mississippi	Greene	1,629	5
Mississippi	Grenada	1,215	4
Mississippi	Hancock	2,376	6
Mississippi	Harrison	3,852	7
Mississippi	Hinds	1,348	4
Mississippi	Holmes	1,230	4
Mississippi	Humphreys	1,128	4
Mississippi	Issaquena	1,169	4
Mississippi	Itawamba	1,124	4
Mississippi	Jackson	3,846	7
Mississippi	Jasper	1,385	4
Mississippi	Jefferson	1,467	4
Mississippi	Jefferson Davis	1,325	4
Mississippi	Jones	2,223	6
Mississippi	Kemper	1,134	4
Mississippi	Lafayette	1,394	4
Mississippi	Lamar	1,988	5
Mississippi	Lauderdale	1,392	4
Mississippi	Lawrence	1,561	5
Mississippi	Leake	1,489	4
Mississippi	Lee	1,337	4
Mississippi	Leflore	1,110	4
Mississippi	Lincoln	2,255	6
Mississippi	Lowndes	1,126	4
Mississippi	Madison	1,622	5
Mississippi	Marion	1,356	4
Mississippi	Marshall	1,347	4
Mississippi	Monroe	1,173	4
Mississippi	Montgomery	909	3
Mississippi	Neshoba	2,133	6
Mississippi	Newton	3,072	7
Mississippi	Noxubee	1,064	4
Mississippi	Oktibbeha	1,712	5
Mississippi	Panola	1,106	4
Mississippi	Pearl River	2,786	6
Mississippi	Perry	2,143	6
Mississippi	Pike	1,928	5
Mississippi	Pontotoc	1,176	4
Mississippi	Prentiss	924	3
Mississippi	Quitman	984	3
Mississippi	Rankin	1,485	4
Mississippi	Scott	1,611	5
Mississippi	Sharkey	1,064	4
Mississippi	Simpson	2,044	6
Mississippi	Smith	1,960	5
Mississippi	Stone	1,826	5
Mississippi	Sunflower	1,063	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Mississippi	Tallahatchie	905	3
Mississippi	Tate	1,699	5
Mississippi	Tippah	1,238	4
Mississippi	Tishomingo	1,311	4
Mississippi	Tunica	1,000	3
Mississippi	Union	1,549	5
Mississippi	Walthall	2,899	6
Mississippi	Warren	1,095	4
Mississippi	Washington	1,260	4
Mississippi	Wayne	1,570	5
Mississippi	Webster	817	3
Mississippi	Wilkinson	1,379	4
Mississippi	Winston	1,670	5
Mississippi	Yalobusha	1,207	4
Mississippi	Yazoo	1,102	4
Missouri	Adair	1,012	4
Missouri	Andrew	1,838	5
Missouri	Atchison	1,642	5
Missouri	Audrain	1,601	5
Missouri	Barry	1,678	5
Missouri	Barton	1,000	3
Missouri	Bates	1,199	4
Missouri	Benton	1,115	4
Missouri	Bollinger	1,292	4
Missouri	Boone	2,544	6
Missouri	Buchanan	1,790	5
Missouri	Butler	1,499	4
Missouri	Caldwell	1,369	4
Missouri	Callaway	1,780	5
Missouri	Camden	1,254	4
Missouri	Cape Girardeau	1,891	5
Missouri	Carroll	1,295	4
Missouri	Carter	1,048	4
Missouri	Cass	1,844	5
Missouri	Cedar	1,146	4
Missouri	Chariton	1,333	4
Missouri	Christian	2,387	6
Missouri	Clark	1,165	4
Missouri	Clay	3,392	7
Missouri	Clinton	1,541	5
Missouri	Cole	1,974	5
Missouri	Cooper	1,332	4
Missouri	Crawford	1,247	4
Missouri	Dade	1,277	4
Missouri	Dallas	1,396	4
Missouri	Daviess	1,176	4
Missouri	DeKalb	1,139	4
Missouri	Dent	991	3
Missouri	Douglas	1,071	4
Missouri	Dunklin	1,936	5
Missouri	Franklin	2,431	6
Missouri	Gasconade	1,586	5
Missouri	Gentry	1,156	4
Missouri	Greene	3,299	7
Missouri	Grundy	1,024	4
Missouri	Harrison	951	3
Missouri	Henry	1,209	4
Missouri	Hickory	1,082	4
Missouri	Holt	1,491	4
Missouri	Howard	1,334	4
Missouri	Howell	1,372	4
Missouri	Iron	1,332	4
Missouri	Jackson	3,675	7
Missouri	Jasper	1,494	4
Missouri	Jefferson	2,635	6
Missouri	Johnson	1,693	5
Missouri	Knox	1,391	4
Missouri	Laclede	1,377	4
Missouri	Lafayette	1,831	5
Missouri	Lawrence	1,777	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Missouri	Lewis	1,106	4
Missouri	Lincoln	2,172	6
Missouri	Linn	1,005	4
Missouri	Livingston	1,285	4
Missouri	Macon	1,072	4
Missouri	Madison	973	3
Missouri	Maries	1,032	4
Missouri	Marion	1,226	4
Missouri	McDonald	2,029	6
Missouri	Mercer	5,358	8
Missouri	Miller	1,479	4
Missouri	Mississippi	1,855	5
Missouri	Moniteau	1,380	4
Missouri	Monroe	1,183	4
Missouri	Montgomery	1,639	5
Missouri	Morgan	1,553	5
Missouri	New Madrid	1,837	5
Missouri	Newton	1,760	5
Missouri	Nodaway	1,195	4
Missouri	Oregon	1,004	4
Missouri	Osage	1,400	4
Missouri	Ozark	1,366	4
Missouri	Pemiscot	1,772	5
Missouri	Perry	1,487	4
Missouri	Pettis	1,388	4
Missouri	Phelps	1,519	5
Missouri	Pike	1,618	5
Missouri	Platte	2,306	6
Missouri	Polk	1,409	4
Missouri	Pulaski	1,310	4
Missouri	Putnam	866	3
Missouri	Ralls	1,437	4
Missouri	Randolph	1,174	4
Missouri	Ray	1,490	4
Missouri	Reynolds	1,048	4
Missouri	Ripley	1,016	4
Missouri	Saline	1,368	4
Missouri	Schuyler	811	3
Missouri	Scotland	1,122	4
Missouri	Scott	1,745	5
Missouri	Shannon	1,052	4
Missouri	Shelby	1,187	4
Missouri	St Louis	3,627	7
Missouri	St. Charles	3,991	7
Missouri	St. Clair	1,018	4
Missouri	St. Francois	2,033	6
Missouri	Ste. Genevieve	1,446	4
Missouri	Stoddard	2,048	6
Missouri	Stone	1,927	5
Missouri	Sullivan	814	3
Missouri	Taney	1,728	5
Missouri	Texas	1,027	4
Missouri	Vernon	1,105	4
Missouri	Warren	2,312	6
Missouri	Washington	1,477	4
Missouri	Wayne	1,034	4
Missouri	Webster	1,722	5
Missouri	Worth	916	3
Missouri	Wright	1,259	4
Montana	Beaverhead	548	3
Montana	Big Horn	246	1
Montana	Blaine	245	1
Montana	Broadwater	464	2
Montana	Carbon	766	3
Montana	Carter	197	1
Montana	Cascade	425	2
Montana	Chouteau	420	2
Montana	Custer	194	1
Montana	Daniels	292	2
Montana	Dawson	219	1

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Montana	Deer Lodge	627	3
Montana	Fallon	262	2
Montana	Fergus	371	2
Montana	Flathead	2,344	6
Montana	Gallatin	1,091	4
Montana	Garfield	165	1
Montana	Glacier	336	2
Montana	Golden Valley	243	1
Montana	Granite	700	3
Montana	Hill	319	2
Montana	Jefferson	603	3
Montana	Judith Basin	526	3
Montana	Lake	1,156	4
Montana	Lewis and Clark	565	3
Montana	Liberty	335	2
Montana	Lincoln	2,869	6
Montana	Madison	648	3
Montana	McCone	226	1
Montana	Meagher	434	2
Montana	Mineral	1,937	5
Montana	Missoula	1,438	4
Montana	Musselshell	242	1
Montana	Park	713	3
Montana	Petroleum	277	2
Montana	Phillips	219	1
Montana	Pondera	453	2
Montana	Powder River	218	1
Montana	Powell	620	3
Montana	Prairie	211	1
Montana	Ravalli	2,676	6
Montana	Richland	290	2
Montana	Roosevelt	299	2
Montana	Rosebud	180	1
Montana	Sanders	1,096	4
Montana	Sheridan	335	2
Montana	Silver Bow	977	3
Montana	Stillwater	480	2
Montana	Sweet Grass	556	3
Montana	Teton	362	2
Montana	Toole	350	2
Montana	Treasure	239	1
Montana	Valley	257	2
Montana	Wheatland	285	2
Montana	Wibaux	241	1
Montana	Yellowstone	505	3
Nebraska	Adams	1,557	5
Nebraska	Antelope	1,086	4
Nebraska	Arthur	195	1
Nebraska	Banner	306	2
Nebraska	Blaine	241	1
Nebraska	Boone	1,152	4
Nebraska	Box Butte	477	2
Nebraska	Boyd	436	2
Nebraska	Brown	343	2
Nebraska	Buffalo	1,312	4
Nebraska	Burt	1,700	5
Nebraska	Butler	1,902	5
Nebraska	Cass	2,075	6
Nebraska	Cedar	1,200	4
Nebraska	Chase	667	3
Nebraska	Cherry	225	1
Nebraska	Cheyenne	374	2
Nebraska	Clay	1,503	5
Nebraska	Colfax	1,629	5
Nebraska	Cuming	1,571	5
Nebraska	Custer	535	3
Nebraska	Dakota	1,348	4
Nebraska	Dawes	362	2
Nebraska	Dawson	1,014	4
Nebraska	Deuel	430	2

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Nebraska	Dixon	1,246	4
Nebraska	Dodge	1,955	5
Nebraska	Douglas	3,900	7
Nebraska	Dundy	478	2
Nebraska	Fillmore	1,685	5
Nebraska	Franklin	768	3
Nebraska	Frontier	529	3
Nebraska	Furnas	604	3
Nebraska	Gage	1,093	4
Nebraska	Garden	255	2
Nebraska	Garfield	351	2
Nebraska	Gosper	836	3
Nebraska	Grant	213	1
Nebraska	Greeley	741	3
Nebraska	Hall	1,661	5
Nebraska	Hamilton	1,841	5
Nebraska	Harlan	714	3
Nebraska	Hayes	415	2
Nebraska	Hitchcock	487	2
Nebraska	Holt	518	3
Nebraska	Hooker	202	1
Nebraska	Howard	999	3
Nebraska	Jefferson	1,181	4
Nebraska	Johnson	967	3
Nebraska	Kearney	1,447	4
Nebraska	Keith	509	3
Nebraska	Keya Paha	345	2
Nebraska	Kimball	309	2
Nebraska	Knox	726	3
Nebraska	Lancaster	1,963	5
Nebraska	Lincoln	509	3
Nebraska	Logan	310	2
Nebraska	Loup	279	2
Nebraska	Madison	1,333	4
Nebraska	McPherson	218	1
Nebraska	Merrick	1,339	4
Nebraska	Morrill	327	2
Nebraska	Nance	917	3
Nebraska	Nemaha	1,271	4
Nebraska	Nuckolls	900	3
Nebraska	Otoe	1,498	4
Nebraska	Pawnee	845	3
Nebraska	Perkins	641	3
Nebraska	Phelps	1,479	4
Nebraska	Pierce	1,246	4
Nebraska	Platte	1,700	5
Nebraska	Polk	1,851	5
Nebraska	Red Willow	569	3
Nebraska	Richardson	973	3
Nebraska	Rock	319	2
Nebraska	Saline	1,317	4
Nebraska	Sarpy	3,567	7
Nebraska	Saunders	2,023	6
Nebraska	Scotts Bluff	648	3
Nebraska	Seward	1,786	5
Nebraska	Sheridan	253	2
Nebraska	Sherman	621	3
Nebraska	Sioux	277	2
Nebraska	Stanton	1,317	4
Nebraska	Thayer	1,333	4
Nebraska	Thomas	205	1
Nebraska	Thurston	1,335	4
Nebraska	Valley	674	3
Nebraska	Washington	2,252	6
Nebraska	Wayne	1,458	4
Nebraska	Webster	850	3
Nebraska	Wheeler	525	3
Nebraska	York	2,009	6
Nevada	Carson City	3,235	7
Nevada	Churchill	1,563	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Nevada	Clark	3,567	7
Nevada	Douglas	840	3
Nevada	Elko	164	1
Nevada	Esmeralda	1,042	4
Nevada	Eureka	230	1
Nevada	Humboldt	380	2
Nevada	Lander	247	1
Nevada	Lincoln	1,058	4
Nevada	Lyon	1,405	4
Nevada	Mineral	193	1
Nevada	Nye	1,044	4
Nevada	Pershing	680	3
Nevada	Storey	32,143	11
Nevada	Washoe	595	3
Nevada	White Pine	544	3
New Hampshire	Belknap	3,444	7
New Hampshire	Carroll	2,833	6
New Hampshire	Cheshire	3,176	7
New Hampshire	Coos	1,196	4
New Hampshire	Grafton	2,147	6
New Hampshire	Hillsborough	5,619	8
New Hampshire	Merrimack	2,683	6
New Hampshire	Rockingham	6,824	8
New Hampshire	Strafford	2,910	6
New Hampshire	Sullivan	2,559	6
New Jersey	Atlantic	5,796	8
New Jersey	Bergen	48,159	11
New Jersey	Burlington	6,778	8
New Jersey	Camden	11,446	9
New Jersey	Cape May	7,049	8
New Jersey	Cumberland	4,714	7
New Jersey	Essex	45,867	11
New Jersey	Gloucester	9,485	8
New Jersey	Hudson*	9,245	8
New Jersey	Hunterdon	11,994	9
New Jersey	Mercer	18,855	9
New Jersey	Middlesex	14,664	9
New Jersey	Monmouth	17,187	9
New Jersey	Morris	26,419	10
New Jersey	Ocean	14,522	9
New Jersey	Passaic	32,161	11
New Jersey	Salem	4,572	7
New Jersey	Somerset	14,440	9
New Jersey	Sussex	7,136	8
New Jersey	Union	93,158	12
New Jersey	Warren	7,428	8
New Mexico	Bernalillo	477	2
New Mexico	Catron	136	1
New Mexico	Chaves	212	1
New Mexico	Cibola	153	1
New Mexico	Colfax	224	1
New Mexico	Curry	526	3
New Mexico	De Baca	129	1
New Mexico	Dona Ana	1,565	5
New Mexico	Eddy	255	2
New Mexico	Grant	186	1
New Mexico	Guadalupe	104	1
New Mexico	Harding*	234	1
New Mexico	Hidalgo	139	1
New Mexico	Lea	156	1
New Mexico	Lincoln	184	1
New Mexico	Los Alamos*	234	1
New Mexico	Luna	228	1
New Mexico	McKinley	75	1
New Mexico	Mora	309	2
New Mexico	Otero	241	1
New Mexico	Quay	180	1
New Mexico	Rio Arriba	328	2
New Mexico	Roosevelt	265	2
New Mexico	San Juan	324	2

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
New Mexico	San Miguel	250	1
New Mexico	Sandoval	196	1
New Mexico	Santa Fe	485	2
New Mexico	Sierra	175	1
New Mexico	Socorro	208	1
New Mexico	Taos	588	3
New Mexico	Torrance	193	1
New Mexico	Union	200	1
New Mexico	Valencia	668	3
New York	Albany	3,185	7
New York	Allegany	1,056	4
New York	Bronx*	1,708	5
New York	Broome	2,953	6
New York	Cattaraugus	1,293	4
New York	Cayuga	1,523	5
New York	Chautauqua	1,401	4
New York	Chemung	1,380	4
New York	Chenango	1,108	4
New York	Clinton	1,081	4
New York	Columbia	3,165	7
New York	Cortland	1,074	4
New York	Delaware	1,707	5
New York	Dutchess	6,291	8
New York	Erie	1,847	5
New York	Essex	1,435	4
New York	Franklin	971	3
New York	Fulton	1,622	5
New York	Genesee	1,395	4
New York	Greene	2,130	6
New York	Hamilton*	1,708	5
New York	Herkimer	1,171	4
New York	Jefferson	872	3
New York	Kings*	1,708	5
New York	Lewis	820	3
New York	Livingston	1,461	4
New York	Madison	1,267	4
New York	Monroe	1,969	5
New York	Montgomery	1,493	4
New York	Nassau	30,396	11
New York	New York	7,500	8
New York	Niagara	1,691	5
New York	Oneida	1,181	4
New York	Onondaga	1,484	4
New York	Ontario	1,679	5
New York	Orange	4,339	7
New York	Orleans	1,241	4
New York	Oswego	2,275	6
New York	Otsego	1,683	5
New York	Putnam	9,515	8
New York	Queens	1,708	5
New York	Rensselaer	2,595	6
New York	Richmond	98,954	12
New York	Rockland	25,154	10
New York	Saratoga	2,818	6
New York	Schenectady	2,133	6
New York	Schoharie	1,717	5
New York	Schuyler	1,555	5
New York	Seneca	1,505	5
New York	St. Lawrence	746	3
New York	Steuben	1,103	4
New York	Suffolk	18,133	9
New York	Sullivan	2,798	6
New York	Tioga	1,385	4
New York	Tompkins	1,686	5
New York	Ulster	3,539	7
New York	Warren	3,136	7
New York	Washington	1,356	4
New York	Wayne	2,488	6
New York	Westchester	15,094	9
New York	Wyoming	1,341	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
New York	Yates	1,863	5
North Carolina	Alamance	3,867	7
North Carolina	Alexander	4,629	7
North Carolina	Alleghany	3,451	7
North Carolina	Anson	2,774	6
North Carolina	Ashe	4,163	7
North Carolina	Avery	4,363	7
North Carolina	Beaufort	1,923	5
North Carolina	Bertie	2,014	6
North Carolina	Bladen	2,954	6
North Carolina	Brunswick	3,183	7
North Carolina	Buncombe	4,486	7
North Carolina	Burke	4,030	7
North Carolina	Cabarrus	4,902	7
North Carolina	Caldwell	4,849	7
North Carolina	Camden	1,884	5
North Carolina	Carteret	2,100	6
North Carolina	Caswell	2,594	6
North Carolina	Catawba	3,603	7
North Carolina	Chatham	3,387	7
North Carolina	Cherokee	4,939	7
North Carolina	Chowan	2,382	6
North Carolina	Clay	5,168	8
North Carolina	Cleveland	3,052	7
North Carolina	Columbus	2,210	6
North Carolina	Craven	2,403	6
North Carolina	Cumberland	2,530	6
North Carolina	Currituck	3,010	7
North Carolina	Dare	1,268	4
North Carolina	Davidson	3,981	7
North Carolina	Davie	4,146	7
North Carolina	Duplin	2,959	6
North Carolina	Durham	5,416	8
North Carolina	Edgecombe	2,074	6
North Carolina	Forsyth	4,559	7
North Carolina	Franklin	2,892	6
North Carolina	Gaston	4,218	7
North Carolina	Gates	1,839	5
North Carolina	Graham	3,731	7
North Carolina	Granville	2,701	6
North Carolina	Greene	2,995	6
North Carolina	Guilford	5,071	8
North Carolina	Halifax	1,810	5
North Carolina	Harnett	3,546	7
North Carolina	Haywood	4,646	7
North Carolina	Henderson	5,243	8
North Carolina	Hertford	1,934	5
North Carolina	Hoke	2,690	6
North Carolina	Hyde	1,819	5
North Carolina	Iredell	4,566	7
North Carolina	Jackson	6,098	8
North Carolina	Johnston	3,582	7
North Carolina	Jones	2,309	6
North Carolina	Lee	3,217	7
North Carolina	Lenoir	3,326	7
North Carolina	Lincoln	3,970	7
North Carolina	Macon	6,039	8
North Carolina	Madison	3,942	7
North Carolina	Martin	2,128	6
North Carolina	McDowell	3,355	7
North Carolina	Mecklenburg	9,616	8
North Carolina	Mitchell	4,331	7
North Carolina	Montgomery	3,337	7
North Carolina	Moore	3,027	7
North Carolina	Nash	2,503	6
North Carolina	New Hanover	9,976	8
North Carolina	Northampton	2,011	6
North Carolina	Onslow	2,949	6
North Carolina	Orange	4,874	7
North Carolina	Pamlico	1,956	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
North Carolina	Pasquotank	1,940	5
North Carolina	Pender	3,118	7
North Carolina	Perquimans	2,285	6
North Carolina	Person	2,463	6
North Carolina	Pitt	2,389	6
North Carolina	Polk	4,682	7
North Carolina	Randolph	3,814	7
North Carolina	Richmond	2,482	6
North Carolina	Robeson	1,994	5
North Carolina	Rockingham	2,665	6
North Carolina	Rowan	3,595	7
North Carolina	Rutherford	3,035	7
North Carolina	Sampson	3,084	7
North Carolina	Scotland	2,219	6
North Carolina	Stanly	3,650	7
North Carolina	Stokes	2,906	6
North Carolina	Surry	3,646	7
North Carolina	Swain	4,461	7
North Carolina	Transylvania	6,417	8
North Carolina	Tyrrell	1,809	5
North Carolina	Union	3,688	7
North Carolina	Vance	2,142	6
North Carolina	Wake	6,388	8
North Carolina	Warren	2,146	6
North Carolina	Washington	1,954	5
North Carolina	Watauga	4,026	7
North Carolina	Wayne	3,162	7
North Carolina	Wilkes	2,997	6
North Carolina	Wilson	2,471	6
North Carolina	Yadkin	3,257	7
North Carolina	Yancey	4,628	7
North Dakota	Adams	250	1
North Dakota	Barnes	448	2
North Dakota	Benson	355	2
North Dakota	Billings	250	1
North Dakota	Bottineau	409	2
North Dakota	Bowman	249	1
North Dakota	Burke	295	2
North Dakota	Burleigh	339	2
North Dakota	Cass	876	3
North Dakota	Cavalier	542	3
North Dakota	Dickey	502	3
North Dakota	Divide	285	2
North Dakota	Dunn	252	2
North Dakota	Eddy	315	2
North Dakota	Emmons	280	2
North Dakota	Foster	399	2
North Dakota	Golden Valley	246	1
North Dakota	Grand Forks	793	3
North Dakota	Grant	309	2
North Dakota	Griggs	354	2
North Dakota	Hettinger	336	2
North Dakota	Kidder	281	2
North Dakota	LaMoure	558	3
North Dakota	Logan	245	1
North Dakota	McHenry	329	2
North Dakota	McIntosh	287	2
North Dakota	McKenzie	304	2
North Dakota	McLean	427	2
North Dakota	Mercer	268	2
North Dakota	Morton	303	2
North Dakota	Mountrail	306	2
North Dakota	Nelson	345	2
North Dakota	Oliver	242	1
North Dakota	Pembina	765	3
North Dakota	Pierce	346	2
North Dakota	Ramsey	368	2
North Dakota	Ransom	520	3
North Dakota	Renville	536	3
North Dakota	Richland	945	3

