AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

1–30–08 Wednesday
Vol. 73 No. 20 Jan. 30, 2008

Pages 5421–5704

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 73 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 73, No. 20

Wednesday, January 30, 2008

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Health Services Research Initial Review Group Committee, 5572

Agricultural Marketing Service
RULES
Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2, 5422–5424
NOTICES
Cotton Research and Promotion Program:
Determination of Whether to Conduct a Referendum Regarding the 1990 Amendments to the Cotton Research and Promotion Act, 5494–5495

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
RULES
Change in Disease Status of Surrey County, England, Because of Foot-and-Mouth Disease, 5424–5426
NOTICES
Decision to Issue Permits for the Importation of Sweet Cherries From Australia Into the Continental United States and Hawaii, 5495–5496

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5572–5574

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Copyright Royalty Board, Library of Congress
PROPOSED RULES
Determination of Rates and Terms for Business Establishment Services, 5466–5470
NOTICES
Distribution of 1998 and 1999 Cable Royalty Funds, 5596–5597
Distribution of 1999, 2000, 2001, 2002, 2003, 2004 and 2005 Satellite Royalty Funds, 5597
Distribution of the 2004 and 2005 Cable Royalty Funds, 5597–5598

Defense Department
NOTICES
Meetings:
Defense Policy Board Advisory Committee, 5527

Education Department
NOTICES
Meetings:
National Advisory Council on Indian Education, 5527

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 5527–5528

Employment Standards Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5592–5593

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Environmental Management Advisory Board; Renewal, 5528

Environmental Protection Agency
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Illinois; Revisions to Emission Reduction Market System, 5435–5439
Boscalid; Denial of Objections, 5439–5450
Fluopicolide; Pesticide Tolerance, 5450–5455
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Illinois; Revisions to Emission Reduction Market System, 5471
Fort Peck Assiniboine and Sioux Tribes in MT; Underground Injection Control; Revision, 5471–5480
NOTICES
Experimental Use Permit; Amendment Application Receipt, 5561–5563
Local Government Advisory Committee; Charter Renewal, 5563
Meetings:
Management of Underground Injection of Carbon Dioxide for Geologic Sequestration; Workshop, 5563
Pesticide Petition Filing:
Residues of Pesticide Chemicals in or on Various Commodities, 5563–5565
Proposed Approval of Transuranic Waste Characterization Program; Hanford Site, 5565–5568

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness Directives:
Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB 135 Airplanes, 5426–5429
Class E Airspace; Establishment:
Emporium, PA, 5432–5433
Lewistown, PA, 5429–5431
Marienville, PA, 5431–5432

New Albany, MS, 5434–5435

Federal Communications Commission
RULES
Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, 5634–5704

Federal Election Commission
NOTICES
Rules of Procedure, 5568–5570

Federal Emergency Management Agency
RULES
Final Flood Elevation Determinations, 5455–5458
PROPOSED RULES
Proposed Flood Elevation Determinations, 5480–5484