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
North Dakota	Rolette	329	2
North Dakota	Sargent	543	3
North Dakota	Sheridan	281	2
North Dakota	Sioux	201	1
North Dakota	Slope	244	1
North Dakota	Stark	324	2
North Dakota	Steele	577	3
North Dakota	Stutsman	407	2
North Dakota	Towner	359	2
North Dakota	Traill	842	3
North Dakota	Walsh	719	3
North Dakota	Ward	419	2
North Dakota	Wells	375	2
North Dakota	Williams	323	2
Ohio	Adams	1,890	5
Ohio	Allen	3,031	7
Ohio	Ashland	2,890	6
Ohio	Ashtabula	2,399	6
Ohio	Athens	1,780	5
Ohio	Auglaize	2,932	6
Ohio	Belmont	1,644	5
Ohio	Brown	2,367	6
Ohio	Butler	4,111	7
Ohio	Carroll	2,091	6
Ohio	Champaign	2,842	6
Ohio	Clark	3,539	7
Ohio	Clermont	3,611	7
Ohio	Clinton	2,900	6
Ohio	Columbiana	2,896	6
Ohio	Coshocton	2,278	6
Ohio	Crawford	2,438	6
Ohio	Cuyahoga	21,742	10
Ohio	Darke	3,170	7
Ohio	Defiance	2,069	6
Ohio	Delaware	3,793	7
Ohio	Erie	3,118	7
Ohio	Fairfield	3,324	7
Ohio	Fayette	2,423	6
Ohio	Franklin	4,684	7
Ohio	Fulton	2,654	6
Ohio	Gallia	1,799	5
Ohio	Geauga	6,207	8
Ohio	Greene	3,082	7
Ohio	Guernsey	1,915	5
Ohio	Hamilton	5,138	8
Ohio	Hancock	2,424	6
Ohio	Hardin	2,194	6
Ohio	Harrison	1,157	4
Ohio	Henry	2,522	6
Ohio	Highland	2,452	6
Ohio	Hocking	2,516	6
Ohio	Holmes	3,484	7
Ohio	Huron	2,771	6
Ohio	Jackson	1,367	4
Ohio	Jefferson	1,866	5
Ohio	Knox	2,878	6
Ohio	Lake	8,039	8
Ohio	Lawrence	1,785	5
Ohio	Licking	3,517	7
Ohio	Logan	2,148	6
Ohio	Lorain	3,164	7
Ohio	Lucas	3,365	7
Ohio	Madison	3,099	7
Ohio	Mahoning	3,110	7
Ohio	Marion	2,229	6
Ohio	Medina	4,851	7
Ohio	Meigs	1,731	5
Ohio	Mercer	3,257	7
Ohio	Miami	3,275	7
Ohio	Monroe	1,408	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Ohio	Montgomery	3,876	7
Ohio	Morgan	1,467	4
Ohio	Morrow	2,464	6
Ohio	Muskingum	1,924	5
Ohio	Noble	1,611	5
Ohio	Ottawa	2,177	6
Ohio	Paulding	2,090	6
Ohio	Perry	2,261	6
Ohio	Pickaway	2,983	6
Ohio	Pike	1,652	5
Ohio	Portage	4,245	7
Ohio	Preble	2,510	6
Ohio	Putnam	2,386	6
Ohio	Richland	2,734	6
Ohio	Ross	2,065	6
Ohio	Sandusky	2,300	6
Ohio	Scioto	1,619	5
Ohio	Seneca	2,346	6
Ohio	Shelby	2,742	6
Ohio	Stark	4,039	7
Ohio	Summit	5,723	8
Ohio	Trumbull	3,017	7
Ohio	Tuscarawas	2,856	6
Ohio	Union	2,563	6
Ohio	Van Wert	2,599	6
Ohio	Vinton	2,064	6
Ohio	Warren	4,851	7
Ohio	Washington	1,970	5
Ohio	Wayne	4,460	7
Ohio	Williams	2,249	6
Ohio	Wood	2,764	6
Ohio	Wyandot	2,784	6
Oklahoma	Adair	1,179	4
Oklahoma	Alfalfa	706	3
Oklahoma	Atoka	627	3
Oklahoma	Beaver	365	2
Oklahoma	Beckham	575	3
Oklahoma	Blaine	613	3
Oklahoma	Bryan	868	3
Oklahoma	Caddo	619	3
Oklahoma	Canadian	1,000	3
Oklahoma	Carter	763	3
Oklahoma	Cherokee	1,156	4
Oklahoma	Choctaw	607	3
Oklahoma	Cimarron	301	2
Oklahoma	Cleveland	1,862	5
Oklahoma	Coal	634	3
Oklahoma	Comanche	768	3
Oklahoma	Cotton	522	3
Oklahoma	Craig	770	3
Oklahoma	Creek	906	3
Oklahoma	Custer	579	3
Oklahoma	Delaware	1,508	5
Oklahoma	Dewey	521	3
Oklahoma	Ellis	328	2
Oklahoma	Garfield	684	3
Oklahoma	Garvin	823	3
Oklahoma	Grady	789	3
Oklahoma	Grant	583	3
Oklahoma	Greer	396	2
Oklahoma	Harmon	365	2
Oklahoma	Harper	330	2
Oklahoma	Haskell	880	3
Oklahoma	Hughes	606	3
Oklahoma	Jackson	523	3
Oklahoma	Jefferson	501	3
Oklahoma	Johnston	751	3
Oklahoma	Kay	737	3
Oklahoma	Kingfisher	754	3
Oklahoma	Kiowa	503	3

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Oklahoma	Latimer	640	3
Oklahoma	Le Flore	1,220	4
Oklahoma	Lincoln	872	3
Oklahoma	Logan	975	3
Oklahoma	Love	794	3
Oklahoma	Major	558	3
Oklahoma	Marshall	674	3
Oklahoma	Mayes	1,243	4
Oklahoma	McClain	1,149	4
Oklahoma	McCurtain	954	3
Oklahoma	McIntosh	773	3
Oklahoma	Murray	693	3
Oklahoma	Muskogee	905	3
Oklahoma	Noble	718	3
Oklahoma	Nowata	761	3
Oklahoma	Okfuskee	771	3
Oklahoma	Oklahoma	1,927	5
Oklahoma	Okmulgee	906	3
Oklahoma	Osage	542	3
Oklahoma	Ottawa	1,267	4
Oklahoma	Pawnee	595	3
Oklahoma	Payne	1,005	4
Oklahoma	Pittsburg	756	3
Oklahoma	Pontotoc	808	3
Oklahoma	Pottawatomie	991	3
Oklahoma	Pushmataha	555	3
Oklahoma	Roger Mills	390	2
Oklahoma	Rogers	1,405	4
Oklahoma	Seminole	742	3
Oklahoma	Sequoyah	1,286	4
Oklahoma	Stephens	676	3
Oklahoma	Texas	519	3
Oklahoma	Tillman	547	3
Oklahoma	Tulsa	2,122	6
Oklahoma	Wagoner	1,344	4
Oklahoma	Washington	1,030	4
Oklahoma	Washita	590	3
Oklahoma	Woods	486	2
Oklahoma	Woodward	455	2
Oregon	Baker	546	3
Oregon	Benton	3,854	7
Oregon	Clackamas	9,600	8
Oregon	Clatsop	2,776	6
Oregon	Columbia	3,813	7
Oregon	Coos	3,364	7
Oregon	Crook	531	3
Oregon	Curry	1,949	5
Oregon	Deschutes	5,172	8
Oregon	Douglas	2,060	6
Oregon	Gilliam	305	2
Oregon	Grant	306	2
Oregon	Harney	289	2
Oregon	Hood River	9,364	8
Oregon	Jackson	2,824	6
Oregon	Jefferson	561	3
Oregon	Josephine	4,153	7
Oregon	Klamath	1,012	4
Oregon	Lake	487	2
Oregon	Lane	4,572	7
Oregon	Lincoln	2,607	6
Oregon	Linn	2,849	6
Oregon	Malheur	537	3
Oregon	Marion	5,107	8
Oregon	Morrow	365	2
Oregon	Multnomah	10,876	9
Oregon	Polk	4,948	7
Oregon	Sherman	368	2
Oregon	Tillamook	5,259	8
Oregon	Umatilla	765	3
Oregon	Union	1,044	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Oregon	Wallowa	614	3
Oregon	Wasco	394	2
Oregon	Washington	7,294	8
Oregon	Wheeler	274	2
Oregon	Yamhill	6,885	8
Pennsylvania	Adams	3,781	7
Pennsylvania	Allegheny	4,763	7
Pennsylvania	Armstrong	2,333	6
Pennsylvania	Beaver	2,976	6
Pennsylvania	Bedford	1,980	5
Pennsylvania	Berks	5,527	8
Pennsylvania	Blair	3,126	7
Pennsylvania	Bradford	1,790	5
Pennsylvania	Bucks	9,418	8
Pennsylvania	Butler	3,950	7
Pennsylvania	Cambria	2,687	6
Pennsylvania	Cameron	1,878	5
Pennsylvania	Carbon	4,436	7
Pennsylvania	Centre	3,400	7
Pennsylvania	Chester	10,358	9
Pennsylvania	Clarion	1,837	5
Pennsylvania	Clearfield	1,650	5
Pennsylvania	Clinton	2,804	6
Pennsylvania	Columbia	3,137	7
Pennsylvania	Crawford	1,738	5
Pennsylvania	Cumberland	3,826	7
Pennsylvania	Dauphin	5,291	8
Pennsylvania	Delaware	22,852	10
Pennsylvania	Elk	3,104	7
Pennsylvania	Erie	2,320	6
Pennsylvania	Fayette	1,844	5
Pennsylvania	Forest	2,008	6
Pennsylvania	Franklin	3,879	7
Pennsylvania	Fulton	2,318	6
Pennsylvania	Greene	1,184	4
Pennsylvania	Huntingdon	2,436	6
Pennsylvania	Indiana	1,879	5
Pennsylvania	Jefferson	1,856	5
Pennsylvania	Juniata	3,059	7
Pennsylvania	Lackawanna	3,205	7
Pennsylvania	Lancaster	7,955	8
Pennsylvania	Lawrence	2,441	6
Pennsylvania	Lebanon	5,349	8
Pennsylvania	Lehigh	4,504	7
Pennsylvania	Luzerne	3,541	7
Pennsylvania	Lycoming	2,318	6
Pennsylvania	McKean	1,179	4
Pennsylvania	Mercer	2,070	6
Pennsylvania	Mifflin	3,189	7
Pennsylvania	Monroe	5,191	8
Pennsylvania	Montgomery	12,748	9
Pennsylvania	Montour	2,996	6
Pennsylvania	Northampton	4,862	7
Pennsylvania	Northumberland	3,099	7
Pennsylvania	Perry	3,203	7
Pennsylvania	Philadelphia	26,090	10
Pennsylvania	Pike	2,878	6
Pennsylvania	Potter	1,678	5
Pennsylvania	Schuylkill	3,383	7
Pennsylvania	Snyder	3,558	7
Pennsylvania	Somerset	1,895	5
Pennsylvania	Sullivan	1,878	5
Pennsylvania	Susquehanna	2,162	6
Pennsylvania	Tioga	2,328	6
Pennsylvania	Union	4,156	7
Pennsylvania	Venango	1,489	4
Pennsylvania	Warren	1,287	4
Pennsylvania	Washington	2,095	6
Pennsylvania	Wayne	2,111	6
Pennsylvania	Westmoreland	2,814	6

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Pennsylvania	Wyoming	2,276	6
Pennsylvania	York	4,805	7
Puerto Rico	All areas	5,866	8
Rhode Island	Bristol	22,431	10
Rhode Island	Kent	6,553	8
Rhode Island	Newport	13,362	9
Rhode Island	Providence	8,982	8
Rhode Island	Washington	7,743	8
South Carolina	Abbeville	2,029	6
South Carolina	Aiken	2,219	6
South Carolina	Allendale	1,252	4
South Carolina	Anderson	3,314	7
South Carolina	Bamberg	1,314	4
South Carolina	Barnwell	1,306	4
South Carolina	Beaufort	2,473	6
South Carolina	Berkeley	2,745	6
South Carolina	Calhoun	1,478	4
South Carolina	Charleston	4,967	7
South Carolina	Cherokee	2,030	6
South Carolina	Chester	1,997	5
South Carolina	Chesterfield	1,408	4
South Carolina	Clarendon	1,415	4
South Carolina	Colleton	1,750	5
South Carolina	Darlington	996	3
South Carolina	Dillon	1,391	4
South Carolina	Dorchester	1,985	5
South Carolina	Edgefield	2,032	6
South Carolina	Fairfield	1,493	4
South Carolina	Florence	1,570	5
South Carolina	Georgetown	2,122	6
South Carolina	Greenville	3,402	7
South Carolina	Greenwood	1,858	5
South Carolina	Hampton	1,498	4
South Carolina	Horry	2,171	6
South Carolina	Jasper	1,454	4
South Carolina	Kershaw	2,116	6
South Carolina	Lancaster	2,204	6
South Carolina	Laurens	2,236	6
South Carolina	Lee	1,381	4
South Carolina	Lexington	2,780	6
South Carolina	Marion	1,503	5
South Carolina	Marlboro	1,204	4
South Carolina	McCormick	2,626	6
South Carolina	Newberry	2,052	6
South Carolina	Oconee	4,792	7
South Carolina	Orangeburg	1,371	4
South Carolina	Pickens	4,652	7
South Carolina	Richland	3,296	7
South Carolina	Saluda	2,016	6
South Carolina	Spartanburg	4,029	7
South Carolina	Sumter	1,958	5
South Carolina	Union	1,747	5
South Carolina	Williamsburg	1,655	5
South Carolina	York	4,067	7
South Dakota	Aurora	592	3
South Dakota	Beadle	537	3
South Dakota	Bennett	241	1
South Dakota	Bon Homme	787	3
South Dakota	Brookings	871	3
South Dakota	Brown	737	3
South Dakota	Brule	493	2
South Dakota	Buffalo	272	2
South Dakota	Butte	263	2
South Dakota	Campbell	314	2
South Dakota	Charles Mix	596	3
South Dakota	Clark	633	3
South Dakota	Clay	1,276	4
South Dakota	Codington	738	3
South Dakota	Corson	172	1
South Dakota	Custer	387	2

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
South Dakota	Davison	709	3
South Dakota	Day	601	3
South Dakota	Deuel	708	3
South Dakota	Dewey	213	1
South Dakota	Douglas	656	3
South Dakota	Edmunds	465	2
South Dakota	Fall River	254	2
South Dakota	Faulk	391	2
South Dakota	Grant	728	3
South Dakota	Gregory	396	2
South Dakota	Haakon	218	1
South Dakota	Hamlin	792	3
South Dakota	Hand	347	2
South Dakota	Hanson	770	3
South Dakota	Harding	149	1
South Dakota	Hughes	441	2
South Dakota	Hutchinson	800	3
South Dakota	Hyde	302	2
South Dakota	Jackson	200	1
South Dakota	Jerauld	401	2
South Dakota	Jones	267	2
South Dakota	Kingsbury	743	3
South Dakota	Lake	982	3
South Dakota	Lawrence	724	3
South Dakota	Lincoln	1,673	5
South Dakota	Lyman	344	2
South Dakota	Marshall	603	3
South Dakota	McCook	860	3
South Dakota	McPherson	346	2
South Dakota	Meade	268	2
South Dakota	Mellette	208	1
South Dakota	Miner	695	3
South Dakota	Minnehaha	1,461	4
South Dakota	Moody	1,205	4
South Dakota	Pennington	351	2
South Dakota	Perkins	189	1
South Dakota	Potter	442	2
South Dakota	Roberts	700	3
South Dakota	Sanborn	487	2
South Dakota	Shannon	168	1
South Dakota	Spink	564	3
South Dakota	Stanley	208	1
South Dakota	Sully	482	2
South Dakota	Todd	208	1
South Dakota	Tripp	338	2
South Dakota	Turner	1,291	4
South Dakota	Union	1,923	5
South Dakota	Walworth	340	2
South Dakota	Yankton	1,049	4
South Dakota	Ziebach	173	1
Tennessee	Anderson	4,033	7
Tennessee	Bedford	2,494	6
Tennessee	Benton	1,580	5
Tennessee	Bledsoe	2,174	6
Tennessee	Blount	5,304	8
Tennessee	Bradley	3,804	7
Tennessee	Campbell	1,970	5
Tennessee	Cannon	2,768	6
Tennessee	Carroll	1,675	5
Tennessee	Carter	3,033	7
Tennessee	Cheatham	3,109	7
Tennessee	Chester	1,644	5
Tennessee	Claiborne	1,840	5
Tennessee	Clay	1,515	5
Tennessee	Cocke	2,809	6
Tennessee	Coffee	2,581	6
Tennessee	Crockett	2,048	6
Tennessee	Cumberland	2,570	6
Tennessee	Davidson	6,559	8
Tennessee	Decatur	1,326	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Tennessee	DeKalb	2,544	6
Tennessee	Dickson	2,612	6
Tennessee	Dyer	1,896	5
Tennessee	Fayette	2,031	6
Tennessee	Fentress	2,253	6
Tennessee	Franklin	2,681	6
Tennessee	Gibson	1,594	5
Tennessee	Giles	2,093	6
Tennessee	Grainger	2,064	6
Tennessee	Greene	2,941	6
Tennessee	Grundy	2,136	6
Tennessee	Hamblen	3,852	7
Tennessee	Hamilton	3,074	7
Tennessee	Hancock	1,954	5
Tennessee	Hardeman	1,236	4
Tennessee	Hardin	1,476	4
Tennessee	Hawkins	2,716	6
Tennessee	Haywood	1,621	5
Tennessee	Henderson	1,394	4
Tennessee	Henry	1,536	5
Tennessee	Hickman	1,519	5
Tennessee	Houston	1,457	4
Tennessee	Humphreys	1,599	5
Tennessee	Jackson	1,731	5
Tennessee	Jefferson	3,853	7
Tennessee	Johnson	3,744	7
Tennessee	Knox	5,170	8
Tennessee	Lake	1,509	5
Tennessee	Lauderdale	1,420	4
Tennessee	Lawrence	1,808	5
Tennessee	Lewis	1,906	5
Tennessee	Lincoln	2,024	6
Tennessee	Loudon	3,938	7
Tennessee	Macon	2,648	6
Tennessee	Madison	2,530	6
Tennessee	Marion	2,009	6
Tennessee	Marshall	2,255	6
Tennessee	Maury	2,579	6
Tennessee	McMinn	2,814	6
Tennessee	McNairy	1,061	4
Tennessee	Meigs	2,813	6
Tennessee	Monroe	2,926	6
Tennessee	Montgomery	2,412	6
Tennessee	Moore	2,091	6
Tennessee	Morgan	2,322	6
Tennessee	Obion	1,666	5
Tennessee	Overton	2,480	6
Tennessee	Perry	1,484	4
Tennessee	Pickett	2,364	6
Tennessee	Polk	4,136	7
Tennessee	Putnam	2,979	6
Tennessee	Rhea	2,705	6
Tennessee	Roane	3,568	7
Tennessee	Robertson	2,548	6
Tennessee	Rutherford	2,959	6
Tennessee	Scott	2,024	6
Tennessee	Sequatchie	2,263	6
Tennessee	Sevier	3,770	7
Tennessee	Shelby	3,821	7
Tennessee	Smith	2,085	6
Tennessee	Stewart	2,069	6
Tennessee	Sullivan	3,485	7
Tennessee	Sumner	3,296	7
Tennessee	Tipton	1,948	5
Tennessee	Trousdale	2,629	6
Tennessee	Unicoi	6,288	8
Tennessee	Union	2,687	6
Tennessee	Van Buren	1,982	5
Tennessee	Warren	2,448	6
Tennessee	Washington	4,056	7

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Tennessee	Wayne	1,288	4
Tennessee	Weakley	1,524	5
Tennessee	White	2,508	6
Tennessee	Williamson	5,166	8
Tennessee	Wilson	3,307	7
Texas	Anderson	1,038	4
Texas	Andrews	164	1
Texas	Angelina	2,320	6
Texas	Aransas	1,008	4
Texas	Archer	529	3
Texas	Armstrong	374	2
Texas	Atascosa	950	3
Texas	Austin	2,176	6
Texas	Bailey	440	2
Texas	Bandera	1,738	5
Texas	Bastrop	1,859	5
Texas	Baylor	517	3
Texas	Bee	826	3
Texas	Bell	1,293	4
Texas	Bexar	2,000	5
Texas	Blanco	2,441	6
Texas	Borden	347	2
Texas	Bosque	1,477	4
Texas	Bowie	1,626	5
Texas	Brazoria	1,516	5
Texas	Brazos	1,712	5
Texas	Brewster	115	1
Texas	Briscoe	274	2
Texas	Brooks	576	3
Texas	Brown	897	3
Texas	Burleson	1,402	4
Texas	Burnet	1,815	5
Texas	Caldwell	1,676	5
Texas	Calhoun	868	3
Texas	Callahan	592	3
Texas	Cameron	1,549	5
Texas	Camp	1,890	5
Texas	Carson	444	2
Texas	Cass	1,254	4
Texas	Castro	665	3
Texas	Chambers	906	3
Texas	Cherokee	1,357	4
Texas	Childress	322	2
Texas	Clay	636	3
Texas	Cochran	369	2
Texas	Coke	522	3
Texas	Coleman	612	3
Texas	Collin	2,534	6
Texas	Collingsworth	456	2
Texas	Colorado	1,513	5
Texas	Comal	2,102	6
Texas	Comanche	977	3
Texas	Concho	514	3
Texas	Cooke	1,413	4
Texas	Coryell	1,063	4
Texas	Cottle	234	1
Texas	Crane	112	1
Texas	Crockett	202	1
Texas	Crosby	466	2
Texas	Culberson	83	1
Texas	Dallam	601	3
Texas	Dallas	2,969	6
Texas	Dawson	531	3
Texas	Deaf Smith	440	2
Texas	Delta	942	3
Texas	Denton	2,898	6
Texas	DeWitt	1,199	4
Texas	Dickens	286	2
Texas	Dimmit	493	2
Texas	Donley	360	2

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Texas	Duval	725	3
Texas	Eastland	729	3
Texas	Ector	141	1
Texas	Edwards	418	2
Texas	El Paso	2,187	6
Texas	Ellis	1,588	5
Texas	Erath	1,332	4
Texas	Falls	868	3
Texas	Fannin	1,150	4
Texas	Fayette	1,879	5
Texas	Fisher	427	2
Texas	Floyd	484	2
Texas	Foard	343	2
Texas	Fort Bend	1,926	5
Texas	Franklin	1,228	4
Texas	Freestone	900	3
Texas	Frio	782	3
Texas	Gaines	602	3
Texas	Galveston	1,576	5
Texas	Garza	266	2
Texas	Gillespie	1,994	5
Texas	Glasscock	353	2
Texas	Goliad	908	3
Texas	Gonzales	1,174	4
Texas	Gray	428	2
Texas	Grayson	1,921	5
Texas	Gregg	1,454	4
Texas	Grimes	1,798	5
Texas	Guadalupe	2,021	6
Texas	Hale	591	3
Texas	Hall	289	2
Texas	Hamilton	900	3
Texas	Hansford	369	2
Texas	Hardeman	349	2
Texas	Hardin	1,260	4
Texas	Harris	2,622	6
Texas	Harrison	1,199	4
Texas	Hartley	376	2
Texas	Haskell	422	2
Texas	Hays	2,877	6
Texas	Hemphill	266	2
Texas	Henderson	1,636	5
Texas	Hidalgo	2,015	6
Texas	Hill	1,198	4
Texas	Hockley	488	2
Texas	Hood	2,321	6
Texas	Hopkins	1,405	4
Texas	Houston	1,080	4
Texas	Howard	444	2
Texas	Hudspeth	151	1
Texas	Hunt	1,585	5
Texas	Hutchinson	253	2
Texas	Irion	234	1
Texas	Jack	713	3
Texas	Jackson	1,089	4
Texas	Jasper	1,536	5
Texas	Jeff Davis	131	1
Texas	Jefferson	860	3
Texas	Jim Hogg	447	2
Texas	Jim Wells	625	3
Texas	Johnson	2,185	6
Texas	Jones	520	3
Texas	Karnes	817	3
Texas	Kaufman	1,556	5
Texas	Kendall	2,168	6
Texas	Kenedy	353	2
Texas	Kent	207	1
Texas	Kerr	1,134	4
Texas	Kimble	651	3
Texas	King	213	1

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Texas	Kinney	397	2
Texas	Kleberg	598	3
Texas	Knox	298	2
Texas	La Salle	593	3
Texas	Lamar	880	3
Texas	Lamb	523	3
Texas	Lampasas	1,215	4
Texas	Lavaca	1,280	4
Texas	Lee	1,445	4
Texas	Leon	1,067	4
Texas	Liberty	1,506	5
Texas	Limestone	743	3
Texas	Lipscomb	367	2
Texas	Live Oak	710	3
Texas	Llano	1,426	4
Texas	Loving	80	1
Texas	Lubbock	811	3
Texas	Lynn	471	2
Texas	Madison	1,137	4
Texas	Marion	976	3
Texas	Martin	434	2
Texas	Mason	971	3
Texas	Matagorda	1,014	4
Texas	Maverick	292	2
Texas	McCulloch	724	3
Texas	McLennan	1,248	4
Texas	McMullen	707	3
Texas	Medina	1,127	4
Texas	Menard	494	2
Texas	Midland	384	2
Texas	Milam	1,186	4
Texas	Mills	972	3
Texas	Mitchell	341	2
Texas	Montague	1,260	4
Texas	Montgomery	2,809	6
Texas	Moore	574	3
Texas	Morris	833	3
Texas	Motley	268	2
Texas	Nacogdoches	1,368	4
Texas	Navarro	868	3
Texas	Newton	957	3
Texas	Nolan	475	2
Texas	Nueces	946	3
Texas	Ochiltree	432	2
Texas	Oldham	213	1
Texas	Orange	1,704	5
Texas	Palo Pinto	800	3
Texas	Panola	1,007	4
Texas	Parker	2,287	6
Texas	Parmer	599	3
Texas	Pecos	139	1
Texas	Polk	1,359	4
Texas	Potter	371	2
Texas	Presidio	324	2
Texas	Rains	1,565	5
Texas	Randall	555	3
Texas	Reagan	204	1
Texas	Real	615	3
Texas	Red River	879	3
Texas	Reeves	139	1
Texas	Refugio	430	2
Texas	Roberts	218	1
Texas	Robertson	1,064	4
Texas	Rockwall	3,129	7
Texas	Runnels	598	3
Texas	Rusk	1,287	4
Texas	Sabine	1,906	5
Texas	San Augustine	1,326	4
Texas	San Jacinto	2,118	6
Texas	San Patricio	888	3

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Texas	San Saba	768	3
Texas	Schleicher	339	2
Texas	Scurry	380	2
Texas	Shackelford	437	2
Texas	Shelby	1,855	5
Texas	Sherman	560	3
Texas	Smith	1,566	5
Texas	Somervell	1,731	5
Texas	Starr	662	3
Texas	Stephens	480	2
Texas	Sterling	200	1
Texas	Stonewall	293	2
Texas	Sutton	362	2
Texas	Swisher	460	2
Texas	Tarrant	3,011	7
Texas	Taylor	661	3
Texas	Terrell	107	1
Texas	Terry	610	3
Texas	Throckmorton	364	2
Texas	Titus	1,586	5
Texas	Tom Green	628	3
Texas	Travis	1,801	5
Texas	Trinity	1,248	4
Texas	Tyler	1,951	5
Texas	Upshur	1,556	5
Texas	Upton	137	1
Texas	Uvalde	645	3
Texas	Val Verde	211	1
Texas	Van Zandt	1,615	5
Texas	Victoria	898	3
Texas	Walker	2,453	6
Texas	Waller	2,805	6
Texas	Ward	138	1
Texas	Washington	2,459	6
Texas	Webb	446	2
Texas	Wharton	1,164	4
Texas	Wheeler	390	2
Texas	Wichita	653	3
Texas	Wilbarger	342	2
Texas	Willacy	1,066	4
Texas	Williamson	2,345	6
Texas	Wilson	1,315	4
Texas	Winkler	102	1
Texas	Wise	1,885	5
Texas	Wood	1,497	4
Texas	Yoakum	579	3
Texas	Young	569	3
Texas	Zapata	665	3
Texas	Zavala	652	3
Utah	Beaver	1,994	5
Utah	Box Elder	527	3
Utah	Cache	1,878	5
Utah	Carbon	439	2
Utah	Daggett	700	3
Utah	Davis	3,802	7
Utah	Duchesne	369	2
Utah	Emery	861	3
Utah	Garfield	1,341	4
Utah	Grand	1,057	4
Utah	Iron	808	3
Utah	Juab	569	3
Utah	Kane	581	3
Utah	Millard	814	3
Utah	Morgan	1,060	4
Utah	Piute	1,331	4
Utah	Rich	315	2
Utah	Salt Lake	4,743	7
Utah	San Juan	271	2
Utah	Sanpete	1,220	4
Utah	Sevier	1,330	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Utah	Summit	1,250	4
Utah	Tooele	478	2
Utah	Uintah	232	1
Utah	Utah	2,785	6
Utah	Wasatch	2,936	6
Utah	Washington	1,659	5
Utah	Wayne	1,678	5
Utah	Weber	5,772	8
Vermont	Addison	1,795	5
Vermont	Bennington	1,718	5
Vermont	Caledonia	2,013	6
Vermont	Chittenden	2,466	6
Vermont	Essex	1,417	4
Vermont	Franklin	1,521	5
Vermont	Grand Isle	3,182	7
Vermont	Lamoille	2,045	6
Vermont	Orange	1,838	5
Vermont	Orleans	1,536	5
Vermont	Rutland	2,632	6
Vermont	Washington	2,384	6
Vermont	Windham	2,442	6
Vermont	Windsor	3,544	7
Virginia	Accomack	1,962	5
Virginia	Albemarle	4,446	7
Virginia	Alleghany	2,197	6
Virginia	Amelia	2,245	6
Virginia	Amherst	2,402	6
Virginia	Appomattox	1,533	5
Virginia	Arlington*	2,675	6
Virginia	Augusta	2,959	6
Virginia	Bath	2,115	6
Virginia	Bedford	2,920	6
Virginia	Bland	1,452	4
Virginia	Botetourt	2,732	6
Virginia	Brunswick	1,371	4
Virginia	Buchanan*	2,675	6
Virginia	Buckingham	1,905	5
Virginia	Campbell	1,874	5
Virginia	Caroline	2,286	6
Virginia	Carroll	2,587	6
Virginia	Charles City	2,689	6
Virginia	Charlotte	1,323	4
Virginia	Chesapeake City	3,500	7
Virginia	Chesterfield	5,257	8
Virginia	Clarke	4,781	7
Virginia	Craig	1,902	5
Virginia	Culpeper	4,162	7
Virginia	Cumberland	2,218	6
Virginia	Dickenson	1,556	5
Virginia	Dinwiddie	1,635	5
Virginia	Essex	1,911	5
Virginia	Fairfax	8,361	8
Virginia	Fauquier	6,000	8
Virginia	Floyd	2,113	6
Virginia	Fluvanna	2,324	6
Virginia	Franklin	2,183	6
Virginia	Frederick	3,676	7
Virginia	Giles	2,088	6
Virginia	Gloucester	3,296	7
Virginia	Goochland	3,001	7
Virginia	Grayson	2,618	6
Virginia	Greene	3,875	7
Virginia	Greensville	1,399	4
Virginia	Halifax	1,588	5
Virginia	Hanover	3,812	7
Virginia	Henrico	4,021	7
Virginia	Henry	1,582	5
Virginia	Highland	2,298	6
Virginia	Isle of Wight	1,887	5
Virginia	James City	5,167	8

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Virginia	King and Queen	1,983	5
Virginia	King George	2,867	6
Virginia	King William	2,018	6
Virginia	Lancaster	2,493	6
Virginia	Lee	1,726	5
Virginia	Loudoun	10,807	9
Virginia	Louisa	2,372	6
Virginia	Lunenburg	1,332	4
Virginia	Madison	3,098	7
Virginia	Mathews	2,691	6
Virginia	Mecklenburg	1,582	5
Virginia	Middlesex	2,726	6
Virginia	Montgomery	3,131	7
Virginia	Nelson	2,103	6
Virginia	New Kent	2,827	6
Virginia	Northampton	2,394	6
Virginia	Northumberland	1,922	5
Virginia	Nottoway	2,110	6
Virginia	Orange	3,138	7
Virginia	Page	3,915	7
Virginia	Patrick	1,645	5
Virginia	Pittsylvania	1,582	5
Virginia	Powhatan	3,027	7
Virginia	Prince Edward	1,718	5
Virginia	Prince George	1,964	5
Virginia	Prince William	6,604	8
Virginia	Pulaski	2,244	6
Virginia	Rappahannock	3,690	7
Virginia	Richmond	1,738	5
Virginia	Roanoke	3,336	7
Virginia	Rockbridge	2,874	6
Virginia	Rockingham	4,043	7
Virginia	Russell	1,603	5
Virginia	Scott	1,563	5
Virginia	Shenandoah	3,280	7
Virginia	Smyth	1,565	5
Virginia	Southampton	1,969	5
Virginia	Spotsylvania	4,288	7
Virginia	Stafford	4,880	7
Virginia	Suffolk	2,339	6
Virginia	Surry	1,905	5
Virginia	Sussex	1,554	5
Virginia	Tazewell	1,561	5
Virginia	Virginia Beach City	3,645	7
Virginia	Warren	3,827	7
Virginia	Washington	2,428	6
Virginia	Westmoreland	2,016	6
Virginia	Wise	2,366	6
Virginia	Wythe	2,158	6
Virginia	York	48,875	11
Washington	Adams	745	3
Washington	Asotin	510	3
Washington	Benton	1,701	5
Washington	Chelan	6,563	8
Washington	Clallam	11,050	9
Washington	Clark	10,011	9
Washington	Columbia	708	3
Washington	Cowlitz	5,118	8
Washington	Douglas	805	3
Washington	Ferry	392	2
Washington	Franklin	1,448	4
Washington	Garfield	529	3
Washington	Grant	1,923	5
Washington	Grays Harbor	2,317	6
Washington	Island	9,468	8
Washington	Jefferson	5,441	8
Washington	King	21,338	10
Washington	Kitsap	12,869	9
Washington	Kittitas	2,702	6
Washington	Klickitat	907	3

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Washington	Lewis	3,023	7
Washington	Lincoln	606	3
Washington	Mason	4,958	7
Washington	Okanogan	843	3
Washington	Pacific	2,076	6
Washington	Pend Oreille	1,834	5
Washington	Pierce	9,655	8
Washington	San Juan	6,308	8
Washington	Skagit	5,113	8
Washington	Skamania	4,566	7
Washington	Snohomish	9,654	8
Washington	Spokane	2,114	6
Washington	Stevens	1,170	4
Washington	Thurston	8,458	8
Washington	Wahkiakum	2,690	6
Washington	Walla Walla	1,330	4
Washington	Whatcom	5,959	8
Washington	Whitman	859	3
Washington	Yakima	1,271	4
West Virginia	Barbour	1,023	4
West Virginia	Berkeley	3,222	7
West Virginia	Boone	1,083	4
West Virginia	Braxton	846	3
West Virginia	Brooke	1,206	4
West Virginia	Cabell	1,320	4
West Virginia	Calhoun	728	3
West Virginia	Clay	1,104	4
West Virginia	Doddridge	830	3
West Virginia	Fayette	1,317	4
West Virginia	Gilmer	793	3
West Virginia	Grant	1,638	5
West Virginia	Greenbrier	1,490	4
West Virginia	Hampshire	1,624	5
West Virginia	Hancock	2,373	6
West Virginia	Hardy	1,724	5
West Virginia	Harrison	1,248	4
West Virginia	Jackson	1,264	4
West Virginia	Jefferson	2,963	6
West Virginia	Kanawha	1,411	4
West Virginia	Lewis	1,069	4
West Virginia	Lincoln	1,097	4
West Virginia	Logan	1,916	5
West Virginia	Marion	1,462	4
West Virginia	Marshall	950	3
West Virginia	Mason	1,276	4
West Virginia	McDowell	901	3
West Virginia	Mercer	1,414	4
West Virginia	Mineral	1,303	4
West Virginia	Mingo	828	3
West Virginia	Monongalia	1,376	4
West Virginia	Monroe	1,358	4
West Virginia	Morgan	2,324	6
West Virginia	Nicholas	1,446	4
West Virginia	Ohio	1,222	4
West Virginia	Pendleton	1,168	4
West Virginia	Pleasants	1,057	4
West Virginia	Pocahontas	1,119	4
West Virginia	Preston	1,415	4
West Virginia	Putnam	1,764	5
West Virginia	Raleigh	1,371	4
West Virginia	Randolph	1,033	4
West Virginia	Ritchie	906	3
West Virginia	Roane	846	3
West Virginia	Summers	1,187	4
West Virginia	Taylor	1,367	4
West Virginia	Tucker	989	3
West Virginia	Tyler	930	3
West Virginia	Upshur	1,048	4
West Virginia	Wayne	1,048	4
West Virginia	Webster	1,099	4

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
West Virginia	Wetzel	808	3
West Virginia	Wirt	1,164	4
West Virginia	Wood	1,260	4
West Virginia	Wyoming	1,194	4
Wisconsin	Adams	2,130	6
Wisconsin	Ashland	1,129	4
Wisconsin	Barron	1,629	5
Wisconsin	Bayfield	1,061	4
Wisconsin	Brown	2,942	6
Wisconsin	Buffalo	1,501	5
Wisconsin	Burnett	1,848	5
Wisconsin	Calumet	2,749	6
Wisconsin	Chippewa	1,527	5
Wisconsin	Clark	1,492	4
Wisconsin	Columbia	2,525	6
Wisconsin	Crawford	1,737	5
Wisconsin	Dane	3,264	7
Wisconsin	Dodge	2,460	6
Wisconsin	Door	2,132	6
Wisconsin	Douglas	1,251	4
Wisconsin	Dunn	1,838	5
Wisconsin	Eau Claire	1,783	5
Wisconsin	Florence	1,265	4
Wisconsin	Fond du Lac	2,351	6
Wisconsin	Forest	1,420	4
Wisconsin	Grant	1,925	5
Wisconsin	Green	2,271	6
Wisconsin	Green Lake	1,981	5
Wisconsin	Iowa	2,243	6
Wisconsin	Iron	1,088	4
Wisconsin	Jackson	1,603	5
Wisconsin	Jefferson	3,087	7
Wisconsin	Juneau	1,870	5
Wisconsin	Kenosha	4,513	7
Wisconsin	Kewaunee	2,523	6
Wisconsin	La Crosse	1,937	5
Wisconsin	Lafayette	2,113	6
Wisconsin	Langlade	1,717	5
Wisconsin	Lincoln	1,566	5
Wisconsin	Manitowoc	2,808	6
Wisconsin	Marathon	1,846	5
Wisconsin	Marinette	1,705	5
Wisconsin	Marquette	2,139	6
Wisconsin	Menominee	715	3
Wisconsin	Milwaukee	6,418	8
Wisconsin	Monroe	1,910	5
Wisconsin	Oconto	2,011	6
Wisconsin	Oneida	2,068	6
Wisconsin	Outagamie	3,166	7
Wisconsin	Ozaukee	4,043	7
Wisconsin	Pepin	1,847	5
Wisconsin	Pierce	2,320	6
Wisconsin	Polk	2,150	6
Wisconsin	Portage	3,010	7
Wisconsin	Price	1,418	4
Wisconsin	Racine	4,275	7
Wisconsin	Richland	2,182	6
Wisconsin	Rock	3,452	7
Wisconsin	Rusk	1,917	5
Wisconsin	Sauk	2,712	6
Wisconsin	Sawyer	1,986	5
Wisconsin	Shawano	2,512	6
Wisconsin	Sheboygan	2,953	6
Wisconsin	St. Croix	3,229	7
Wisconsin	Taylor	1,340	4
Wisconsin	Trempealeau	1,794	5
Wisconsin	Vernon	1,768	5
Wisconsin	Vilas	3,156	7
Wisconsin	Walworth	3,909	7
Wisconsin	Washburn	1,741	5

2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	2002 L/B values	Rent schedule zone
Wisconsin	Washington	4,051	7
Wisconsin	Waukesha	4,735	7
Wisconsin	Waupaca	2,151	6
Wisconsin	Waushara	2,589	6
Wisconsin	Winnebago	2,519	6
Wisconsin	Wood	1,825	5
Wyoming	Albany	228	1
Wyoming	Big Horn	718	3
Wyoming	Campbell	177	1
Wyoming	Carbon	214	1
Wyoming	Converse	154	1
Wyoming	Crook	360	2
Wyoming	Fremont	311	2
Wyoming	Goshen	413	2
Wyoming	Hot Springs	162	1
Wyoming	Johnson	270	2
Wyoming	Laramie	305	2
Wyoming	Lincoln	906	3
Wyoming	Natrona	187	1
Wyoming	Niobrara	262	2
Wyoming	Park	676	3
Wyoming	Platte	335	2
Wyoming	Sheridan	456	2
Wyoming	Sublette	733	3
Wyoming	Sweetwater	98	1
Wyoming	Teton	3,057	7
Wyoming	Uinta	373	2
Wyoming	Washakie	389	2
Wyoming	Weston	217	1

* State-average Land and Building value used where no county-specific value is available.
** Land areas to be determined.

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Part III

Securities and Exchange Commission

17 CFR Part 240
Shareholder Proposals Relating to the Election of Directors; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–56914; IC–28075; File No. S7–17–07]

RIN 3235–AJ95

Shareholder Proposals Relating to the Election of Directors

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is publishing this adopting release to codify the meaning of Rule 14a–8(i)(8) under the Securities Exchange Act of 1934. Rule 14a–8 provides shareholders with an opportunity to place certain proposals in a company's proxy materials for a vote at an annual or special meeting of shareholders. Subsection (i)(8) of the Rule permits exclusion of certain shareholder proposals related to the election of directors. The Commission is adopting an amendment to Rule 14a–8(i)(8) to provide certainty regarding the meaning of this provision in response to a recent court decision.

DATES: *Effective Date:* January 10, 2008.

FOR FURTHER INFORMATION CONTACT: Lillian Brown or Tamara Brightwell, at (202) 551–3700, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

SUPPLEMENTARY INFORMATION: We are adopting an amendment to Rule 14a–8(i)(8) [1] under the Securities Exchange Act of 1934.[2]

I. Background

A. Purpose of the Rule 14a–8(i)(8) Exclusion

On July 27, 2007, the Commission published for comment the proposed amendment to Rule 14a–8(i)(8) that we are adopting today to address the uncertainty resulting from a recent decision of the U.S. Court of Appeals for the Second Circuit that did not defer to the agency's longstanding interpretation of the Rule.[3]

Rule 14a–8, which creates a procedure under which shareholders [4] may present certain proposals [5] in the company's proxy materials, does not require the inclusion of any proposal that ''relates to an election for membership on the company's board of directors or analogous governing body.'' [6] The proper functioning of Rule 14a–8(i)(8) is particularly critical to assuring that investors receive adequate disclosure in election contests, and that they benefit from the full protection of the antifraud provisions of the securities laws. Because the inclusion of shareholder nominees for director in a company's proxy materials normally would create a contested election of directors, the protections of the proxy solicitation rules designed to provide investors with full and accurate disclosure are of vital importance in this context. An interpretation of Rule 14a–8(i)(8) that resulted in the Rule being used as a means to include shareholder nominees in company proxy materials would, in effect, circumvent the other proxy rules designed to assure the integrity of director elections.

Several Commission rules, including Exchange Act Rule 14a–12,[7] regulate contested proxy solicitations so that investors receive adequate disclosure to enable them to make informed voting decisions in elections. The requirements to provide these disclosures to shareholders from whom proxy authority is sought are grounded in Rule 14a–3,[8] which requires that any party conducting a proxy solicitation file with the Commission, and furnish to each person solicited, a proxy statement containing the information specified in Schedule 14A.[9] Items 4(b) and 5(b) of Schedule 14A require numerous specified disclosures if the solicitation is subject to Rule 14a–12(c).[10] A solicitation is subject to Rule 14a–12(c) if it is made ''for the purpose of opposing'' a solicitation by any other person ''with respect to the election or removal of directors. * * *'' [11] Thus, the result of Schedule 14A's cross-referencing of Rule 14a–12(c) is to trigger, when a solicitation with respect to the election of directors is conducted in opposition to another solicitation, a number of disclosures relevant in proxy contests.[12] In addition, Item 7 of Schedule 14A [13] requires the furnishing of additional information as to nominees for director, including nominees of ''persons other than the

[1] 17 CFR 240.14a–8(i)(8).

[2] 15 U.S.C. 78a *et seq.*

[3] Release No. 34–56161 (July 27, 2007) [72 FR 43488] (the ''Proposing Release'').

[4] To be eligible to submit a proposal, Exchange Act Rule 14a–8(b)(1) (17 CFR 240.14a–8(b)(1)) requires the shareholder to have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal for at least one year. The Rule also contains other eligibility and procedural requirements for shareholders who wish to include a proposal in the company's proxy materials.

[5] With respect to subjects and procedures for shareholder votes, most state corporation laws provide that a corporation's charter or bylaws can specify the types of proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. Rule 14a–8(i)(1) supports these determinations by providing that a proposal that is not a proper subject for action by shareholders under the laws of the jurisdiction of the corporation's organization may be excluded from the corporation's proxy materials.