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5528–5531
Airtricity Munnsville Wind Farm LLC; Notice of Filing, 5531
Application Accepted for Filing and Soliciting Motions to Intervene, Protest, and Comments:
Aberdeen Hydro, LLC, 5531–5532
Green Wave Energy Solutions, LLC, 5533–5534
Little River Hydro, LLC, 5534–5535
Mississippi 5 Hydro, LLC, 5535–5536
Wickiup Hydro Group, LLC, 5536–5537
Wright Patman Hydro, LLC, 5537–5538
Caledonia Energy Partners, L.L.C.; Application, 5538–5539
City of Aspen; Declaration of Intention, 5539–5540
Combined Notice of Filings No. 1, 5540–5542
Combined Notice of Filings No. 2, 5542–5543
Crisp County Power Commission; Restricted Service List:
Programmatic Agreement for Managing Properties Eligible for Inclusion in the National Register of Historic Places, 5543–5544
Dominion Transmission Inc.; Intent to Prepare Environmental Assessment:
Utica 7 Project; Request for Comments on Environmental Issues, 5544–5546
Downeast Pipeline, LLC; Notice of Amendment, 5546
Lockport Energy Associates, L.P.; Issuance of Order, 5546–5547
Long Beach Partners, LLC; Issuance of Order, 5547
Meetings:
Gulf Crossing Pipeline Company LLC et al., 5547
PacifiCorp, et al.; FERC Staff Attendance, 5548
Rockies Express Pipeline LLC; Technical Conference, 5548
Southern Star Central Gas Pipeline, Inc.; Technical Conference, 5548
Southwest Power Pool Board Of Directors/Members Committee et al., 5548–5549
Northern Natural Gas Co.; Under Blanket Authorization Request, 5549
PowerGrid Systems, Inc.; Issuance of Order, 5549
Progress Energy Carolinas, Inc.; Non-Project Use of Project Lands and Waters Application, 5549–5551
Records Governing Off-the-Record Communications; Public Notice, 5551–5552
Scott Hansen; Declaration of Intention, 5552
Tarpon Whitetail Gas Storage, LLC; Intent To Prepare Environmental Assessment:
Whitetail Natural Gas Storage Project; Request for Comments on Environmental Issues, 5552–5554
Transcontinental Gas Pipe Line Corporation:
Prior Notice of Activity Under Blanket Certificate, 5554–5555
Under Blanket Authorization Request:
Transwestern Pipeline Company, LLC, 5555

Federal Highway Administration
NOTICES
Environmental Impact Statement:
Galveston County, Texas; Cancellation, 5625

Federal Maritime Commission
NOTICES
Agreement Filed; Shipping Act of 1984:
Marine Terminal Services Agreement between Port of Houston Authority and Hapag-Lloyd AG, 5570
Ocean Transportation Intermediary License Applicants, 5570–5571

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 5571–5572

Federal Transit Administration
NOTICES
Environmental Impact Statement on Transit Improvements in North-South Corridor of Kansas City, MO, 5625–5627

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species Permit Applications, 5583–5584

Food and Drug Administration
NOTICES
Clinical Laboratory Improvement Amendments of 1988:
In Vitro Diagnostic Devices Manufacturers Waiver Applications, 5574–5575

Food and Nutrition Service
NOTICES
Summer Food Service Program for Children
Program Reimbursement For 2008, 5496–5497

Forest Service
NOTICES
Environmental Impact Statement:
Hiawatha National Forest, MI; Niagara, 5497–5498
Meetings:
Eastern Region Resource Advisory Committee, 5498–5499
Mendocino Resource Advisory Committee, 5499
Southern Region Resource Advisory Committee, 5499

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Federal Emergency Management Agency
RULES
Privacy Act of 1974; Implementation of Exemptions, 5421–5422
PROPOSED RULES
Privacy Act; Systems of Records, 5460–5461

NOTICES
Privacy Act; Systems of Records, 5577–5581

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5581–5582
Application for Technical Assistance for Community Planning and Development (CPD) Programs, 5582–5583

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Determination of Sales at Less Than Fair Value:
Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 5500–5507
Light-Walled Rectangular Pipe and Tube from Turkey, 5508–5514
Heavy Forged Hand Tools from China; Court Decision, 5514–5515
Preliminary Determination of Sales at Less Than Fair Value:
Light-Walled Rectangular Pipe and Tube from Mexico, 5515–5525

Labor Department
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Emergency Closure of Public Lands:
Douglas County, Nevada, 5584
Meetings:
Southeast Oregon Resource Advisory Council, 5584–5585
Notice of Realty Action:
Termination of Classification, 5585
Order Closing Public Lands to Motorized Use:
Gunnison and Saguache Counties, Colorado, 5585–5586
Public Land Order No. 7688:
Withdrawal of Public Lands for the Protection of Yermo xanthocephalus Plant Habitat, WY, 5586
Realty Action:
(Non-Competitive) Sale of Public Lands, Nye County, Nevada, 5586–5588

Legal Services Corporation
RULES
Income Level for Individuals Eligible for Assistance, 5458–5459