[6] Exchange Act Rule 14a–8(i)(8).

[7] 17 CFR 240.14a–12.

[8] 17 CFR 240.14a–3.

[9] Rule 14a–3 provides, in pertinent part, that ''[n]o solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a publicly-filed preliminary or definitive written proxy statement containing the information specified in Schedule 14A. * * *''

[10] 17 CFR 240.14a–101, Items 4 and 5. Items 4 and 5 require disclosures made by participants in a solicitation. For purposes of Items 4 and 5, a ''participant'' in the solicitation includes:

- Any person who solicits proxies;
- Any director nominee for whose election proxies are being solicited; and
- Any committee or group, any member of a committee or group, and other persons involved in specified ways in the financing of the solicitation.

See Item 4, Instruction 3. Thus, for each of the numerous disclosures required as to a ''participant,'' the information must be disclosed as to all of such persons.

[11] Because numerous protections of the federal proxy rules are triggered only by the presence of a solicitation made in opposition to another solicitation, the requirements regarding disclosures and procedures in contested elections do not contemplate the presence of competing nominees in the same proxy materials.

[12] *See* 17 CFR 240.14a–101, Items 4(b) and 5(b). These disclosures include:

- By whom the solicitation is made;
- The methods to be employed to solicit;
- Total expenditures to date and anticipated in connection with the solicitation;
- By whom the cost of the solicitation will be borne;
- Any substantial interest of each participant in the solicitation;
- The name, address, and principal occupation or principal business of each participant;
- Whether any participant has been convicted in a criminal proceeding within the past 10 years;
- The amount of each class of securities of the company owned by the participant and the participant's associates;
- Information concerning purchases and sales of the company's securities by each participant within the past two years;
- Whether any part of the purchase price or market value of such securities is represented by funds borrowed;
- Whether a participant is a party to any contract, arrangements or understandings with any person with respect to securities of the company;
- Certain related party transactions between the participant or its associates and the company;
- Whether the participant or any of its associates have any arrangement or understanding with any person with respect to any future employment with the company or its affiliates, or with respect to any future transactions to which the company or its affiliates will or may be a party; and
- With respect to any person who is a party to an arrangement or understanding pursuant to which a nominee is proposed to be elected, any substantial interest that such person has in any matter to be acted upon at the meeting.

[13] 17 CFR 240.14a–101, Item 7.

[company]'' (*e.g.*, shareholders), including:

- Any arrangement or understanding between the nominee and any other person(s) (naming such person(s)) pursuant to which the nominee was or is selected as a nominee; [14]
- Business experience of the nominee; [15]
- Any other directorships held by the nominee in an Exchange Act reporting company; [16]
- The nominee's involvement in certain legal proceedings; [17]
- Certain transactions between the nominee and the company; [18] and
- Whether the nominee complies with independence requirements.[19]

Finally, and of critical importance, all of these disclosures are covered by the prohibition contained in Rule 14a–9 on the making of a solicitation containing false or misleading statements or omissions.[20]

These numerous protections of the federal proxy rules are triggered only by the presence of a solicitation made in opposition to another solicitation. Accordingly, were the election exclusion not available for proposals that would establish a process for the election of directors that circumvents the proxy disclosure rules, it would be possible for a person to wage an election contest without providing the disclosures required by the Commission's present rules governing such contests. Additionally, false and misleading disclosure in connection with such an election contest could potentially occur without liability under Exchange Act Rule 14a–9 for material misrepresentations made in a proxy solicitation. The Commission stated this rationale for the exclusion at the time it was proposed in 1976:

> [T]he principal purpose of [Rule 14a–8(i)(8)] is to make clear, with respect to corporate elections, that Rule 14a–8 is not the proper means for *conducting campaigns or effecting reforms in* elections of that nature, since other proxy rules, including Rule 14a–11, are applicable thereto.[21] (Emphasis added.)

Accordingly, the staff has determined that shareholder proposals that may result in a contested election—including those which establish a procedure to list shareholder-nominated director candidates in the company's proxy materials—fall within the election exclusion. We agree with this position and believe it is consistent with the explanation that the Commission gave in 1976.

As explained in the Proposing Release, except for a few brief references to the Rule, the Commission did not discuss the meaning of Rule 14a–8(i)(8) from the time of its 1976 statement until its shareholder access proposal in October 2003,[22] and the two proposing releases [23] in July 2007. Between 1976 and the time of the *AFSCME* v. *AIG* litigation, the staff of the Commission took ''no-action'' positions on the application of the Rule. Between 1976 and 1990, in applying the Rule to proposals that would have established procedures for shareholders to nominate candidates to the board, in the limited number of cases that presented the question, the staff did not concur with companies that the proposals could be excluded under the election exclusion.[24] In 1990, however, without mentioning the pre-1990 decisions, the staff clearly stated its position that the Rule permitted exclusion of a proposal that ''would establish a procedure that may result in contested elections to the board'' in a response to a request for no-action relief from Amoco.[25] In doing so, the staff aligned its interpretation with the Commission's 1976 statement. Between 1990 and 1998, the staff granted no-action relief under the election exclusion nine times [26] and denied relief twice [27] to operating companies seeking to exclude shareholder proposals to adopt procedures that would give shareholders the ability to nominate director candidates in the company's proxy materials. For the past decade, since 1998, the Commission staff has repeatedly taken the position that shareholder proposals that may result in a contested election fall within the election exclusion. On several occasions after 1990, the Commission itself declined to review these ''no-action'' positions.[28]

B. Background Relating to Rule Amendment

In *American Federation of State, County & Municipal Employees, Employees Pension Plan* v. *American International Group, Inc.,*[29] the U.S. Court of Appeals for the Second Circuit held that AIG could not rely on Rule 14a–8(i)(8) to exclude a shareholder proposal seeking to amend the company's bylaws to establish a procedure under which the company would be required, in specified circumstances, to include shareholder nominees for director in the company's proxy materials.[30] The Second Circuit described the Commission's statement in 1976 as limiting the election exclusion ''to shareholder proposals used to oppose solicitations dealing with an identified board seat in an

[14] *See* Item 401(a) of Regulation S–K [17 CFR 229.401(a)], which is referenced in Item 7 of Schedule 14A.

[15] *See* Item 401(e)(1) of Regulation S–K [17 CFR 229.401(e)(1)], which is referenced in Item 7 of Schedule 14A.

[16] *See* Item 401(e)(2) of Regulation S–K [17 CFR 229.401(e)(2)], which is referenced in Item 7 of Schedule 14A.

[17] *See* Items 103 and 401(f) of Regulation S–K [17 CFR 229.103 and 17 CFR 229.401(f)], which are referenced in Item 7 of Schedule 14A.

[18] *See* Item 404 of Regulation S–K [17 CFR 229.404], which is referenced in Item 7 of Schedule 14A.

[19] *See* Item 407(a) of Regulation S–K [17 CFR 229.407(a)], which is referenced in Item 7 of Schedule 14A.

[20] *See* 17 CFR 240.14a–9.

[21] Release No. 34–12598 (July 7, 1976) [41 FR 29982]. The Commission's reference in its 1976 statement to ''other proxy rules, including Rule 14a–11,'' reflects the fact that, in 1976, Rule 14a–11 was the Commission proxy rule governing election contests. As part of a series of rule changes in 1999, the Commission rescinded Rule 14a–11 and moved many of the requirements of prior Rule 14a–11 to the current Rule 14a–12. [17 CFR 240.14a–12] *See* Release No. 33–7760 (October 22, 1999) [64 FR 61408]. Accordingly, the Commission's reference to Rule 14a–11 in 1976 was to the rules governing election contests, which now may be found generally elsewhere in the proxy rules and, in particular, in Rule 14a–12.

[22] Release No. 34–48626 (October 14, 2003) [68 FR 60784].

[23] *See* Proposing Release and Release No. 34–56160 (July 27, 2007) [72 FR 43466].

[24] The proposals submitted between 1976 and 1990 typically presented similar, but not identical, procedures as those presented in the direct access proposals generally submitted in recent years. *See, e.g.*, Pan Am Corp. (March 22, 1985); Union Oil Company (February 24, 1983); and Mobil Corp. (March 3, 1981). *Cf.* Tylan Corporation (September 25, 1987) (allowing exclusion under the prior version of Rule 14a–8(i)(8) of a shareholder proposal to reduce the number of directors and nominate a new slate of directors meeting certain criteria).

[25] Amoco Corporation (February 14, 1990). *See also* Thermo Electron (March 22, 1990); Unocal Corp. (February 6, 1990); and Bank of Boston (January 26, 1990).

[26] *See* Storage Technology Corporation (March 11, 1998); BellSouth Corp. (February 4, 1998); Unocal Corporation (February 8, 1991); AT&T (January 11, 1991); Flow International (July 16, 1990); Thermo Electron (March 22, 1990); Amoco Corporation (February 14, 1990); Unocal Corporation (February 6, 1990) and Bank of Boston (January 26, 1990). *See also* International Business Machine Corporation (March 4, 1992), in which the staff noted that the proposal would be excludable unless modified as specified in the staff's response letter.

[27] *See* Dravo Corporation (February 21, 1995) and Pinnacle West Capital Corporation (March 26, 1993). *See also,* TCW/DW Term Trust 2003 (July 15, 1997), in which the Division of Investment Management denied no-action relief.

[28] *See, e.g.*, Storage Technology Corporation, letter of Jonathan Katz, Secretary of the Commission, to Dr. Seymour Licht P.E. (April 6, 1998).

[29] 462 F.3d 121 (2d Cir. 2006) (*AFSCME* v. *AIG*).

[30] Consistent with the longstanding interpretation, the Commission staff had issued to AIG a letter stating that ''[t]here appears to be some basis for your view that AIG may exclude the proposal under rule 14a–8(i)(8) * * * we will not recommend enforcement action to the Commission if AIG omits the proposal from its proxy materials * * *.'' American International Group (February 14, 2005).

upcoming election and reject[ing] the somewhat broader interpretation that the election exclusion applies to shareholder proposals that would institute procedures making such election contests more likely.'' [31] After 1976, in the Second Circuit's view, the Commission gradually shifted away from this interpretation, and came to its present interpretation in 1990. The court then held ''that an agency's interpretation of an ambiguous regulation made at the time the regulation was implemented or revised should control unless that agency has offered sufficient reasons for its changed interpretation.'' [32] Finding no such sufficient reason, the court declined to defer to what it viewed as the 1990 interpretation and deemed it ''appropriate'' instead to defer to its own reading of the meaning of the 1976 interpretation.[33] It is the Commission's position that the election exclusion should not be, and was not originally intended to be, limited in this way.[34]

This decision was issued on September 5, 2006, as companies and shareholders prepared for the 2007 proxy season. Although the decision is binding only within the Second Circuit, it created uncertainty in the rest of the nation about the continuing validity of the longstanding interpretation of Rule 14a–8(i)(8). While the Commission began the process that led to the current rulemaking to clarify the Rule's application, the staff of the Division of Corporation Finance received three no-action requests seeking to exclude similar proposals under Rule 14a–8(i)(8). The staff took a position of ''no view'' on the one request for no-action relief under the Rule that it received and that was not withdrawn.[35] This request for no-action relief was submitted by Hewlett-Packard Company, which asserted that any litigation related to the proposal would be handled by the U.S. Court of Appeals for the Ninth Circuit and that the staff therefore should grant no-action relief under Rule 14a–8(i)(8) on the basis that it was consistent with the agency's interpretation of the Rule and the Ninth Circuit was not bound by the decisions of the Second Circuit. Hewlett-Packard ultimately included the proposal in its proxy materials, but the proposal did not receive a majority of shareholder votes. A second request for no-action relief was submitted by Reliant Energy. Subsequent to the staff of the Division of Corporation Finance taking a ''no view'' position on Hewlett-Packard's request, Reliant Energy filed a complaint in the U.S. District Court for the Southern District of Texas seeking a declaratory judgment that the company could properly omit a similar proposal that it had received for inclusion in its proxy materials.[36] During the pendency of this litigation and prior to the staff's response to Reliant's no-action request, the shareholder withdrew the proposal and the company therefore withdrew its no-action request.[37] A third request for no-action relief was withdrawn after the company agreed to include the proposal in its proxy materials.[38] These events demonstrate the uncertainty the Second Circuit decision created.

Compounding this uncertainty created by the Second Circuit's decision is the U.S. Supreme Court's recent unanimous reversal of another Second Circuit decision involving an agency's interpretation of its rules. In *Long Island Care at Home, Ltd.* v. *Coke,*[39] the Supreme Court addressed the validity of the Department of Labor's changed interpretation of its rules. As in *AFSCME* v. *AIG,* the Second Circuit declined to follow the agency's more recent interpretation. In rejecting the Second Circuit's view, the Supreme Court held that an agency's interpretation of its own regulations is controlling unless plainly erroneous or inconsistent with the regulations being interpreted. The Supreme Court noted that the Department of Labor ''may have interpreted these regulations differently at different times in their history.''[40] Nonetheless, ''as long as interpretive changes create no unfair surprise * * * the change in interpretation alone presents no separate ground for disregarding the Department's present interpretation.''[41] Indeed, whereas the Second Circuit required the Commission to provide ''sufficient reason'' for what it regarded as a changed interpretation in order to merit deference, the Supreme Court, in reversing the Second Circuit's decision in another administrative law case, held that a department's change in interpretation alone presents no separate ground for disregarding the department's present interpretation. As a result of this post-*AFSCME* v. *AIG* decision, which binds all U.S. Courts of Appeals and other federal courts, it is more likely that a court would uphold this agency's interpretation of Rule 14a–8(i)(8). If a lower court were to apply the reasoning in *Long Island Care at Home* and reach a result contrary to the *AFSCME* v. *AIG* court, further litigation and confusion about the Commission's rules could follow.

To permit this escalating state of confusion to continue for the 2008 proxy season and beyond would effectively require shareholders and companies to go to court to determine the meaning of the Commission's proxy rules, and it could take years before the U.S. Supreme Court resolved any resulting conflicts between the circuits. Inaction by the Commission would thus promote further uncertainty and leave both shareholders and companies in a position of ''every litigant for himself.'' This would benefit neither shareholders nor companies. If the current environment was permitted to continue, and these types of proposals were included in proxy statements and subsequently approved, shareholders would be exposed to the risk that the disclosure provisions of the securities laws could be circumvented. And by furthering legal uncertainty about the meaning and application of the Commission's rules, it would impose needless costs on shareholders and companies alike, and undermine the Commission's statutory mission to protect investors, promote fair and orderly markets and facilitate capital formation.

The Commission has a fundamental responsibility to make sure that the rules and regulations it adopts have clear meaning so that the regulated community can conform its conduct accordingly. To that end, we previously reiterated the Commission's interpretation in the Proposing Release, and today we are adopting a clear and concise amendment to the text of Rule 14a–8 that codifies the agency's longstanding interpretation of Rule 14a–8(i)(8). It is our intention that this will enable shareholders and companies to know with certainty whether a proposal may or may not be excluded under Rule 14a–8(i)(8). It also will facilitate the staff's efforts in reviewing no-action requests and in interpreting Rule 14a–8 with certainty in responding to requests

[31] *AFSCME* v. *AIG,* 432 F.3d at 128.

[32] *Id.* at 123.

[33] *Id.* at 129.

[34] In this regard, we note that the Second Circuit decision stated that ''if the SEC determines that the interpretation of the election exclusion embodied in its 1976 Statement would result in a decrease in necessary disclosures or any other undesirable outcome, it can certainly change its interpretation of the election exclusion, provided that it explains its reasons for doing so.'' *Id.* at 130.

[35] Hewlett-Packard Company (January 22, 2007), available at *http://www.sec.gov/divisions/corpfin/cf-noaction/2007/hp012207-14a-8.htm.*

[36] The Reliant complaint may be found at *http://www.sec.gov/divisions/corpfin/cf-noaction/2007/reliantenergy011607-14a-8-incoming.pdf.*

[37] Reliant Energy, Inc. (February 23, 2007), available at *http://www.sec.gov/divisions/corpfin/cf-noaction/2007/reliantenergy011607-14a-8-incoming.pdf.*

[38] UnitedHealth Group Inc. (March 29, 2007), available at *http://www.sec.gov/divisions/corpfin/cf-noaction/2007/uhg032907-14a-8.htm.*

[39] 127 S.Ct. 2339 (2007).

[40] *Long Island Care at Home,* 127 S.Ct at 2349.

[41] *Id.*

for no-action letters during the 2008 proxy season. We believe it is important to adopt a rule change to eliminate any uncertainty, particularly in light of *Long Island Care at Home* and its implications. Thus, today's release codifies the agency's longstanding interpretation of Rule 14a–8(i)(8) and the modifications to the rule we adopt today do not affect or address any other aspect of the staff's prior determinations under the election exclusion.

II. Commission Interpretation of Rule 14a–8(i)(8)

Rule 14a–8(i)(8) permits exclusion of a proposal that would result in an immediate election contest (*e.g.*, by making or opposing a director nomination for a particular meeting) or would set up a process for shareholders to conduct an election contest in the future by requiring the company to include shareholders' director nominees in the company's proxy materials for subsequent meetings.

In the *AFSCME* v. *AIG* opinion, the Second Circuit took the view that a shareholder proposal may be excluded under Rule 14a–8(i)(8) if it would result in an immediate election contest, but that a proposal may not be excluded under Rule 14a–8(i)(8) if it ''establish[es] a process for shareholders to wage a future election contest.''[42] As the Commission stated in 1976, however, the express purpose of the election exclusion is to make clear that Rule 14a–8 is not a proper ''means'' to achieve election contests because ''other proxy rules'' are applicable to such contests. We are acting today to state clearly that the phrase ''relates to an election'' in the election exclusion cannot be read so narrowly as to refer only to a proposal that relates to the current election, or a particular election, but rather must be read to refer to a proposal that ''relates to an election'' in subsequent years as well. In this regard, if one looked only to what a proposal accomplished in the current year, and not to its effect in subsequent years, the purpose of the exclusion could be evaded easily. For example, such a reading might permit a company to exclude a shareholder proposal that nominated a candidate for election as director for the upcoming meeting of shareholders, but not exclude a proposal that resulted in the company being required to include the same shareholder-nominated candidate in the company's proxy materials for the following year's meeting.

Our interpretation of Rule 14a–8(i)(8) is fully consistent with the Commission's statement in 1976, that the Rule was not intended ''to cover proposals dealing with matters previously held not excludable by the Commission, such as cumulative voting rights, general qualifications for directors * * *.'' The Commission's references in 1976 to proposals relating to ''cumulative voting rights'' and ''general qualifications for directors'' simply reflect the long-held belief that these proposals generally do not trigger the contested elections proxy rules and therefore are not excludable under Rule 14a–8(i)(8). Accordingly, the Commission's 1976 statement should not be interpreted to mean that Rule 14a–8(i)(8) permits exclusion of proposals establishing nomination or election procedures other than those that would result in a contested election. It also is consistent with the Commission's statement in 1976 that Rule 14a–8 is not the proper means for conducting campaigns or effecting reforms in corporate elections. As explained in the Proposing Release and above, the analysis under Rule 14a–8(i)(8) does not focus on whether the proposal would make election contests more likely, but whether the resulting contests would be governed by the Commission's proxy rules for contested elections.

We received numerous public comments regarding the Proposing Release, and have carefully considered them. Commenters supporting the agency's longstanding interpretation noted that, notwithstanding the court decision, no new facts or circumstances exist that warrant the Commission deviating from that interpretation.[43] Commenters believed that the court decision did not invalidate the agency's position, but rather required the Commission to state its position and its reasoning in a formal way.[44] Other commenters disagreed with the Commission's position entirely and therefore opposed the longstanding interpretation and the proposed Rule text amendment.[45] Some commenters opposing the interpretation and Rule proposal believed that the Commission should withhold action until it has the opportunity to assess the impact of the *AFSCME* v. *AIG* decision.[46]

Many of the comments we received on the amendment that we are adopting today went beyond the limited issue the Proposing Release sought to address—namely, the Commission's interpretation of existing Rule 14a–8(i)(8) and proposed rule amendment—and instead focused on the broader range of matters implicated by a separate companion release (the ''Companion Release'') that proposed a comprehensive package of amendments to the proxy rules and related disclosure requirements.[47] We separately proposed the amendment that we are adopting today so that we could eliminate the uncertainty created by *AFSCME* v. *AIG*. As discussed throughout the Proposing Release, and in this release, we believe that a definitive codification of our longstanding interpretation is both needed and appropriate. We appreciate the thoughtful comments regarding the questions raised in the Companion Release but, because they go beyond the scope of the Proposing Release, they are more appropriately addressed in connection with the Companion Release. In this release, we are acting only on the matters that were the subject of the Proposing Release.

III. Amendment to Rule 14a–8(i)(8)

The amendment that we are adopting today is intended to clarify the meaning of Rule 14a–8(i)(8) by codifying the agency's longstanding interpretation of the Rule. The text of Rule 14a–8(i)(8) currently specifies that a proposal may be excluded ''[i]f the proposal relates to an election for membership on the company's board of directors or analogous governing body.'' To clarify the meaning of this provision, consistent with the Commission's longstanding interpretation, we proposed to amend the language of the rule to read:

> If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election.

[42] *AFSCME* v. *AIG*, 462 F.3d at 128.

[43] *See* comment letters from U.S. Chamber of Commerce (''Chamber'') and Society of Corporate Governance Professionals (''SCSGP'').

[44] *See* comment letter from Citigroup Inc. (''Citigroup''). *See, e.g.*, comment letters from The Adams Express Company (''Adams'') and Chamber.

[45] *See, e.g.*, comment letters from AFL–CIO; American Federation of State, County and Municipal Employees, AFL–CIO (''AFSCME''); State Board of Administration of Florida (''FL Board''); Amalgamated Bank LongView Funds (''Amalgamated Bank''); Board of Fire and Police Pension Commissioners of the City of Los Angeles (''LA Fire & Police''); and Comptroller of the City of New York (''NYC Comptroller'').

[46] *See* Form Letter B.

[47] We received approximately 8800 comment letters addressing the rule proposal and accompanying interpretation. Approximately 8400 of these letters were form letters opposing both this release and the Companion Release published for comment on July 25. Of the 8800, approximately 400 were not form letters.

As discussed in more detail in the Companion Release, those proposals followed a long history of prior Commission consideration and examination of possible regulatory approaches to shareholder nominations of directors, including several prior proposals, hearings, and roundtables. *See* Release No. 34–56160 (July 27, 2007) [72 FR 43466].

The term ''procedures'' in the election exclusion relates to procedures that would result in a contested election either in the year in which the proposal is submitted or in any subsequent year.

Commenters that addressed whether further clarification of the meaning of the election exclusion was necessary thought an amendment to Rule 14a–8(i)(8) was appropriate.[48] Commenters that supported the amendment believed that it would eliminate the uncertainty caused by the decision in *AFSCME* v. *AIG*.[49] Many commenters opposing the amendments addressed the matters that are the subject of the Companion Release. Some, for example, argued that the Commission's proxy rules should facilitate shareholders' ability to nominate directors.[50] Several commenters, some opposing the interpretation and rule amendment altogether and others supporting the interpretation and rule amendment, believed that the proposed language was too broad.[51] They asserted that under the proxy rules shareholders have been allowed to include proposals that may make contested elections more likely, such as proposals to de-stagger the board or introduce cumulative voting.[52] One commenter stated that any final rule should not inadvertently overrule other positions on shareholder proposals that the staff has taken.[53] Several commenters recommended that the rule define the term ''procedure'' or contain a note that provides a list of circumstances that would constitute a proposal that may result in an election contest.[54] Other commenters believed that listing the procedures that the staff historically has found to fall under the exclusion is unnecessary and may result in confusion because it would be difficult to draft a comprehensive list that includes every possible permutation.[55]

As discussed above, we agree with those commenters that support amending Rule 14a–8(i)(8) in order to provide greater clarity to both shareholders and companies, and believe that the comments that address the broader issues in the Companion Release go beyond the scope of this release. We believe that the clarifying rule amendment is consistent with the agency's longstanding interpretation of the election exclusion and that the references to ''nomination'' and ''procedure'' in the rule text appropriately reflect the purpose of the exclusion. We have not included in the amended rule text a list of the specific types of proposals that may be excluded, as was suggested by some commenters, as we agree with commenters who asserted that inclusion of such a list is unnecessary and could be confusing. We therefore are adopting the change to the rule text as proposed. To meet some of the concerns expressed by commenters, however, we emphasize that the changes to the rule text relate only to procedures that would result in a contested election, either in the year in which the proposal is submitted or in subsequent years. The changes to the rule text do not affect or address any other aspect of the agency's prior interpretation of the exclusion.[56] Thus, under the Rule as amended, a shareholder proposal that would allow for shareholder use of the company's proxy materials to nominate director candidates, such as the proposal at issue in *AFSCME* v. *AIG*, would be excludable. We believe the actions we are taking today will provide certainty in the application of Rule 14a–8(i)(8) and will preserve our longstanding interpretation of the Rule.

We believe that the amendment we are adopting today, as well as the definitive interpretive guidance provided in this release, will provide certainty to shareholders and companies regarding the application of Rule 14a–8(i)(8).[57] The clarification provided will enable shareholders and companies to better understand the shareholder proposal process, and will facilitate the efforts of the Commission's staff in its review of future no-action requests.

IV. Paperwork Reduction Act

The proxy rules constitute a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995, the PRA.[58] The amendment to Rule 14a–8(i)(8) described in this release relates to a previously approved collection of information, the title of which is ''Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–16 and Schedule 14A)'' (OMB Control No. 3235–0059). This regulation was adopted pursuant to the Exchange Act and sets forth the disclosure requirements for proxy statements filed by companies to help investors make informed voting decisions.

The Rule 14a–8(i)(8) amendment merely revises the text of Rule 14a–8(i)(8) in a manner that is consistent with the agency's longstanding interpretation of the rule. As such, the amendment does not affect the Schedule 14A collection of information for purposes of the PRA. Therefore, we are not submitting the amendment for OMB approval.

V. Cost-Benefit Analysis

The amendment to Rule 14a–8(i)(8) clarifies the Commission's existing

[48] *See, e.g.*, comment letters from Business Roundtable (''BRT'') and SCSGP.

[49] *See, e.g.*, comment letters from American Bar Association (''ABA''); Adams; Bank of America (''BOA''); The Boeing Company (''Boeing''); BRT; Burlington Northern Santa Fe Corporation (''Burlington Northern''); Caterpillar Inc. (''Caterpillar''); Chevron Corporation (''Chevron''); Peabody Energy Corporation (''Peabody''); and SCSGP.

[50] *See, e.g.*, Form Letter B and comment letters from Stephen R. Van Winthrop (''Van Winthrop'') and Group of Thirty-Nine Law Professors (''Thirty-Nine Law Professors'').

[51] *See, e.g.*, comment letters from ABA; Corporate Governance; theRacetotheBottom.org (''Race''); and Sullivan & Cromwell (''Sullivan'').

[52] *See, e.g.*, comment letters from Race and Sullivan.

[53] *See* comment letter from Amalgamated Bank.

[54] *See, e.g.*, comment letters from BRT and Peabody.

[55] *See, e.g.*, comment letters from ABA and SCSGP.

[56] For example, we note that, as stated in the Proposing Release, the staff has taken the position that a proposal relates to ''an election for membership on the company's board of directors or analogous governing body'' and, as such, is subject to exclusion under Rule 14a–8(i)(8) if it could have the effect of, or proposes a procedure that could have the effect of, any of the following:

- Disqualifying board nominees who are standing for election;
- Removing a director from office before his or her term expired;
- Questioning the competence or business judgment of one or more directors; or
- Requiring companies to include shareholder nominees for director in the companies' proxy materials or otherwise resulting in a solicitation on behalf of shareholder nominees in opposition to management-chosen nominees.

Conversely, the staff has taken the position that a proposal may not be excluded under Rule 14a–8(i)(8) if it relates to any of the following:

- Qualifications of directors or board structure (as long as the proposal will not remove current directors or disqualify current nominees);
- Voting procedures (such as majority or plurality voting standards or cumulative voting);
- Nominating procedures (other than those that would result in the inclusion of a shareholder nominee in company proxy materials); or
- Reimbursement of shareholder expenses in contested elections.

These lists represent non-exclusive examples of types of proposals that the staff has found to be excludable and non-excludable under the election exclusion.

[57] The approach we are taking today is similar to the Commission's response to the decision of the Third Circuit in *Levy* v. *Sterling Holding Co.*, 314 F.3d 106 (3d Cir. 2002), which also resulted in uncertainty and confusion about the interpretation of Commission rules. *See* 69 FR 35982 (June 25, 2004) (proposing release), 70 FR 46080 (August 9, 2005) (adopting release); *Bruh* v. *Bessemer Venture Partners III L.P.*, 464 F.3d 202 (2d Cir. 2006) (accepting Commission interpretation of rule before amendment based on Commission's amicus brief in the case and the rule amendments and observing that the amended rule was valid); *Levy* v. *Sterling Holding Co.*, 475 F. Supp. 2d 463 (D. Del. 2007) (upholding Commission's amended rules and applying them retroactively); *Tinney* v. *Geneseo Communications, Inc.*, 457 F. Supp. 2d 495 (D. Del. 2006) (same).

[58] 44 U.S.C. 3501 *et seq.*

proxy rules. The opinion in *AFSCME* v. *AIG* created uncertainty regarding the agency's longstanding interpretation of Rule 14a–8(i)(8), making it difficult for shareholders and companies to assess the operation of that rule. The amendment is intended to clarify the meaning of the exclusion in Rule 14a–8(i)(8), consistent with the agency's unwavering interpretation of the rule for the last decade. Without such clarification, shareholders and companies may need to resort to litigation to determine the range of shareholder proposals that are required to be included in company proxy materials. They may be uncertain as to the proper range of proposals that shareholders may submit to companies for inclusion in those proxy materials. For example, without clarification of the exclusion in Rule 14a–8(i)(8), shareholders may incur costs in preparing and submitting proposals that a company may properly exclude from its proxy materials.

The Commission solicited public comment on the benefits and costs of the proposed amendment to Rule 14a–8(i)(8). While not directly addressing the cost-benefit analysis, commenters that addressed whether further clarification of the meaning of the election exclusion was necessary generally thought that an amendment to Rule 14a–8(i)(8) was appropriate.[59] Commenters supporting the amendment agreed that it would eliminate the uncertainty caused by the decision in *AFSCME* v. *AIG*.[60] Several commenters opposing the amendment [61] argued that the Commission's proxy rules should facilitate a shareholder's ability to nominate directors.[62]

The amendment should assist shareholders in determining the precise meaning of Rule 14a–8(i)(8) in connection with their preparation and submission of proposals for inclusion in a company's proxy materials. To the extent that proposals are properly excluded from proxy materials in reliance on the amended rule, companies and their shareholders will not incur additional costs that would otherwise be incurred if the proposals were included. Without the clarification of the proper scope of the Rule 14a–8(i)(8) exclusion that will be provided by the amendment, shareholders and companies may incur substantial expense in litigating disputes regarding that basis for exclusion. Thus, the clarification of Rule 14a–8(i)(8) will save both shareholders and companies potentially substantial expense in litigating disputes regarding its application.

In addition, the amendment will prevent circumvention of provisions of the proxy rules outside of Rule 14a–8, such as Rules 14a–9 and 14a–12, which are designed to assure the integrity of director elections. Finally, the amendment will facilitate the ability of staff in the Division of Corporation Finance to respond to no-action requests by clarifying the scope of the Rule 14a–8(i)(8) exclusion.

As we stated in the Proposing Release, because the proposed amendment would clarify that the scope of the exclusion in Rule 14a–8(i)(8) is consistent with the Commission's longstanding interpretation of that exclusion, shareholders and companies would not incur additional costs to determine the appropriate scope of the exclusion.

The Second Circuit decision may have altered the expectations of some shareholders, both within and outside of the Second Circuit, regarding their ability to require a company to include in its proxy statement a shareholder proposal under Rule 14a–8 to amend the bylaws to establish procedures for shareholder-nominated candidates for director to be included in a company's proxy materials. Despite the fact that, since 1998, the Commission staff repeatedly has taken the position that shareholder proposals that may result in a contested election fall within an exclusion from the rule, some uncertainty regarding this position was created by the *AFSCME* v. *AIG* decision. In this regard, the Commission's restatement of the longstanding interpretation of Rule 14a–8(i)(8) could impose a cost on shareholders that may have already incurred expenses in connection with preparations for bylaw amendments in the upcoming proxy season. Because the Commission is persuaded that the unanimous decision of the U.S. Supreme Court in *Long Island Care at Home* has called the continuing validity of the Second Circuit's decision into question even within that judicial circuit, however, it is not clear that the reassertion of the agency's longstanding view of the scope of the election exclusion would itself be the sole reason that such costs would occur.

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [63] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act [64] and Section 2(c) of the Investment Company Act of 1940 [65] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The *AFSCME* v. *AIG* opinion has created uncertainty regarding the Commission's longstanding interpretation of Rule 14a–8(i)(8), making it difficult for shareholders and companies to assess the operation of that rule. This has resulted in uncertainty regarding whether Rule 14a–8 requires companies to include in their proxy materials shareholder proposals that would establish procedures whereby shareholders could submit nominations for director to be included in the company's proxy materials, despite the exclusion provided by Rule 14a–8(i)(8). This uncertainty has made it difficult for shareholders and companies to assess the proper operation of the shareholder proposal rule and has generated economic inefficiency by introducing potential litigation costs and potential costs of preparing and responding to otherwise excludable shareholder proposals.

The amendment is intended to clarify the scope of the exclusion in Rule 14a–8(i)(8), consistent with the agency's longstanding interpretation of the Rule. This should improve shareholders' and companies' ability to assess shareholder proposals with a clear understanding whether Rule 14a–8 will require inclusion of the proposal. Informed decisions in this regard generally promote market efficiency and capital formation, but should not affect competition. We believe the amendment

[59] *See, e.g.*, comment letters from BRT and SCSGP.

[60] *See, e.g.*, comment letters from ABA; Adams; BOA; Boeing; BRT; Burlington Northern; Caterpillar; Chevron; Peabody; and SCSGP.

[61] As discussed above, this release addresses the limited issue of the Commission's interpretation of existing Rule 14a–8(i)(8) and corresponding rule amendment, and does not address the broader range of matters contemplated by the Companion Release. Accordingly, this release does not address the benefits and costs, and effects on efficiency, competition and capital formation, of the proposals in the Companion Release.

[62] *See, e.g.*, Form Letter B and comment letters from Van Winthrop and Thirty-Nine Law Professors.

[63] 15 U.S.C. 78w(a)(2).

[64] 15 U.S.C. 78c(f).

[65] 15 U.S.C. 80a–2(c).

to Rule 14a–8(i)(8), and the attendant clarity and reduction of litigation risk, expense, and uncertainty for all parties will not impose a burden on competition, but will promote efficiency and capital formation.

VII. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to an amendment to Rule 14a–8 that clarifies the application of the exclusion provided by paragraph (i)(8) of that Rule.

A. Need for the Rules and Rule Amendments

The purpose of the amendment is to clarify the scope of Rule 14a–8(i)(8), which permits the exclusion from a company's proxy materials of certain bylaw proposals relating to procedures for the election of directors. The final rule should improve shareholders' and companies' ability to assess such shareholder proposals with a clear understanding of whether Rule 14a–8 will require inclusion or permit exclusion of the proposal.

B. Significant Issues Raised by Public Comment

We did not receive comments specifically on the application of the interpretation to small entities. Several commenters supported the agency's longstanding interpretation of Rule 14a–8(i)(8). Some believed that the *AFSCME* v. *AIG* opinion did not invalidate the interpretation, but rather required the Commission to state its position and its reasoning in a formal way.[66] Other commenters disagreed with the Commission's position entirely and therefore opposed the longstanding interpretation and the related proposed rule text amendment.[67] Some commenters opposing the interpretation and rule proposal believed that the Commission should withhold action until it has the opportunity to assess the impact of the *AFSCME* v. *AIG* decision.[68]

C. Small Entities Subject to the Rule

The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[69] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.[70] A ''small business'' and ''small organization,'' when used with reference to a company other than an investment company, generally means a company with total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 companies, other than investment companies, that may be considered reporting small entities.[71] The final rules may affect each of the approximately 1,315 small entities that are subject to the Exchange Act reporting requirements.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The amendment imposes no new reporting, recordkeeping, or compliance requirements. The impact of the amendment relates to clarifying the scope of Rule 14a–8(i)(8), which permits companies to omit certain shareholder proposals from their proxy materials.

E. Agency Action To Minimize Effect on Small Entities

The amendment to Rule 14a–8(i)(8) is intended to provide certainty and consistency to shareholders and companies of all sizes regarding the application of the Rule. It would be contrary to this objective if we minimized the effect of the amendment on small entities.

VIII. Statutory Basis and Text of Amendment

We are adopting an amendment to the Rule pursuant to Sections 14 and 23(a) of the Exchange Act, as amended, and Sections 20(a) and 38 of the Investment Company Act of 1940, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 240.14a–8 by revising paragraph (i)(8) to read as follows:

§ 240.14a–8 Shareholder proposals.

* * * * *

(i) * * *

(8) *Relates to election:* If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election;

* * * * *

Dated: December 6, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–23951 Filed 12–10–07; 8:45 am]

BILLING CODE 8011–01–P

[66] *See* comment letter from Citigroup. *See, e.g.*, comment letters from Adams and Chamber.

[67] *See, e.g.*, comment letters from AFL–CIO; AFSCME; FL Board; Amalgamated Bank; LA Fire & Police; and NYC Comptroller.

[68] *See* Form Letter B.

[69] 5 U.S.C. 601(6).

[70] Securities Act Rule 157 [17 CFR 230.157], Exchange Act Rule 0–10 [17 CFR 240.0–10], and Investment Company Act Rule 0–10 [17 CFR 270.0–10] contain the applicable definitions.

[71] The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database. Approximately 215 investment companies meet this definition.

Federal Register

Tuesday,
December 11, 2007

Part IV

Department of Housing and Urban Development

Notice of Funding Availability for the Public Housing Neighborhood Networks Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5159-N–01]

Notice of Funding Availability for the Public Housing Neighborhood Networks Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability.

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of Public and Indian Housing.

B. *Funding Opportunity Title:* Public Housing Neighborhood Networks program.

C. *Announcement Type:* Initial announcement.

D. *Funding Opportunity Number:* **Federal Register** number: FR–5159–N–01; OMB approval number: 2577–0229.

E. *Catalog of Federal Domestic Assistance (CFDA) Number(s):* 14.875.

F. *Dates:* The application deadline date is February 15, 2008.

G. Additional Overview Content Information

1. *Purpose of Program.* The purpose of the Public Housing Neighborhood Networks (NN) program is to provide grants to public housing authorities (PHAs) to: (a) Update and expand existing NN community technology centers; or (b) establish new NN centers. These centers offer comprehensive services designed to help public housing residents achieve long-term economic self-sufficiency. This program is authorized under § 9(d)(1)(E), § 9(e)(1)(K), § 9(h)(8), and § 24(d)(1)(G) of the United States Housing Act of 1937 (42 U.S.C. 1437g).

2. *Funding Available.* The Department plans to award approximately $10 million under the Public Housing NN program in Fiscal Year (FY) 2007.

3. *Award Amounts.* Awards will range from $150,000 to $600,000.

4. *Eligible Applicants.* Eligible applicants are PHAs only.

Tribes and tribally designated housing entities (TDHEs), nonprofit organizations, and resident associations are not eligible to apply for funding under the Public Housing Neighborhood Networks program.

5. *Cost Sharing/Match Requirement.* PHAs are required to match at least 25 percent of the requested grant amount.

6. *Grant term.* The grant term is 3 years from the execution date of the grant agreement.

Grant program	Total funding	Eligible applicants	Maximum grant amount
Neighborhood Networks	Approximately $10 million	PHAs—existing centers	$150,000 for PHAs with 1 to 780 units. $200,000 for PHAs with 781 to 2,500 units. $250,000 for PHAs with 2,501 to 7,300 units. $300,000 for PHAs with 7,301 units or more.
		PHAs—new centers	$300,000 for PHAs with 1 to 780 units. $400,000 for PHAs with 781 to 2,500 units. $500,000 for PHAs with 2,501 to 7,300 units. $600,000 for PHAs with 7,301 units or more.

FULL TEXT OF ANNOUNCEMENT

I. Funding Opportunity Description

A. Definition of Terms

1. *Citywide Resident Organization* consists of members of Resident Councils, Resident Management Corporations, and Resident Organizations who reside in public housing developments that are owned and operated by the same PHA within a city.

2. *Contract Administrator* is a grant administrator or financial management agent that oversees the implementation of the grant and/or the financial aspects of the grant. Contract administrators may be local housing agencies, community-based organizations such as community development corporations (CDCs), local faith-based institutions, nonprofit organizations, and state/regional associations and organizations. Troubled PHAs are not eligible to be contract administrators. Grant writers who assist applicants in the preparation of NN applications are also ineligible to be contract administrators. Please see the ''Program Requirements'' section III.C.2. of this NOFA for more information.

3. *An existing computer center* is: (1) A computer lab, or technology center owned and operated by a PHA that serves residents of public housing and has not received prior NN funding and, therefore, is not officially designated a HUD Public and Indian Housing (PIH) NN center; (2) a computer lab designated as a HUD PIH NN center, which seeks to expand its services; or (3) a computer lab that needs funding under this program to become fully operational and serve residents of public housing.

4. *A new NN center* is one that will be established (*i.e.*, there is no infrastructure, space, or equipment currently in use for this purpose) with NN grant funds. NOTE: An applicant that has previously received NN funding may apply under the ''New Computer Center'' category *only* if it will develop a new center in a development that cannot be served by the applicant's existing NN center(s).

5. *Intermediary Resident Organizations* means jurisdiction-wide resident organizations, citywide resident organizations, statewide resident organizations, regional resident organizations, and national resident organizations.

6. *Jurisdiction-Wide Resident Organization* means an incorporated nonprofit organization or association that meets the following requirements: (a) Most of its activities are conducted within the jurisdiction of a single PHA; (b) There are no incorporated resident councils or resident management corporations within the jurisdiction of the single PHA; (c) It has experience in providing startup and capacity-building training to residents and resident organizations; and (d) Public housing residents representing unincorporated resident councils within the jurisdiction of the single PHA must comprise a majority of the board of directors.

7. *National Resident Organization (NRO)* is an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

a. It is national (*i.e.*, conducts activities or provides services in at least two HUD areas or two states);

b. It has the capacity to provide startup and capacity-building training to residents and resident organizations; and

c. Public housing residents representing different geographical locations in the country are members of the Board of Directors.

8. *Past Performance* is a threshold requirement. Using Rating Factor 1, HUD's field offices will evaluate applicants for past performance to

determine whether an applicant has the capacity to manage the grant for which it is applying. Field offices will evaluate the past performance of contract administrators for applicants that are required to have one. See section III. C.2.c. for more information on contract administrators.

9. *Person with disabilities* means a person who:

a. Has a condition defined as a disability in section 223 of the Social Security Act;

b. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act; or

c. Is determined to have a physical, mental, or emotional impairment that:

(1) Is expected to be of long-continued and indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions.

The term ''person with disabilities'' includes persons who have acquired immunodeficiency syndrome (HIV/AIDS) or any conditions arising from the etiologic agent for AIDS. No individual shall be considered a person with disabilities solely based on drug or alcohol dependence.

The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of providing reasonable accommodations and for program accessibility for persons with disabilities.

10. *Project Coordinator* is responsible for coordinating the grantee's approved activities to ensure that grant goals and objectives are met. A qualified Project Coordinator is someone with at least 2 years of experience running a community technology center and working on supportive services designed specifically for underserved populations. Please see Section V.A.1.a.(1)(a) of Rating Factor 1, ''Staff Experience,'' for more information. The Project Coordinator and grantee are both responsible for ensuring that all federal requirements are followed.

11. *Regional Resident Organization (RRO)* means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

a. The RRO is regional (*i.e.*, not limited by HUD areas);

b. The RRO has experience in providing start-up and capacity-building training to residents and resident organizations; and

c. Public housing residents representing different geographical locations in the region must comprise the majority of the Board of Directors.

12. *Resident Advisory Board (RAB)* refers to a board or boards whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA. (See 24 CFR 903.13 for a complete definition.)

13. *Resident Association (RA)* means any or all of the forms of resident organizations as they are defined elsewhere in this Definitions section and includes Resident Councils (RCs), Resident Management Corporations (RMCs), Regional Resident Organizations (RROs), Statewide Resident Organizations (SROs), Jurisdiction-Wide Resident Organizations, and National Resident Organizations (NROs). This NOFA uses ''Resident Association'' or ''RA'' to refer to all eligible types of resident organizations.

14. *Resident Council (RC)* must consist entirely of people residing in public housing and must meet each of the following criteria:

a. It may represent residents residing:

(1) In scattered site buildings;

(2) In areas of contiguous row houses;

(3) In one or more contiguous buildings;

(4) In a development; or

(5) In a combination of these buildings or developments;

b. It must adopt written procedures such as bylaws; and

c. It must have a democratically elected governing board that is elected by the voting membership. (Please see the requirements of 24 CFR 964.115 for more information.)

15. *Resident Management Corporation (RMC)* means an entity that proposes to enter into, or enters into, a contract to conduct one or more management activities of a PHA and meets the requirements of 24 CFR 964.120.

16. *Secretary* means the Secretary of Housing and Urban Development.

17. *Senior person* means a person who is at least 62 years of age.

18. *Site-Based Resident Associations* means resident councils or resident management corporations representing a specific public housing development.