Library of Congress
See Copyright Royalty Board, Library of Congress

Management and Budget Office
NOTICES
Discount Rates for Cost-Effectiveness, Lease, Purchase, and Related Analysis, 5599–5600
Pilot Program for Alternative Approaches to Performance and Accountability Reporting Open Forum FY 2007, 5600

Mine Safety and Health Administration
NOTICES
Affirmative Decisions on Petitions for Modification Granted in Whole or in Part, 5593–5594

National Credit Union Administration
PROPOSED RULES
Mergers, Conversion from Credit Union Charter, and Account Insurance Termination, 5461–5466

National Highway Traffic Safety Administration
PROPOSED RULES
Federal Motor Vehicle Safety Standards:
Roof Crush Resistance, 5484–5493
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5627–5628

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5575–5576
Meetings:
National Center for Complementary and Alternative Medicine, 5576
National Institute of Diabetes and Digestive and Kidney Diseases, 5577
National Institute on Drug Abuse, 5577

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Fisheries of the South Atlantic; South Atlantic Fishery Management Council, 5525
Gulf of Mexico Fishery Management Council, 5525–5526
Pacific Fishery Management Council, 5526–5527
Pacific Fishery Management Council; Correction, 5526

National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5588–5589
Concession Contracts Extension, 5590
Minor Boundary Revision at Delaware Water Gap National Recreation Area, 5590
National Register of Historic Places; Pending Nominations and Related Actions, 5591–5592

Nuclear Regulatory Commission
NOTICES
Demand for Information:
Mattingly Testing Services, Inc., 5598–5599

Occupational Safety and Health Administration
NOTICES
National Advisory Committee on Occupational Safety and Health; Nominations Request, New, and Reappointed Members, 5594–5596

Office of Management and Budget
See Management and Budget Office

Rural Business-Cooperative Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5499–5500

Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5499–5500

Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5499–5500

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5600–5603
Meetings; Sunshine Act, 5603
Schroder Series Trust, et al.; Notice of Application, 5603–5604
Self-Regulatory Organizations; Proposed Rule Changes:
American Stock Exchange LLC, 5604–5609
Boston Stock Exchange, Inc., 5610–5611
Chicago Board Options Exchange, Inc., 5611–5614
Depository Trust Company, 5614–5615
International Securities Exchange, LLC, 5615–5616
National Securities Clearing Corporation, 5617–5618
Options Clearing Corporation, 5618–5619

Social Security Administration
NOTICES
Privacy Act; Systems of Records, 5619–5624

State Department
RULES
Revisions to Passport Regulations; Correction, 5435
NOTICES
Report Finalization and Submission:
Transformational Diplomacy Advisory Committee, 5624–5625

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5628–5631

U.S.-China Economic and Security Review Commission
NOTICES
Meetings, 5631–5632

Western Area Power Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5555–5561

Separate Parts In This Issue

Part II
Federal Communications Commission, 5634–5704

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

6 CFR
5 5421
Proposed Rules:
5 5460
7 CFR
948 5222
9 CFR
94 5424
12 CFR
Proposed Rules:
708a 5461
708b 5461
14 CFR
39 5426
71 (4 documents) ... 5429, 5431, 5432, 5434
22 CFR
51 5435
37 CFR
Proposed Rules:
384 5466
40 CFR
52 5435
180 (2 documents) 5439, 5450
Proposed Rules:
52 5471
147 5471
44 CFR
67 5455
Proposed Rules:
67 5480
45 CFR
1611 5458
47 CFR
15 5634
73 5634
76 5634
49 CFR
Proposed Rules:
571 5484

Rules and Regulations

Federal Register

Vol. 73, No. 20

Wednesday, January 30, 2008

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

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

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2008–0004]

Privacy Act of 1974: Implementation of Exemptions

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule exempting from certain provisions of the Privacy Act a revised and updated Privacy Act system of records maintained by the Office of Investigations in the Office of the Inspector General. The system of records is the ''Investigative Data Management System.''