19. *Statewide Resident Organization (SWO)* is an incorporated nonprofit organization or association for public housing that meets the following requirements: (a) The SWO has statewide jurisdiction; (b) The SWO has experience in providing start-up and capacity-building training to residents and resident organizations; and (c) Public housing residents representing different geographical locations in the state must comprise the majority of the Board of Directors.

B. Program Description

1. The Public Housing NN program provides grants to PHAs to: (1) Update and expand existing NN/community technology centers; or (2) establish new NN centers.

2. NN centers must be located within a public housing development, on PHA land, or within reasonable walking distance to the PHA development(s).

3. HUD is looking for applications that implement comprehensive programs within the 3-year grant term, which will result in improved economic self-sufficiency for public housing residents. HUD is also looking for proposals that involve partnerships with organizations that will supplement and enhance the services offered to residents.

4. NN centers provide computer and Internet access for public housing residents and offer a full range of computer, educational, and job training services. Applicants should submit proposals that will incorporate computer and Internet use to: provide job training for youths, adults, and seniors; expand educational opportunities for residents; promote economic self-sufficiency and help residents transition from welfare to work; assist children with homework; provide guidance to high school students (or other interested residents) for post-secondary education (college or trade schools); and provide other services deemed necessary after input from residents.

5. All applicants must complete a business plan (see sample form HUD–52766 provided in the instructions download for the NN application on Grants.gov) covering the 3-year grant term. The applicant's business plan and narrative must indicate how the center(s) will become self-sustaining after the grant term expires. Proposed grant activities should build on the foundation created by previous grants whose aim was to help residents achieve self-sufficiency, such as Resident Opportunities and Self-Sufficiency (ROSS) grants; previous NN grants; or other federal, state, and local self-sufficiency efforts.

C. Eligible Activities

1. *Hiring a Qualified Project Coordinator To Administer the Grant Program.* A qualified Project Coordinator must have at least 2 years of experience running a community

technology center and working to provide supportive services to typically underserved populations. The Project Coordinator should be hired for the entire term of the grant. The Project Coordinator is responsible for ensuring that the center achieves its proposed goals and objectives. In addition, the Project Coordinator is responsible for the following activities:

a. Marketing the program to residents;

b. Assessing residents' needs, interests, skills, and job-readiness;

c. Assessing residents' needs for supportive services, e.g., childcare and transportation;

d. Working with RCs and/or RABs;

e. Designing and coordinating grant activities based on residents' needs and interests; and

f. Monitoring the progress of program participants and evaluating the overall success of the program. For more information on how to measure performance, please see Rating Factor 5 in the ''Application Review Information'' section of this NOFA.

2. Literacy training and General Equivalency Diploma (GED) preparation;

3. Computer training, from basic to advanced;

4. College preparatory courses and information;

5. *Job Training and Activities Leading to Self-Sufficiency.* Job training for very low- and low-income persons is a requirement under Section 3 of the Housing and Urban Development Act of 1968. Some examples of the job training skills encouraged are: oral and written communication; work ethic; interpersonal and teamwork skills; resume writing; interviewing techniques; creating job training and placement programs with local employers and employment agencies; tax preparation and submission assistance, including Earned Income Tax credits; and other training activities, using the NN center, that can help residents move toward housing and economic self-sufficiency. Examples of such activities include financial literacy, credit repair, and homeownership training, as well as post-employment follow-up to assist residents who have transitioned to the workplace.

6. *Physical improvements.* Physical improvements must relate to providing space for a NN center. Renovation, conversion, wiring, and repair costs may be essential elements of physical improvements. In addition, architectural, engineering, and related professional services required to prepare plans or drawings, write-ups, specifications, or inspections may also be part of the cost of implementing physical improvements.

a. Creating an accessible space for persons with disabilities is an eligible use of funds. Refer to Office of Management and Budget (OMB) Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments.''

b. The renovation, conversion, or joining of vacant units in a PHA development to create space for the equipment and activities of a NN center (computers, printers, and office space) are eligible activities for physical improvement.

c. The renovation or conversion of existing common areas in a PHA development to accommodate a NN center is also eligible.

d. If renovation, conversion, or repair is done offsite, the PHA must provide documentation with its application that it has control of the proposed property and will continue to have control for the grant term. Control can be demonstrated through a lease agreement, ownership documentation, or other documentation that demonstrates that the PHA will have control of the proposed property for the duration of the grant term.

7. *Maintenance and insurance costs.* Includes installing and maintaining the hardware and software, as well as insurance coverage for the space and equipment.

8. *Purchase of computers, printers, software, other peripheral equipment, and furniture for the NN Center* are eligible expenses. In addition, costs of computer hardware and software for the needs of persons with disabilities are eligible expenses.

9. *Distance Learning Equipment.* Distance learning equipment (including the costs for videocasting and purchase/lease/rental of distance learning equipment) is an eligible use of funds. The proposal must indicate that the center will be working in a virtual setting with a college, university, or other educational organization. Distance learning equipment can also be used to link one or more centers so that residents can benefit from courses being offered at only one site.

10. *Security and related costs.* Includes space and minor refitting, locks, and other equipment for safeguarding the center and other longer-term security measures, as needed.

11. *Hiring Residents.* Grantees may hire residents to help with the implementation of this grant program.

12. *Administrative Costs.* See Section IV.E. for information on this topic.

13. *Staff Training and Long-Distance Travel.* Funds may be used for applicant staff or subcontractors' training in program-relevant areas. This activity should not exceed $5,000 and must receive prior approval from the grantee's local HUD field office. See Section IV.E. for more information on this topic.

D. Regulations Governing the Neighborhood Networks Grant

The Neighborhood Networks program is covered by regulations in 24 CFR parts 905 and 968.

II. Award Information

A. *Total Funding.* The Department expects to award approximately a total of $10 million under the Public Housing NN program in FY 2007. Awards will be made as follows:

1. Forty percent of available Public Housing NN funding will be used for updating and expanding existing computer technology centers. The other 60 percent will provide grants to establish and operate new NN centers.

2. PHAs must use the number of occupied public housing units as of September 30, 2006, per their budget. This is required so that PHAs can determine the maximum grant amount they are eligible for in accordance with the categories listed below. PHAs should clearly indicate on the Fact Sheet (form HUD–52751) the number of units under management.

a. *Funding Levels For Existing Centers:*

Number of conventional units	Maximum funding
1 to 780 units	$150,000
781 to 2,500 units	200,000
2,501 to 7,300 units	250,000
7,301 or more units	300,000

b. *Funding Levels For New Centers:*

Number of conventional units	Maximum funding
1 to 780 units	$300,000
781 to 2,500 units	400,000
2,501 to 7,300 units	500,000
7,301 or more units	600,000

B. *Grant Period.* Three years. The grant period shall begin the day the grant agreement and the form HUD–1044, ''Assistance Award/Amendment,'' are signed by both the grantee and HUD.

C. *Grant Extensions.* Requests to extend the grant term must be submitted in writing by the grantee to the local HUD field office. Such requests must be made prior to grant termination and with at least 30 days' notice, to give the field office a reasonable amount of time to fully evaluate the request. Requests must explain why the extension is necessary, what work remains to be

completed, and what work and progress was accomplished to date. Extensions may be granted one time only by the field office for a period not to exceed 6 months and may be granted for an additional 6 months by the HUD Headquarters program office at the request of the field office. Extensions will only be granted for good cause.

D. *Type of Award.* Grant agreement.

E. *Subcontracting.* Subcontracting is permitted. Grantees must follow HUD procurement regulations found at 24 CFR 85.36.

III. Eligibility Information

A. *Eligible Applicants.* Only PHAs are eligible to apply for this funding category. Tribes/TDHEs, nonprofit organizations, and RAs are not eligible to apply for this funding category.

B. *Cost Sharing or Matching.* All applicants are required to obtain a 25 percent cash or in-kind match. The match is a threshold requirement. Applicants who do not demonstrate the minimum 25 percent match will fail the threshold requirement and will not receive further consideration for funding. Match contributions that are proposed to be used for ineligible activities will not be accepted or counted. Please see the section below on threshold requirements for more information on what is required for the match.

C. Other

1. *Threshold Requirements.* Applicants must respond to each threshold requirement clearly and thoroughly by following the instructions below. If an application fails one threshold requirement (regardless of the type of threshold), it will be considered a failed application. In addition to the threshold requirements outlined below, all applicants will be subject to all thresholds listed in the: General Section of the SuperNOFA that was published in the **Federal Register** on January 18, 2007 (72 FR 2396); the Introduction to the SuperNOFA, published March 13, 2007 (72 FR 114354); and Supplemental Information to the General Section and Technical Corrections, published May 11, 2007 (72 FR 27032). Applicants should refer only to the General Section supplemental information in the May 11, 2007 Notice. These collectively are referred to throughout this document as the General Section.

a. *Match.* All applicants are required to commit a 25 percent match in cash or in-kind donations, is defined in this paragraph. Joint applicants must together have at least a 25 percent match. Applicants who do not demonstrate the minimum 25 percent match will fail this threshold requirement and will not receive further consideration for funding. Match donations must be *firmly committed*. Firmly committed means that the amount of match resources and their dedication to NN-funded activities must be explicit, in writing, and signed by a person authorized to make the commitment. Letters of commitment and memoranda of understanding (MOUs) must be on organization letterhead, and signed by a person authorized to make the commitment. The letters of commitment/MOUs must indicate the total dollar value of the commitment.

For example, if an organization is proposing to donate the cost of training 15 residents at a fee of $300 per resident, the letter must show the total value, or 15 residents × $300 = $4,500. If this donation will be an annual donation for the life of the grant (3 years), the letter must also state this and show a total value of $4,500 × 3 years = $13,500.

Match letters must be dated between the publication date of this NOFA and the application deadline published in this NOFA or an amended deadline, and must indicate how the commitment will relate to the proposed program. If the commitment is in-kind, the letters should explain exactly what services or material will be provided. The commitment must be available at time of award. Applicants proposing to use their own non-ROSS or non-NN grant funds to meet the match requirement must also include a letter of commitment indicating the type of match (cash or in-kind), the source of the funds, and how the match will be used. Please note that costs paid by another federal assistance award are allowable to be used as *cost sharing or matching* where such use is not inconsistent with federal statutes. This letter must also be signed by a person authorized to make the commitment on behalf of the applicant organization. Grant awards shall be contingent upon letters of commitment being submitted with the application. A match proposed to be used for ineligible activities will not be accepted or counted. Please see the General Section for instructions on how to submit the required letters with an electronic application. Applicants should be aware that each time they submit an application to Grants.gov, they must submit a complete set of faxed materials for each application. *See General Section* 72 FR 27032).

(1) Applicants shall compute the value of volunteer time and services using the professional rate for the local area or the national minimum wage rate.

Note: Applicants may not count their staff time toward the Match.

If grantees propose to use volunteers for development or operations work that would otherwise be subject to payment of Davis-Bacon or HUD-determined prevailing wage rates (including construction, rehabilitation, or maintenance work), their services must be computed using the appropriate methodology. Additional information on these wage rates can be found at: *http://www.hud.gov/offices/olr/olrfoa.cfm,* or by contacting HUD field office labor relations staff or the PHA. Such volunteers must also meet the requirements of section 12(b) of the United States Housing Act of 1937 and 24 CFR part 70;

(2) In order for HUD to determine the value of any donated material, equipment, staff time, building, or lease, an application must provide a letter from the organization making the donation. The letter must state the value of the contribution.

(3) Other resources/services that can be committed include: in-kind services provided to the applicant; funds from federal sources that are allowed by statute, such as Community Development Block Grant (CDBG) funds, funds from any state or local government sources, and funds from private contributions. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

b. *Past Performance.* HUD's field offices will evaluate data provided by applicants, as well as their past performance, to determine whether applicants have the capacity to manage the grant they are applying for. Field offices will evaluate the contract administrators' past performance for applicants required to have a contract administrator. Using Rating Factor 1, the field office will evaluate applicants' past performance. Applicants should carefully review Rating Factor 1 to ensure their application addresses all of the criteria requested. If applicants fail to address what is requested in Rating Factor 1, their application will not receive further consideration.

c. *Minimum Score for All Fundable Applications.* Applications that pass all threshold requirements and go through the ranking and rating process must receive a minimum score of 75 in order to be considered for funding.

d. *The Dun and Bradstreet Universal Numbering System (DUNS) Number Requirement.* Refer to the General Section for information regarding the DUNS requirement. You will need to have a DUNS number to receive an award from HUD.

e. *Off-site Physical Improvements.* Physical improvements that relate to providing space for an NN center are eligible activities, including improvements for offsite centers. If renovation, conversion, or repair is done offsite, the PHA must describe this circumstance in its narrative and provide documentation with its application that it has control of the proposed property and will continue to have control for the period of grant award. Control can be demonstrated through a lease agreement, ownership documentation, or other documentation that demonstrates that the PHA will have control of the proposed property for the grant period of performance.

f. *Federal Debt.* In addition to the requirements in the General Section, applicants at the time of award that have federal debt or are in default of an agreement with the Internal Revenue Service (IRS) will not be funded. Applicants selected for funding have an obligation to report to HUD changes in status of a current IRS agreement covering federal debt.

2. Program Requirements

a. *Physical Improvements.* All renovations must meet appropriate accessibility requirements, including the requirements of Section 504 of the Rehabilitation Act of 1973 at 24 CFR part 8, the Architectural Barriers Act at 24 CFR part 40, and the Americans with Disabilities Act. Design, construction, or alteration of buildings in conformance with the Uniform Federal Accessibility Standards (UFAS) shall be deemed by HUD to comply with the requirements of 24 CFR 8.21, 8.22, 8.23, and 8.25 with respect to those buildings.

b. *Contract Administrator.* PHAs that are troubled at the time of application filing are required to submit a signed Contract Administrator Partnership Agreement. The agreement must be for the entire grant term. Grant awards must include a signed Contract Administrator Partnership Agreement in the application. Failure to submit the required Contract Administrator Partnership Agreement, or submission of an incomplete or insufficient agreement will be treated as a curable deficiency.

The contract administrator must assure that the financial management system and procurement procedures that will be implemented during the grant term comply with 24 CFR part 85. *CAs are expressly forbidden from accessing HUD's Line of Credit Control System (LOCCS) and submitting vouchers on behalf of grantees.* NN grant funds cannot be used to hire or pay for the services of a contract administrator.

Contract administrators must assist PHAs in meeting HUD's reporting requirements; see Section VI.C., ''Reporting,'' for more information. Troubled PHAs are not eligible to be contract administrators. Grant writers who assist applicants in preparing their NN applications are also ineligible to be contract administrators. Organizations that the applicant proposes to use as the contract administrator must not violate the conflict-of-interest standards, as defined in 24 CFR part 85. Please also refer to the General Section of the SuperNOFA for more information about conflict-of-interest and Code of Conduct requirements.

c. *Other Requirements and Procedures Applicable to All Programs.* All applicants, lead and non-lead, should refer to ''Other Requirements and Procedures Applicable to All Programs'' of the General Section for other requirements to which they may be subject.

3. Number of Applications Permitted

a. *General.* HUD will only fund one application per applicant or joint applicants.

b. *Joint applications.* Two or more applicants may join together to submit a joint application for proposed grant activities, but one applicant must be designated the lead applicant. HUD will use the applicant identified on the form SF–424 ''Application for Federal Assistance,'' as the lead applicant. Only the lead applicant is subject to the threshold requirements outlined in this program section and the General Section. The lead applicant must be registered with Grants.gov and submit the application using the Grants.gov portal. Applicants who are part of a joint application cannot also submit separate applications as sole applicants under this NOFA.

Note: Joint applicants may add their number of units together in order to determine funding eligibility for this program.

4. *Eligible Participants.* NN centers shall be available for use by residents of public housing and residents of other housing assisted with funding made available under HUD Appropriations Acts (e.g., residents receiving tenant-based or project-based voucher assistance, as well as elderly and disabled residents, are eligible to receive assistance).

IV. Application and Submission Information

A. *Address to Request an Application Package.* Copies of this published NOFA and application forms will be posted on *http://www.grants.gov/applicants/apply_for_grants.jsp*. If you have difficulty accessing the information, you may call the Grants.gov help desk toll-free at (800) 515–GRANTS or you may send an email message to *Support@Grants.gov.*

B. Content and Form of Application Submission

1. *Application Preparation.* Before preparing an application, applicants should carefully review the program description, program requirements, ineligible activities, threshold requirements contained in this NOFA, and the General Section of the SuperNOFA. Applicants should also review each rating factor found in the ''Application Review Information'' section before writing a narrative response. Applicants' narratives must be as descriptive as possible in order to ensure that every requested item is addressed. Applicants should be sure to include all requested information, according to the instructions found in this NOFA and the General Section. This will help ensure fair and accurate review of the application.

2. *Content of Application.* Applicants must write narrative responses to each of the rating factors described in the section below. Responses must demonstrate that applicants have the necessary capacity to successfully manage this grant program. Applicants should ensure that their narratives are written clearly and concisely so that HUD reviewers, who may not be familiar with the Public Housing NN program, fully understand the proposal.

3. Format of Application

a. Applications may not exceed 40 narrative pages. Narrative pages must be submitted as separate electronic files, and formatted as double-spaced, single-sided documents. Each file should have the pages numbered consecutively. Use Times New Roman font style and font size 12. Supporting documentation, required forms, and certifications will not be counted toward the 40 narrative page limit. Applicants should make every effort to submit only what is necessary in terms of supporting documentation. Please see the General Section for instructions on how to submit supporting documentation with your electronic application. Applicants should be aware that Grants.gov is not compatible with Microsoft Vista or Microsoft Office 2007. Applications submitted in Microsoft Office 2007 will be rejected by Grants.gov. Applicants with Microsoft Office 2007 should prepare files compatible with Microsoft

Office versions 1997–2003. HUD currently can read Microsoft Office software through 2003. If an application is submitted using software other than Microsoft Office 2003 or lower or Adobe Acrobat version 6.0 or lower, HUD will not be able to open the files. Applications with attachments not meeting these requirements cannot be reviewed and will result in a lower rating score. Applicants using older versions of Microsoft Office should follow the directions in the General Section.

b. The following checklist has been provided to help applicants submit all of the required forms and information. Electronic application filers should make sure the file names for their narratives reflect the subject matter covered. Applicants should follow the special instructions found in the General Section for naming files. File names with special characters cannot be opened by HUD. Each narrative must be saved as a separate file. All application files must be ''zipped'' together and sent as an attachment in the application submittal. Copies of the required forms may be downloaded with the application package and instructions from the following Web site: *http://www.grants.gov/applicants/apply_for_grants.jsp*. You must use the forms that are included with the 2007 application to avoid using outdated forms that may be on HUDCLIPS or found from another source. Please include a header in your narrative pages and any additional pages to indicate the applicant name and the requirement being responded to.

(1) Required Forms

(a) Acknowledgment of Application Receipt form (form HUD–2993), for paper application submissions only (you must have an approved waiver in order to submit a paper application); (b) Application for Federal Assistance (SF–424).

(**Note:** Applicants must enter their legal name in box 8.a. of the SF–424 as it appears in the Central Contractor Register (CCR). See the General Section regarding CCR registration);

(c) SF–424 Supplement—Survey on Ensuring Equal Opportunity for Applicants (listed as ''Faith Based EEO Survey'' (SF–424 SUPP) on Grants.gov);

(d) Questionnaire for HUD's Initiative on Removal of Regulatory Barriers (form HUD–27300) (''HUD Communities Initiative Form'' on Grants.gov);

(e) ROSS Fact Sheet (form HUD–52751);

(f) Grant Application Detailed Budget (form HUD–424–CB) (''HUD Detailed Budget Form'' on Grants.gov);

(g) Grant Application Detailed Budget Worksheet (form HUD–424–CBW); (Please Note: Applicants must submit a separate form HUD–424–CBW for any subcontract worth 10 percent or more of the requested grant amount);

(h) Applicant/Recipient Disclosure/Update Report (form HUD–2880);

(i) Certification of Consistency with RC/EZ/EC–II Strategic Plan (form HUD–2990), if applicable;

(j) Certification of Consistency with the Consolidated Plan (form HUD–2991);

(k) Disclosure of Lobbying Activities (form HUD–SF–LLL)—if applicable;

(l) Disclosure of Lobbying Activities Continuation Sheet (form HUD–SF–LLL–A)—if applicable;

(m) You Are Our Client! Grant Applicant Survey (form HUD–2994–A) (Optional);

(n) HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''Facsimile Transmittal Form'' on Grants.gov); this form must be used as the cover page to fax third-party letters, documents, etc., that cannot be attached to the electronic application.

Note: HUD will neither accept entire applications submitted by facsimile nor read a faxed document transmitted without the HUD–96011 cover page.

(o) Code of Conduct, as required by the General Section; and

(p) Statement on Affirmatively Furthering Fair Housing, as required by the General Section.

(2) Materials To Address Threshold Requirements

(a) Letters from partners attesting to match;

(b) Letter from applicant's organization attesting to match (if applicant is contributing to match);

(c) Contract Administrator Partnership Agreement (required for troubled PHAs) (form HUD–52755); and

(d) If applicable, documentation of site control for the period of grant award for off-site physical improvements.

(3) Materials for Rating Factor 1

(a) Narrative

(b) Chart A: Program Staffing (form HUD–52756)

(c) Chart B: Applicant/Administrator Track Record (form HUD–52757)

(d) Resumes/Position Descriptions

(4) Materials for Rating Factor 2

- Narrative

(5) Materials for Rating Factor 3

(a) Narrative

(b) Business Plan (see sample) (form HUD–52766)

(6) Materials for Rating Factor 4

- Narrative

(7) Materials for Rating Factor 5

(a) Narrative

(b) Logic Model (form HUD–96010)

C. Submission Dates and Times

1. *Deadline Dates*. Electronic applications must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the deadline date. Please note that the validation process may take up to 72 hours. For applicants receiving a waiver to the electronic filing requirement, the approval of the waiver request will contain submission instructions. See the General Section and Section F below for instructions regarding waivers to the electronic application submission requirements. Applicants granted approval to submit a paper application will receive instructions on where to submit this application. All applications, regardless if submitted via Grants.gov or on paper, must be received by the deadline date.

2. *Proof of Timely Submission*. Please see the General Section for this information for electronic application submission. For paper applications, proof of timely submission is the Certificate of Mailing (USPS Form 3817) for the United States Postal Service or electronic receipt showing the date, time, and location of the mailing provided by the United States Post Office showing mailing of the application with sufficient time for it to be received by HUD by the application deadline date. In the case of applications submitted to HUD via DHL, FedEx, or UPS, documentary proof of timely submission will be the delivery service receipt indicating that the application was submitted to the delivery service with sufficient time for it to be received by HUD by the application deadline date. Applicants using delivery services other than DHL, FedEx, or UPS do so at their own risk, as HUD cannot guarantee delivery due to HUD Security procedures.

Please remember that mail to federal facilities is screened and irradiated prior to delivery, a process that can take several days. Applicants should take the mailing and security screening timeline into account when submitting a paper application to HUD and allow ample time for the application to be delivered to the appropriate HUD office. An application delivered to HUD, but not to the HUD office designated for receipt, does not meet the timely filing requirements. If you mail your application to the wrong location, or the

office designated for receipt does not receive it, your application will be considered late and not be considered for funding. HUD will not be responsible for directing applications to the appropriate office.

D. *Intergovernmental Review*. Not applicable.

E. Funding Restrictions

1. *Reimbursement for Grant Application Costs*. Applicants who receive a Public Housing NN award are prohibited from using such funds to reimburse any costs incurred in preparing their applications.

2. Covered Salaries

a. *Project Coordinator*. The Public Housing NN program will fund up to $68,000 in combined annual salary and fringe benefits for one full-time Project Coordinator or two (or more) part-time coordinators sharing a full-time position. Applicants may also propose to use a coordinator on a part-time basis at a lesser salary. For audit purposes, applicants must have documentation on file demonstrating that the salary paid to the Project Coordinator is comparable to similar professions in their local area.

b. *Hiring Residents*. Grantees may hire residents to help with the implementation of this grant program. No more than 5 percent of grant funds can be used for this purpose.

c. Public Housing NN funds may be used to pay for salaries of staff that provide direct services to residents. Direct services staff, for purposes of this NOFA, are defined as applicant personnel or subcontractors who, as their primary responsibility, provide services directly to residents that participate in the activities described in this application, e.g., computer skills training. Public Housing NN funds may also be used to pay for administrative staff working on the NN program, but administrative salaries may not exceed the 10 percent cap for administrative expenses.

d. Public Housing NN funds may only be used for the types of salaries described in this section according to the restrictions described herein. Public Housing NN funds may not be used to pay for salaries of any other kind.

e. Public Housing Neighborhood Networks grant funds cannot be used to hire or pay for the services of a contract administrator.

3. *Funding Requests in Excess of Maximum Grant Amount*. Applicants that request funding in excess of the maximum grant amount that they are eligible to receive will be given consideration only for the maximum grant amount for which they are eligible. If awarded, the grantee will work with the field office to re-apportion the grant funds for eligible activities proposed in the original application.

4. *Administrative Costs*. Administrative costs may include, but are not limited to, purchase of office furniture, equipment, supplies, printing and postage, local travel, utilities, and administrative salaries for staff working on the Public Housing NN grant. To the maximum extent possible, when leasing space or purchasing equipment or supplies, business opportunities should be provided to businesses covered under Section 3 of the Housing and Urban Development Act of 1968. Section 3 requires that grant recipients provide business opportunities to very low- and low-income persons. Administrative expenses, including administrative salaries, must not exceed 10 percent of the total grant amount requested from HUD. Administrative costs must adhere to OMB Circular A–87. Please use form HUD–424–CBW to itemize your administrative costs. See other parts of this section (Section IV.E.) for more information. An indirect cost rate will not be accepted.

5. *Eligible activity costs*. Public Housing NN funding may be used to pay for those costs identified under Section 1.C. of this NOFA, ''Eligible Activities.''

6. *Long-Distance Travel*. Grantees may not use more than $5,000 for applicant staff/subcontractor long-distance travel activities. Travel must relate to the purpose of this grant and must receive prior approval from the grantee's local HUD field office.

7. *Ineligible Activities/Costs*. Grant funds may not be used for ineligible activities:

a. Payment of wages and/or salaries to residents/participants for receiving supportive services and/or training programs;

b. Purchase, lease, or rental of land;

c. Purchase, lease, or rental of vehicles;

d. Vehicle maintenance and/or insurance;

e. Entertainment costs;

f. Purchase of food;

g. Salaries and fringe benefits that are not for direct-services staff or Public Housing NN administrative staff. Direct-services staff, for purposes of this NOFA, are defined as applicant personnel or subcontractors who, as their primary responsibility, provide services directly to residents who participate in Public Housing NN activities;

h. Stipends;

i. Payment for or scholarships for degree programs;

j. Cost of application preparation;

k. Costs that exceed limits identified in the NOFA for the following: Project Coordinator, resident salaries, physical improvements (see below), long-distance travel, and administrative expenses;

l. Public Housing NN funds cannot be used to hire or pay for the services of a contract administrator; and

m. Any other costs not eligible under section 9(d)(1)(E) of the United States Housing Act of 1937.

8. *Physical Improvements*. For new centers, expenses for physical improvements may not exceed 20 percent of the total grant amount requested from HUD. For existing centers, expenses for physical improvements may not exceed 10 percent of the total grant amount.

F. Other Submission Requirements

1. All applicants are required to submit their applications electronically via Grants.gov, unless they request and are approved by HUD for a waiver of that requirement. Please refer to the General Section for information on how to submit your application and all attachments electronically via Grants.gov. See the General Section for instructions for requesting a waiver of the electronic application submission requirement.

2. *For Waiver Recipients Only*. Applicants wishing to submit a paper application should submit their waiver requests via e-mail to *Dina_Lehmann-Kim@hud.gov* or *Anice.M.Schervish@hud.gov*. Waiver requests must be submitted no later than 15 days prior to the application deadline date. All applications must be received by HUD no later than 11:59:59 p.m. eastern time on the application deadline date.

3. *Number of Copies*. Only applicants receiving a waiver to the electronic submission requirement may submit a paper copy application. When the waiver request is approved, the applicant will be provided information on how many copies are needed and where to submit the copies. All paper applications must be received by the deadline date. Any paper applications submitted without an approved waiver will not be considered.

V. Application Review Information

A. Criteria

1. *Factors for Award Used to Evaluate and Rate Applications to the Public Housing NN Program*. The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number

of points available for this program is 102. This includes two Renewal Community/Empowerment Zones/Enterprise Community (RC/EZ/EC–II) bonus points. The General Section contains a certification that must be completed in order for the applicant to be considered for RC/EZ/EC–II bonus points. A listing of federally designated RC/EZ/EC–IIs is available on HUD's Web site at: *http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/tour/roundnumber.cfm*. The agency certifying to RC/EZ/EC–II status must be included in the listing on HUD's Web site. Please see the General Section for more details. **Note:** Applicants should carefully review each rating factor before writing a response. Applicants' narratives must be descriptive and detailed in order to ensure that every requested item is addressed. Applicants should make sure their narratives thoroughly address the rating factors below and include all requested information, according to the instructions found in this NOFA. This will help ensure fair and accurate review of your application.

a. *Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (up to 25 points).*

This factor addresses whether the applicant has the organizational capacity and resources necessary to implement successfully the proposed activities within the grant period. In rating this factor, HUD will evaluate the qualifications and experience of the staff the applicant proposes to administer the Public Housing NN program. Please do not include the Social Security Numbers (SSNs) of any staff members.

(1) *Proposed Program Staffing* (up to 10 points).

(a) *Staff Experience* (up to 4 points). HUD is requesting a thorough description of the knowledge and experience of the proposed Project Coordinator, staff, and partners in planning and managing programs. Experience will be judged in terms of recent, relevant, and successful experience of proposed staff to undertake program activities. In rating this factor, HUD will consider experience within the last 5 years to be recent; experience pertaining to the specific activities being proposed to be relevant; and experience producing specific accomplishments to be successful. Applicants will receive a greater amount of points if the proposed staff has recent and applicable experience. If proposed staff has recent and relevant experience both in providing community technology services and in delivering social service programs to underserved populations, applicants will receive a maximum score of 4 points. If proposed staff has recent and relevant experience in only one area, applicants will receive 2 points. If proposed staff has experience in neither area, applicants will receive a score of 0 for this subfactor.

The following information should be included in the application in order to provide HUD an understanding of the proposed staff's experience and capacity:

(i) The number of staff years (one staff year = 2,080 hours) to be allocated to the program by each employee, as well as each of their roles in the program;

(ii) The staff's relevant educational background and/or work experience;

(iii) Relevant and successful experience running programs whose activities include social services and computer programs that are similar to the eligible program activities described in this NOFA.

(b) *Hiring Residents* (up to 3 points). Three points will be awarded if applicants commit to hiring one to three residents. PHAs may hire qualified residents and/or propose to train the residents they hire. Small PHAs should hire one person, medium PHAs should hire one to two people, and large PHAs should hire three people in order to get the maximum score. In order to receive points for this subfactor, applicants must explain in their narrative that they will hire residents, indicate the number of residents to be hired, and indicate the work they will be assigned.

(c) *Organizational Capacity* (up to 3 Points). Applicants will be evaluated based on whether they and/or their partners have sufficient qualified personnel to deliver the proposed activities in a timely and effective fashion.

In order to enhance or supplement capacity, applicants should provide evidence of partnerships with nonprofit organizations or other organizations that have experience providing community technology services to typically underserved populations. Applicants' narratives must describe their ability to immediately begin the proposed work program. Applicants may fax (see the General Section for instructions) resumes or position descriptions (where staff is not yet hired) for all key personnel. Please see the General Section for instructions on how to submit the required information with your electronic application. (Resumes/position descriptions do not count toward the 40-page limit.) **Note:** Applicants should use the narrative for this subfactor to indicate whether they are single or joint applicants.

(2) *Past Performance of Applicant/Contract Administrator* (up to 5 points). Applicants' narratives must describe how they (or their contract administrator) successfully implemented grant programs, such as those listed below, designed to promote resident self-sufficiency or moving from welfare to work. Applicants' past experience may include, but is not limited to, running programs aimed at helping residents of low-income housing achieve economic self-sufficiency; e.g., ROSS grants, prior Public Housing NN grants, and Youthbuild. Applicants' narratives must indicate the grants they received and managed, the grant amounts, and grant terms (years) of the grants they are counting toward past experience. Applicants will be evaluated according to the following criteria:

(a) Benefits gained by participating residents (up to 3 points). These must be measurable. Applicants should describe results their programs have obtained (e.g., higher incomes, improved grades, higher rates of employment, increased savings, improved literacy, etc.); and

(b) Description of timely grant expenditure throughout the terms of past grants (up to 2 points). Timely means regular drawdowns throughout the life of the grant, i.e., quarterly drawdowns, with all funds expended by the end of the grant term.

(3) *Program Administration and Fiscal Management* (up to 10 points).

(a) *Program Administration* (up to 4 points). Applicants should describe how they will manage the program, describe how HUD can be sure that there is program accountability, and provide a description of proposed staff's roles and responsibilities. Applicants should also describe how grant staff and partners will report to the Project Coordinator and other senior staff.

(b) *Fiscal Management* (up to 6 points). In rating this factor, applicants' skills and experience in fiscal management will be evaluated. If applicants have had any audit or material weakness findings in the past 5 years, they will be evaluated on how well they have addressed them. Applicants must provide the following:

(i) A complete description of their fiscal management structure, including fiscal controls currently in place, which includes those of a contract administrator for applicants who are required to have one (i.e., troubled PHAs); (up to 2 points)

(ii) Applicants must list any audit findings in the past 5 years (HUD Inspector General, management review, fiscal, etc.), and material weaknesses and what has been done to address

them. Applicants who have not had any audit findings in the past 5 years will automatically receive 2 points. Applicants who have had audit findings within the past 5 years that have been resolved will receive one point. Unresolved audit findings will receive 0 points; (up to 2 points) and

(iii) For applicants who are required to have a contract administrator, describe the skills and experience the contract administrator has in managing Federal funds. (up to 2 points) Applicants who are not required to have a contract administrator will automatically receive 2 points.

b. Rating Factor 2: Need (Up to 15 Points)

This factor addresses the need for funding an applicant's proposed program. In responding to this factor, applicants will be evaluated on the extent to which they describe and document the level of need for their proposed activities. NOTE: Applicants should use the narrative for this rating factor to indicate whether they are applying to open a new center or expand/update an existing center.

In responding to this factor, applicants must include:

(1) *Socioeconomic Profile* (up to 7 points). In order to receive points for this subfactor, applicants must provide a thorough socioeconomic profile of the eligible residents to be served by the program, including education levels, income levels, employment statistics, and other socioeconomic information for the local area. Applicants may either: (1) Provide data for the local area and show that the residents reflect the local area or (2) may provide resident-specific data.

Applicants will receive up to 7 points by providing a thorough socioeconomic profile of the eligible residents to be served by the program, as described above. Applicants will receive up to 3 points if they provide a basic socioeconomic profile of the area, but do not show that the residents to be served reflect that profile. Applicants will receive 0 points if they fail to provide the socioeconomic data on the community and/or eligible residents.

(2) *Demonstrated Link Between Proposed Activities and Local Need* (up to 8 points). Applicants' narratives must demonstrate a clear relationship between proposed activities, community needs, and the purpose of the program's funding, in order for points to be awarded for this factor.

Applicants will receive up to 8 points if their narratives demonstrate a strong relationship between: (1) The proposed activities, (2) local need, and (3) the purpose of the program funding. Applicants will receive up to 4 points if their narratives do not provide enough detail to determine a strong relationship between these criteria. Applicants will receive 0 points if their narratives fail to demonstrate a clear relationship between any of these criteria.

c. Rating Factor 3: Soundness of Approach (Up to 35 Points)

This factor addresses both the quality and cost-effectiveness of applicants' proposed business plan. The narrative for this rating factor, or applicants' budget and business plan, must indicate a clear relationship between proposed activities, the targeted population's needs, and the purpose of the program funding. Applicants' activities must address HUD's policy priorities outlined in this Rating Factor.

In rating this factor, HUD will consider:

(1) *Quality of the Business Plan* (up to 25 points). This factor evaluates both the applicants' business plan and budget, based on the following criteria:

(a) *Specific Services and/or Activities* (up to 15 points). Applicants' narratives must describe the specific services, course curriculum, and activities they plan to offer and who will be responsible for each. Applicants must also explain how the services they propose to offer will address residents'/community needs identified in Rating Factor 2. In addition to the narrative, applicants must also provide a business plan listing the specific services, activities, and outcomes they expect. The business plan must show a logical order of activities and progress and must tie to the outcomes and outputs applicants identify in the Logic Model (see Rating Factor 5). Please see a sample business plan (form HUD–52766). Applicants' narratives must explain how their proposed activities will:

(i) Involve community partners in the delivery of services (up to 4 points).

Applicants will receive up to 4 points if their narrative describes the full extent of partner-involvement in the delivery or support of their proposed programs. Applicants will receive up to 2 points if their narrative describes the existence of other community-based organizations in the area, but does not describe firm connections between such organizations and the proposed program. Applicants will receive 0 points if they fail to include partners or show how they will be involved in program delivery;

(ii) Involve Resident Associations and/or Resident Advisory Boards in the delivery of services (up to 3 points). Applicants will also be evaluated on whether they propose to work with Resident Associations (RAs) and/or Resident Advisory Boards (RABs) throughout the life of the grant. In order to receive points for this subfactor, applicants should explain how RAs and/or RABs will be involved in the planning and/or delivery of program services throughout the grant term. At a minimum, applicants should explain that they will confer with RAs and/or RABs to ensure that the programs they are delivering continue to reflect the needs and interests of residents.

Applicants will receive 3 points if they demonstrate that RAs and/or RABs will be involved in the planning and delivery of program services throughout the grant term. Applicants will receive up to 2 points if they show that RAs and/or RABs will be involved in either the planning or delivery of program services throughout the life of the grant. Applicants will receive one point if their narrative shows that they will confer with RAs and/or RABs throughout the life of the grant. Applicants will receive 0 points if none of these criteria are addressed; and

(iii) Offer comprehensive services versus a small range of services geared toward enhancing economic opportunities for residents (up to 8 points).

Applicants will receive up to 8 points if their narratives describe comprehensive and specific services, including course curricula, and activities they plan to offer and staff that will be responsible for each. In order to receive maximum points for this subfactor, applicants' narratives should also explain how the services will address residents'/community needs and how the services will help residents move toward economic self-sufficiency. Applicants will receive up to 4 points if their narratives describe the proposed program, but do not describe the spectrum of activities that they will be providing and the needs they will be targeting. Applicants will receive 0 points if they do not describe the services they will offer or how their program will help residents move toward self-sufficiency.

(b) *Feasibility and Demonstrable Benefits* (up to 5 points). This factor examines whether an applicant's business plan is logical, feasible, and likely to achieve its stated purpose during the term of the grant. HUD's desire is to fund applications that will quickly produce demonstrable results and advance the purposes of the Public Housing NN program.

(i) *Timeliness* (up to 2 points). This subfactor evaluates whether an

applicant's business plan demonstrates that its project is ready to be implemented no later than 3 months following the execution of the grant agreement. The business plan must indicate time frames and deadlines for accomplishing major activities.

(ii) *Description of the problem and solution* (up to 3 points). The business plan will be evaluated based on how well an applicant's proposed activities address the needs described in Rating Factor 2.

(c) *Budget Appropriateness/Efficient Use of Grant* (up to 5 points). The score in this factor will be based on the following:

(i) *Justification of expenses* (up to 2 points). Applicants will be evaluated based on whether their expenses are reasonable, well explained, and support the objectives of their proposal.

(ii) *Budget Efficiency* (up to 3 points). Applicants will be evaluated based on whether their application requests funds commensurate with the level of effort necessary to accomplish their goals and anticipated results.

(iii) Applicants should note that the budget form HUD–424–CBW provides important information that allows HUD evaluators to assess how grant funds will be used. Additionally, the HUD–424–CBW requires that a separate form HUD–424–CBW be submitted for *each* subcontract that is 10 percent or more of the requested grant amount. If applicants do not submit a form HUD–424–CBW for their own organization, and/or if applicants propose to subcontract 10 percent or more of the requested grant amount and do not include a separate form HUD–424–CBW for each subcontract worth 10 percent or more of the requested grant amount, all points for Budget Appropriateness/Efficient Use of Grant will be lost (5 points). If form HUD–424–CBWs for subcontracts of 50 percent or more of the requested grant amount are not included, the application will lose 10 points.

An applicant will receive up to 5 points if expenses are reasonable, thoroughly explained, support the objectives of the proposal, and are commensurate with the level of effort necessary to accomplish the goals. An applicant will receive up to 3 points if the expenses support the objectives of the proposal but are not fully explained or do not fully support the level of effort necessary to accomplish the proposal's goals. An applicant will receive 0 points if expenses are not reasonable and/or the requested funds are not commensurate with the level of effort necessary to accomplish the proposal's goals.

(d) *Ineligible Activities.* Two points will be *deducted* for each ineligible activity proposed in the application, as identified in Section IV.E. For example, you will lose 2 points if you propose costs that exceed the limits identified in the NOFA for a Project Coordinator.

(2) *Addressing HUD's Policy Priorities* (up to 10 points). HUD wants to improve the quality of life for those living in distressed communities. HUD's grant programs are a vehicle for long-term, positive change that can be achieved at the community level. Applicants' narratives and business plans will be evaluated based on how well they meet the following HUD policy priorities:

(a) *Improving the Quality of Life in Our Nation's Communities* (up to 2 points). In order to receive points in this category, an applicant's narrative and business plan must indicate the types of activities, services, and training programs that will be offered. These programs should help residents successfully transition from welfare to work and earn higher wages, or help elderly/disabled residents to continue to live independently.

(b) *Providing Full and Equal Access to Grassroots Faith-Based and Other Community-Based Organizations in HUD Program Implementation* (up to 2 points). HUD encourages applicants to partner with grassroots organizations, e.g., civic organizations, and grassroots faith-based and other community-based organizations. These grassroots organizations have a strong history of providing vital community services, such as developing first-time homeownership programs, creating economic development programs, and providing job training and other supportive services. In order to receive points under this factor, an applicant's narrative and business plan must describe how applicants will work with these organizations and what types of services they will provide.

(c) *Policy Priority for Increasing the Supply of Affordable Housing Through the Removal of Regulatory Barriers to Affordable Housing* (up to 2 points).

Under this policy priority, higher rating points are available to: (1) Governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing, and (2) nongovernmental applicants undertaking activities in jurisdictions that have undertaken successful efforts in removing barriers. For applicants to obtain the policy priority points for efforts to successfully remove regulatory barriers, applicants should complete form HUD–27300, ''Questionnaire for HUD's Initiative on Removal of Regulatory Barriers.'' A copy of HUD's Notice entitled ''America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Announcement of Incentive Criteria on Barrier Removal in HUD's 2004 Competitive Funding Allocations'' can be found on HUD's Web site at *http://www.hud.gov/initiatives/affordablecom.cfm.* The information and requirements contained in HUD's regulatory barriers policy priority apply to this FY 2007 NOFA. A copy of form HUD–27300 can be found in the application download package posted at *http://www.grants.gov/applicants/apply_for_grants.jsp.* Applicants are encouraged to read the Notice, as well as the General Section to obtain an understanding of this policy priority and how it can impact their score. A number of questions in HUD–27300 expressly request the applicant to provide brief documentation with their response. Other questions require that for each affirmative statement made, the applicant must supply a reference, Internet link, or a brief statement indicating where the backup information may be found; and a point of contact, including a telephone number or e-mail address. The electronic copy of the HUD–27300 has space to identify an Internet link or reference that the material is being scanned and attached to the application as part of the submission or faxed to HUD in accordance with the facsimile submission instructions. When providing documents in support of your responses to the questions on the form, please provide the applicant name and project name and whether you are responding under column A or B. Then identify the number of the question and the Internet link or document name and attach all supporting documents using the attachment function at the end of the electronic form.

(d) *Energy Star* (up to 2 points). HUD has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step toward implementing the energy plan, HUD, the Environmental Protection Agency (EPA), and the Department of Energy (DOE) have signed a joint partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purpose of the Energy Star partnership is to promote energy efficiency in the affordable housing stock, but also to help protect the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote

energy efficiency in design and operations. They are urged especially to purchase and use Energy Star-labeled products. Applicants providing housing assistance or counseling services are encouraged to promote the use of Energy Star materials and practices, as well as the construction of buildings to Energy Star standards, to both homebuyers and renters. Program activities can include developing Energy Star promotional and informational materials, outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, and promoting the designation of community buildings and homes as Energy Star compliant. For further information about Energy Star, see *http://www.energystar.gov* or call 1–888–STAR–YES (1–888–782–7937) or, for the hearing-impaired, 1–888–588–9920 TTY. Applicants demonstrating that they will meet one or more provisions of this policy priority will receive up to 2 points.

(e) *Economic Opportunities for Low- and Very Low-Income Persons* (Section 3) (up to 2 points). You will receive 2 points if your application demonstrates that you will implement Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135 in connection with this grant, if awarded. Information about Section 3 can be found at HUD's Section 3 Web site at *http://www.hud.gov/offices/fheo/section3/section3brochure.cfm.* Your application must describe how you will implement Section 3 through the proposed grant activities. You must state that you will, to the greatest extent feasible, direct training, employment, and other economic opportunities to:

(a) Low- and very low-income persons, particularly those who are recipients of government assistance for housing, and

(b) Business concerns that provide economic opportunities to low- and very low-income persons.

d. Rating Factor 4: Leveraging Resources (Up to 10 Points)

(1) This factor addresses the applicant's ability to secure community resources that can be combined with HUD's grant resources in order to achieve program purposes. Applicants are required to create partnerships with organizations that can help achieve their program's goals. PHAs are required by section 12(d)(7) of the U.S. Housing Act of 1937 (entitled ''Cooperation Agreements for Economic Self-Sufficiency Activities'') to make best efforts to enter into such agreements with relevant state or local agencies. In rating this factor, HUD will look at the extent to which applicants partner, coordinate, and leverage their services and resources with other organizations serving the same or similar populations.