DATES: *Effective Dates:* This final rule is effective January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Richard N. Reback, Department of Homeland Security, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528, by telephone (202) 254–4100 or facsimile (202) 254–4285; or Hugo Teufel III, (703) 235–0780, Chief Privacy Officer, U.S. Department of Homeland Security, Washington, DC 20528; e-mail *privacy@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2005, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (70 FR 67931), to exempt a Privacy Act system of records maintained by the Office of Investigations in the Office of the Inspector General (OIG) from certain provisions of the Privacy Act. The system of records is the DHS OIG Investigations Data Management System.

No comments were received on the proposed rulemaking. Accordingly, the Department is adopting the proposed rule as final.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, DHS certifies that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, DHS has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. At the end of Appendix C to part 5, add the following new paragraph 5 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

5. DHS–OIG–2005–002, the Office of Inspector General Investigative Records System includes both paper investigative files and the ''Investigation Data Management System'' (IDMS)—an electronic case management and tracking information system, which also generates reports. The Investigative Records System consists of records and information collected and maintained to receive and process allegations of violations of criminal, civil, and administrative laws and regulations relating to DHS programs, operations, and employees, as well as contractors and other individuals and entities associated with the DHS. The system allows the DHS Office of Inspector General to monitor case assignments, disposition, status, and results; manage investigations and information provided during the course of such investigations; track actions taken by management regarding misconduct; track legal actions taken following referrals to the United States Department of Justice for prosecution or litigation; provide information relating to any adverse action or other proceeding that may occur as a result of the findings of an investigation; retrieve investigation results; provide a system for creating and reporting statistical information; and to provide a system to track Office of Inspector General investigators' firearms qualification records and property records. Pursuant to exemptions 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (c)(4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation; and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or

necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject as to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude OIG special agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8)(Notice on Individuals) because compliance would interfere with OIG's ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–1553 Filed 1–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

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

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule modifies 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 specify that potatoes handled under the marketing order must be at least 2 inches in diameter or 4 ounces in weight, with exceptions allowing the handling of round potatoes of any weight, and Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties with a minimum of 1⅞ inches in diameter or 4 ounces in weight. This rule removes the exception that Russet Burbank, Russet Norkotah, and Silverton Russet potato 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: *Effective Date:* January 31, 2008.

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

The 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 final rule modifies the minimum size requirements under the order. The minimum size requirements for Area No. 2 potatoes specify that potatoes handled under the marketing order must be at least 2 inches in diameter or 4 ounces in weight with exceptions allowing the handling of round potatoes of any weight, and Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties with a minimum of 1⅞ inches in diameter or 4 ounces in weight. This rule removes the exception that Russet Burbank, Russet Norkotah, and Silverton Russet potato 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 over the last several years and that there are currently abundant supplies in the marketplace. Market data also shows that consumers prefer larger, higher quality potatoes. After reviewing such 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 believes that providing the sizes desired is necessary to maintain consumer confidence in the marketplace. The Committee also believes that most Colorado potato handlers have already been shipping Russet varieties with a minimum size of 2 inches in diameter or 4 ounces in weight.

Russet potatoes subject to the order's handling regulation will 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 revised size requirements. Some potatoes might weigh less than 4 ounces, but be at least 2 inches in diameter. These potatoes would also meet the revised minimum size requirements.

Twelve members voted in favor of the modification 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, thus facilitating the handling and marketing of Colorado Area No. 2 potatoes and improving producer returns.

Final 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 of 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 each Colorado Area No. 2 potato producer 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 final rule removes from the handling regulation 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 will thus have the effect of increasing the minimum size requirement for Russet potatoes from 1⅞ inches in diameter or 4 ounces in weight 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 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 will 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 producers 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 final rule increases the size requirements for Russet varieties of potatoes under the order. Accordingly, this action will 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final 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.