(2) Additionally, applicants must have at least a 25 percent cash or in-kind match. The match is a threshold requirement. Joint applicants must have at least a 25 percent combined match. Applicants who do not demonstrate the minimum 25 percent match will fail the threshold requirement and will not receive further consideration for funding. Leveraging in excess of the 25 percent of the requested grant amount will receive a higher point value. In evaluating this factor, HUD will consider the extent to which applicants have partnered with other entities to secure additional resources. The additional resources and services must be firmly committed; must support the proposed grant activities; and must, in combined amount (including in-kind contributions of personnel, space and/or equipment, and monetary contributions) equal at least 25 percent of the grant amount requested in the application. Match proposed to be used for ineligible activities will not be accepted or counted. ''Firmly committed'' means that the amount of resources and their dedication to Public Housing NN-funded activities must be explicit, in writing, and signed by a person authorized to make the commitment. Proposed ''in-kind'' matches should be explained explicitly, including the total value for the grant term. Please see the section on Threshold Requirements for more information.

(3) Points for this factor will be awarded based on the documented evidence of partnerships and commitments of match, as follows:

Percentage of match	Points awarded
25	4 points (with partnerships); 2 points (without partnerships).
26 to 50	6 points (with partnerships); 4 points (without partnerships).
51 to 75	8 points (with partnerships); 6 points (without partnerships).
76 or above.	10 points (with partnerships); 8 points (without partnerships).

e. Rating Factor 5: Achieving Results and Program Evaluation (Up to 15 Points)

(1) An important element of any supportive service program is the development and reporting of performance measures and outcomes. This factor emphasizes HUD's determination to ensure that applicants meet commitments made in their applications and grant agreements. Applicants are also required to assess their performance so that they can measure performance goals. Applicants must demonstrate how they propose to measure their success and outcomes relating to the Department's Strategic Plan.

(2) HUD requires Public Housing NN applicants to develop an effective, quantifiable, outcome-oriented plan for measuring performance and determining that goals have been met. Applicants must use the Logic Model form (HUD–96010) for this purpose. The activities and outcomes projected in the Logic Model must be consistent with the narrative statements provided in response to the rating factors. In addition, applicants must use the narrative response to this rating factor to describe how they will evaluate their program effectiveness throughout the life of the grant and collect, verify, and report the data requested in the Logic Model. Applicants must also discuss how they will modify their delivery mechanisms if goals are not being met.

(3) Applicants must establish interim benchmarks, or outputs, for their proposed program that lead to the ultimate achievement of outcomes. ''Outputs'' are the direct products of a program's activities. Outputs should produce outcomes for your program; e.g., the delivery of training and/or educational programs to improve the ability of participants to obtain or retain employment, get a high school diploma or GED, get on-the-job training by establishing partnerships with local employers, etc. ''Outcomes'' are benefits accruing to the residents, families, and/or communities during or after participation in the Public Housing NN program. Applicants must clearly identify the outcomes to be achieved and measured. Examples of outcomes are: increasing academic achievement, increasing residents' financial stability by residents obtaining or retaining employment, and increasing a participant's job readiness by increasing literacy or GED certifications, etc. Outcomes are not the actual development or delivery of services or program activities, but the results of the services delivered or program activities—the ultimate results of the program.

(4) This rating factor requires that applicants identify program outputs, outcomes, and performance indicators that will allow applicants to measure their performance. Performance

indicators should be objectively quantifiable and measure actual achievements against anticipated achievements. Applicants' narratives, business plans, and Logic Models should identify what applicants are going to measure, how they are going to measure it, and the steps they have in place to make adjustments if performance targets begin to fall short of established benchmarks and time frames. Applicants' proposals must also show how they will measure the performance of partners and affiliates. Applicants must include the standards, data sources, and methods they will use to measure performance. Applicants will be evaluated based on how comprehensively they propose to measure their program's outcomes.

Applicants will receive up to 15 points if they provide a business plan, narrative, and Logic Model that: (a) Describe the goals, objectives, outcomes, and performance measurements to be achieved over the term of the program; (b) include goals for each year of the program and the total goals to be achieved through the 3-year period of performance; (c) indicate what will be measured; (d) describe how progress will be measured; and (e) show steps to be taken if performance targets are not met within the established time frames. Applicants will receive up to 13 points if they fully address four of the five review criteria (a) to (e) above). Applicants will receive up to 10 points if they fully address three of the five review criteria. Applicants will receive up to 7 points if they fully address two of the five review criteria. Applicants will receive up to 3 points if they fully address one of the five review criteria. Applicants will receive 0 points if they do not provide the Logic Model and do not provide enough information to determine the program goals, outcomes, and/or performance measurements. Points will also be deducted if there are inconsistencies between statements in the narrative and the contents of the submitted Logic Model.

B. Review and Selection Process

1. *Review Process*. Four types of reviews will be conducted: a screening to determine if the applicant is eligible to apply for funding under the Public Housing NN category; a review of whether the application submission is complete, on time, and meets HUD's threshold; a review by the field office to evaluate past performance; and a technical review to rate the application based on the five rating factors provided in this NOFA.

2. *Selection Process*. HUD will make awards in rank order based on the score of each eligible application.

3. *Tie Scores*. In the event of a tie score between two applications, HUD will select the application that was first received electronically by Grants.gov, and that determination will be made based on the earliest date and time stamp. In the case of paper applications, HUD will select the application postmarked the earliest.

4. *Deficiency Period*. Applicants will have 14 calendar days in which to provide missing information requested from HUD. For other information on correcting deficient applications, please see the General Section.

VI. Award Administration Information

A. Award Notices

1. HUD will make announcements of grant awards after the rating and ranking process is completed. Grantees will be notified by letter. The letter will contain instructions and the steps grantees must take to access funding and begin implementation of grant activities. Applicants who are not funded will also receive letters via U.S. postal mail.

2. *Debriefings*. Applicants who are not funded may request a debriefing. Applicants requesting to be debriefed must send a written request to: Iredia Hutchinson, Director, Grants Management Center, 501 School Street, SW., Suite 800, Washington, DC 20024. Please refer to the General Section for additional information on debriefings.

B. Administrative and National Policy Requirements

1. *Applicable Requirements*. Grantees are subject to regulations and other requirements found in:

a. 24 CFR 85, ''Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments;''

b. 24 CFR Part 905, ''The Public Housing Capital Fund Program;''

c. 24 CFR Part 968, ''Public Housing Modernization;''

d. OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments;'' and

e. OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

2. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3)*.

Applicants and grantees must also comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and ensure that training, employment, and other economic opportunities shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing and to business concerns that provide economic opportunities to low- and very low-income persons.

3. *Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects*. For further information, see the General Section.

4. *Fair Housing and Civil Rights Laws*. Applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a), as applicable. Please see the General Section for more information.

5. *Environmental Impact*. Some activities under this Public Housing NN NOFA will be excluded and not subject to environmental review under 24 CFR 58.34(a)(3); or (a)(8) or (a)(9); 58.35(b)(2) or (b)(3); 50.19(b)(3), (b)(8), (b)(9), (b)(12), or (b)(13). Some will be subject to environmental review. Any applicant proposing any long-term leasing or physical development activities, and its partners, are prohibited from constructing, rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until the following has occurred: HUD has approved the grantee's Request for Release of Funds (form HUD–7015.15) following a Responsible Entity's completion of an environmental review under 24 CFR part 58, where required: or, if HUD has determined in accordance with 24 CFR 58.11 to perform the environmental review itself under 24 CFR part 50, HUD has completed the environmental review.

6. *Wage Rates*. Laborers and mechanics employed in the development and operation of Public Housing NN facilities must be paid Davis-Bacon or HUD-determined prevailing wage rates, respectively, unless they meet the qualifications of a volunteer (See Section III.C.1.a of this NOFA).

7. *Provision of Services to Individuals with Limited English Proficiency (LEP)*. Successful applicants and grantees must seek to provide access to program benefits and information to LEP individuals through translation and interpretive services, in accordance with HUD's LEP Recipient Guidance (68 FR 70968).

8. *Communications*. Successful applicants should ensure that notices of and communications during all training sessions and meetings be effective for persons who have hearing and/or visual disabilities, consistent with Section 504 (See 24 CFR 8.6).

9. *Procurement of Recovered Materials*. State agencies or a political subdivision of a state that are using assistance under a HUD program NOFA must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In addition, any person contracting with such an agency with respect to work performed under an assisted contract must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Please see the General Section for more information.

10. *Eminent Domain*. The revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5, approved February 15, 2007, made HUD FY 2007-appropriated funds subject to the same limitations as FY 2006 appropriations. No funds made available under the 2006 Act may be used to support any federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. See the Supplemental Information and Technical Correction to the SuperNOFA, published May 11, 2007 (72 FR 27033 and 27036).

C. Reporting

1. *Semi-Annual Performance Reports*. Grantees must submit semi-annual performance reports to the local HUD field office. These progress reports shall include financial reports (SF–269A) and the Logic Model (HUD–96010) showing achievements to date against outputs and outcomes proposed in the application and approved by HUD. Each semi-annual report must identify any deviations (positive or negative) from outputs and outcomes proposed and approved by HUD, by providing the information in the reporting tab of the approved Logic Model. Applicants must include a narrative describing milestones, work plan progress, and problems encountered and methods used to address these problems to support the data in the Logic Model. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in their business plan. Applicants that receive awards from HUD should be prepared to report on additional measures that HUD may designate at time of award, which will be incorporated into the approved Logic Model made a part of the award agreement. Performance reports are due to the field office on July 30 and January 31 of each year. If reports are not received by the due date, grant funds will not be advanced until reports are received. For FY 2007, HUD is considering a new concept for the Logic Model, a Return on Investment (ROI) statement. HUD will be publishing a separate notice on the ROI concept.

2. *Final Report*. All grantees must submit a final report to their local field office that will include a financial report (SF–269A), a final Logic Model, and a narrative evaluating overall results achieved against their approved projections and business plan. Grantees must use quantifiable data to measure performance against goals and objectives outlined in their Logic Model and business plan. The final report must also include responses to the management questions found in the Logic Model and approved for your program. The financial report must contain a summary of all expenditures made from the beginning of the grant agreement to the end of the grant agreement and must include any unexpended balances. The final narrative, Logic Model, and financial report are due to the field office 90 days after the termination of the grant agreement.

3. *Program Evaluations*. A portion of grant funds may be reserved to ensure that evaluations can be completed for all participants who received training through this program. These evaluations can assist grantees in preparing their required semi-annual and final reports. Grant funds may be used for the purchase of software that can assist grantees with the evaluation of participant performance.

4. *Final Audit*. Grantees that expend $500,000 in federal funds in a given program or fiscal year are required to obtain a complete final closeout audit of the grant's financial statements by a certified public accountant (CPA), in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR 85, as stated in OMB Circulars A–87 and A–133.

5. *Racial and Ethnic Data*. HUD requires that funded recipients collect racial and ethnic beneficiary data. HUD has adopted OMB's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, applicants should use form HUD–27061, the Racial and Ethnic Data Reporting Form.

VII. Agency Contact(s)

For questions and technical assistance, applicants may call the Public and Indian Housing Information and Resource Center at (800) 955–2232. For the hearing or speech impaired, please call the Federal Relay Service at (800) 877–8339.

VIII. Other Information

A. *Code of Conduct*. See the General Section for more information.

B. *Transfer of Funds*. HUD does not have the discretion to transfer funds for the Public Housing Neighborhood Networks category to or from any other grant program.

C. *Paperwork Reduction Act*. The information collection requirements contained in this document have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0229. In accordance with the Paperwork Reduction Act, HUD 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. Public reporting burden for the collection of information is estimated to average 54.25 hours per respondent for the application. This includes the time for collecting, reviewing, and reporting the data for the application. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Dated: December 4, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–23997 Filed 12–10–07; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
December 11, 2007

Part V

Department of Housing and Urban Development

Allocations and Requirements for the Supplemental Grant to the State of Louisiana Under Division B of the Department of Defense Appropriations Act, 2008; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5183–N–01]

Allocations and Requirements for the Supplemental Grant to the State of Louisiana Under Division B of the Department of Defense Appropriations Act, 2008

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocation and requirements.

SUMMARY: This Notice advises the public of the allocation of a $3 billion Community Development Block Grant (CDBG) disaster recovery grant to the State of Louisiana solely for the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007, under the Road Home homeowner compensation program administered by the State in accordance with plans approved by the Secretary. As described in the Supplementary Information section of this notice, HUD has determined that the State shall follow the requirements applicable to the other CDBG disaster recovery grants funding the Road Home homeowner compensation program, unless those requirements conflict with the requirements of section 159 of Public Law 110–116, in which case the requirements of that law apply.

DATES: *Effective Date*: December 11, 2007.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Fax inquiries may be sent to Ms. Kome at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Program Requirements

Except as described in Public Law 110–116 and in this and other notices applicable to this grant, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

The stated purpose of the supplemental appropriation is:

> * * * solely for the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007, under the Road Home program administered by the State in accordance with plans approved by the Secretary.

The conference report clarifies that these funds are for costs associated with the Road Home homeowner compensation program and not for any other Road Home program. Public Law 110–116 further stipulates that the funds must ''serve only to supplement and not supplant any other State or Federal resources committed to the Road Home program.''

On review of Public Law 110–116, HUD has determined these funds must be used in accordance with the same CDBG disaster recovery program requirements that apply to the Road Home homeowner compensation program under law, regulation, and Notice unless those requirements conflict with the requirements of Public Law 110–116, in which case the stipulations of that supplemental law shall apply. This means, for example, that:

- The State must only use the funds for costs eligible under the Road Home homeowner compensation program under the Action Plans for Disaster Recovery (Action Plans) for the grants made under Public Laws 109–148 and 109–234, as those plans have been amended and accepted by HUD and in accordance with Public Law 110–116;
- The State may assume the responsibility for environmental review related to this grant in accordance with 24 CFR part 58;
- Because this grant is additional funding for activities included in approved Action Plans, this Notice requires that the amount of CDBG disaster recovery and State funds must remain at or above the allocations for the homeowner compensation program as of the date the law is effective until funds for the costs associated with the last eligible homeowner compensation claim are assigned by the State;
- On a quarterly basis, the State must report to HUD on the grant in the disaster recovery grant reporting system;
- The same CDBG disaster recovery financial standards and requirements apply to this grant as applied to the two preceding CDBG disaster recovery grants to the State;
- The same CDBG property disposition requirements apply to properties assisted or acquired with this grant; and
- HUD will apply the same actions to prevent fraud, waste, and abuse of funds related to this grant as it is applying to the previous CDBG disaster recovery grants.

As noted, in general, CDBG waivers already granted to the State and alternative requirements already specified for CDBG disaster recovery grant funds provided under Public Law 109–148 and under Public Law 109–234 also apply to grant funds provided under Public Law 110–116. This eliminates unnecessary inconsistencies in administration of the three grants and, thus, reduces the opportunities for technical errors. The notices in which these prior waivers and alternative requirements appear are 71 FR 7666, published February 13, 2006 (all five states); 71 FR 34451 (for Louisiana), published June 14, 2006; 71 FR 63337, published October 30, 2006 (all five states); 72 FR 10014, published March 6, 2007 (for Louisiana); and 72 FR 48804, published August 24, 2007 (all five states). In addition to the requirements imposed by HUD, all other requirements of the Road Home homeowner compensation program shall apply to the use of these funds. Specifically, it is HUD's understanding that the State set a deadline of December 1, 2007, for those homeowners who applied by July 31, 2007, to schedule an appointment with the Road Home program to complete the application and begin the verification process. HUD expects the State to adhere to this deadline. The State may not extend this deadline without prior HUD approval.

The Road Home homeowner compensation program includes an elevation component, which is eligible under CDBG, but was intended by the program designers to be funded primarily through a Federal Emergency Management Agency (FEMA) program. Therefore, HUD expects the State of Louisiana to continue to work constructively with FEMA to access the available Hazard Mitigation Grant Program funding for elevation activities.

The provisions of this notice do not apply to funds provided to the states under the regular CDBG program.

Allocations

Public Law 110–116 (effective November 13, 2007) provides $3 billion of supplemental appropriation for the State of Louisiana CDBG program solely for:

> the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007, under the Road Home program administered by the State in accordance with plans approved by the Secretary.

As further provided for in Public Law 110–116, the funds may only be used to supplement and not supplant any other

State or federal resources committed to the Road Home homeowner compensation program. No funds shall be drawn from the U.S. Treasury beyond those necessary to fulfill this exclusive purpose. To ensure compliance with this limitation, the Department will make the grant under this Notice, but will restrict the use of the grant funds in the State's line of credit until the State has certified to HUD that all CDBG funds approved for the same purposes in the Action Plans for Disaster Recovery under each preceding CDBG disaster recovery grant (as of November 13, 2007, amounts budgeted from the grant under Public Law 109–148 equal $4,035,090,868 and those under the Public Law 109–234 grant equal $2,955,361,750), along with the $372.5 million of additional state-appropriated funds pledged to the Road Home homeowner compensation program, have already been assigned by the State for eligible costs under that program. The State will demonstrate this assignment by documenting payment requests from its contractor for costs associated with Option 1 claims that have already closed or for costs associated with Option 2 or 3 claims that are scheduled for closing. The payment requests must document costs associated with homeowner compensation claims that are sufficient to exhaust funds budgeted for homeowner compensation in the Public Law 109–148 and Public Law 109–234 grants and the $372.5 million in cash budgeted by the State. On receiving the signed certification from the State, HUD will permit drawdowns under this grant to commence. This assignment and certification process will allow HUD and the State to comply with the law without slowing the flow of funds to homeowners and without undue burden to the State program administrators. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds are not in compliance with this provision.

Prevention of Fraud, Abuse, and Duplication of Benefits

The previous supplemental appropriations statutes (Public Laws 109–148 and 109–234) also directed the Secretary to:

> Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits.

The grant under this Notice will be subject to the courses of action HUD is already undertaking for the two previous grants to the State. To meet this directive, HUD is pursuing five courses of action. First, this Notice makes applicable specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. HUD's standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds. Fifth, HUD is applying $6 million for immediate enhancement of the capabilities of the Disaster Recovery Grant Reporting system by building additional electronic controls to increase accountability while further decreasing the risk of fraud, waste, or abuse of funds.

Application for Allocation

The general requirements related to a state's application for its allocation are those delineated in a notice entitled, ''Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under the Department of Defense Appropriations Act, 2006,'' published February 13, 2006, at 71 FR 7666. HUD invites the State of Louisiana to submit an application, including a Standard Form 424 and the appropriate CDBG disaster recovery certifications as listed in that Notice. Public Law 110–116 stipulates that this grant is governed by the State's Action Plans for the Road Home homeowner compensation program. Adding the additional program funding constitutes an amendment to the program covered by these plans, but because of the specificity of the law regarding the uses of funds, HUD has determined that the Action Plans taken together are drafted so that this funding increase, large as it is, does not meet the substantial amendment definition in the Notice cited above.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General requirements.* Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. Those governing the funds appropriated under the Appropriations Act and already published in the **Federal Register**, including those in notices 71 FR 7666, published February 13, 2006 (for all five states); 71 FR 34451 (for Louisiana), published June 14, 2006; 71 FR 63337, published October 30, 2006 (all five states); 72 FR 10014, published March 6, 2007 (for Louisiana); and 72 FR 48804, published August 24, 2007 (all five states); and

b. Those governing the CDBG program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570.

c. In addition to the requirements imposed by HUD, all other requirements of the Road Home homeowner compensation program shall apply to the use of these funds. Specifically, it is HUD's understanding that the State set a deadline of December 1, 2007, for those homeowners who applied by July 31, 2007, to schedule an appointment with the Road Home program to complete the application and begin the verification process. HUD expects the State to adhere to this deadline. The State may not extend this deadline without prior HUD approval.

2. *Use of grant funds.*

a. Public Law 110–116 requires that activities funded under this Notice be used solely for the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007 under the Road Home homeowner compensation program administered by the State in accordance with its CDBG Action Plans. To the extent that the requirements of Public Law 110–116 conflict with the requirements listed in paragraph 1 of this Notice, the requirements of Public Law 110–116 will apply.

b. Further, grant funds must serve only to supplement and not supplant any other state or federal resources committed to the Road Home program. Before the Department will permit the State to draw down grant funds, the State must certify to HUD, in writing, that all CDBG funds approved for the same purposes in the Action Plans under the grants made under Public Laws 109–148 and 109–234 and the $372.5 million in additional state funds pledged to the Road Home homeowner compensation program already have been assigned or expended by the State for costs associated with the homeowner compensation program. The State will demonstrate the assignment of funds by documenting payment requests from the contractor for costs associated with Option 1 claims that have already closed or for costs associated with Option 2 or 3 claims that are scheduled for closing. The payment requests must document total costs associated with homeowner compensation claims that are sufficient to exhaust funds budgeted

for homeowner compensation in the Public Law 109–148 and Public Law 109–234 grants and the $372.5 million in cash budgeted by the State. On receiving the signed certification from the State, HUD will permit the State to begin making draw downs under this grant.

c. The amount of CDBG disaster recovery funds budgeted for the homeowner compensation program must remain at or above the current Actions Plan allocations for the homeowner compensation program as of the date the law is effective until the costs associated with the last eligible homeowner compensation claim are assigned.

3. *De-obligation of unused grant funds.* If grant funds under Public Law 110–116 remain after all costs associated with Road Home homeowner compensation claims that were filed on or before July 31, 2007, have been paid, those remaining funds shall be de-obligated by HUD.

4. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under Office of Management and Budget (OMB) control number 2506–0165 . In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) 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). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, 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, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Dated: December 5, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–24002 Filed 12–10–07; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
December 11, 2007

Part VI

The President

Executive Order 13453—Closing of Executive Departments and Agencies of the Federal Government on Monday, December 24, 2007

Federal Register
Vol. 72, No. 237
Tuesday, December 11, 2007

Presidential Documents

Title 3—

The President

Executive Order 13453 of December 6, 2007

Closing of Executive Departments and Agencies of the Federal Government on Monday, December 24, 2007

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2007, the day before Christmas Day, except as provided in section 2 below.

Sec. 2. The heads of executive branch departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 24, 2007, for reasons of national security or defense or other public need.

Sec. 3. Monday, December 24, 2007, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

THE WHITE HOUSE,
December 6, 2007.

[FR Doc. 07–6022
Filed 12–7–07; 11:52 am]
Billing code 3195–01–P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 50/P.L. 110–132

Multinational Species Conservation Funds Reauthorization Act of 2007 (Dec. 6, 2007; 121 Stat. 1360)

H.R. 465/P.L. 110–133

Asian Elephant Conservation Reauthorization Act of 2007 (Dec. 6, 2007; 121 Stat. 1362)

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