A proposed rule concerning this action was published in the **Federal Register** on December 11, 2007 (72 FR 70244). Copies of the rule were mailed or sent via facsimile to all Committee members and handlers. The rule was also made available through the Internet by USDA and the Office of the **Federal Register**. A 15-day comment period ending December 26, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping potatoes from the 2007–2008 crop. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

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 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. Amend § 948.386 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: January 24, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–1570 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2007–0124]

Change in Disease Status of Surrey County, England, Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Surrey County, England, from the list of regions considered to be free of foot-and-mouth disease (FMD). We are taking this action because the existence of FMD has been confirmed in that area. This action is necessary to prevent the introduction of FMD into the United States. As a result of this interim rule the importation of ruminants and swine and the fresh meat and other animal products of ruminants and swine from Surrey County, England, is restricted.

DATES: This interim rule is effective January 30, 2008. However, we are imposing this restriction retroactively to August 3, 2007. We will consider all comments that we receive on or before March 31, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0124* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0124, 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–2007–0124.

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: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services Import Staff, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

Foot-and-mouth disease (FMD) is a severe and highly contagious viral infection affecting all cloven-hoofed ruminants, including cattle, deer, goats, sheep, swine, and other animals. The disease is highly communicable and is characterized by fever and blister-like lesions on the tongue and lips, in the mouth, on the teats, and between the hooves. It causes severe losses in the production of meat, milk, and other dairy products. Although many animals survive the disease, it leaves them debilitated. FMD is endemic to more than two-thirds of the world and is considered to be widespread in parts of Africa, Asia, Europe, and South America. Because of the highly communicable nature of FMD, it is necessary to protect livestock that are free of the disease from any animals, animal products, or other articles that might be contaminated with the FMD virus.

Although FMD was eradicated in the United States in 1929, the virus could be reintroduced by a single infected animal, animal product, or person carrying the virus. Once introduced, FMD can spread quickly through exposure to aerosols from infected animals, direct contact with infected animals, contact with contaminated feed or equipment, ingestion of animal products, or contact with humans harboring the virus or carrying the virus on their clothing.

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest and FMD. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest and FMD. The United Kingdom (England, Northern Ireland, Scotland, Wales, and the Isle of Man), in its entirety, has been listed in § 94.1 as a region considered free of rinderpest and FMD. Section 94.11 lists regions of the world considered free of rinderpest and FMD but from which the importation of meat and other animal products into the United States is subject to additional restrictions because of those regions' proximity to or trading relationships with FMD-affected regions. The United Kingdom is currently listed in § 94.11 as one of the regions from which meat and other animal products of ruminants and swine are subject to additional restrictions.

On August 3, 2007, the United Kingdom reported an outbreak of FMD in Surrey County, England, to the World Organization for Animal Health (OIE). A second outbreak was reported on August 7, 2007. By September 30, 2007, a total of eight outbreaks had been confirmed. All infected premises were located in Surrey County. As a precautionary measure, the United Kingdom, in agreement with the European Commission, has since August 3, 2007, restricted exports of ruminants and swine and the fresh meat and other animal products of ruminants and swine, initially from all of Great Britain and subsequently from smaller regions within Great Britain. Epidemiological investigations and risk assessments conducted by the United Kingdom link the source of the outbreaks in Surrey County with a probably accidental release of the FMD virus from a laboratory and vaccine production facility in Pirbright. Intensive surveillance has demonstrated that the virus never spread outside of Surrey County. The United Kingdom and the European Commission removed all restrictions in Great Britain on December 31, 2007.

Based on our discussions with the United Kingdom's veterinary officials and our evaluation of the situation, we have determined that: (1) FMD is not known to exist in the United Kingdom outside of Surrey County, England; (2) the United Kingdom maintained strict control over the importation and movement of animals and animal products from regions of higher risk and established barriers to the spread of FMD from Surrey County, England; (3) the United Kingdom maintained a surveillance system capable of detecting FMD should the disease have been introduced into other regions of the country; and (4) the United Kingdom has the laws, policies, and infrastructure to detect, respond to, and eliminate any occurrence of FMD. Consequently, until such time as we are able to conclude our own risk assessment of the Surrey County outbreaks, we have decided to remove the affected portion of the United Kingdom encompassing the administrative unit Surrey County, England, from the list of regions considered free of FMD. We are taking this action in order to protect the livestock of the United States from FMD.

Therefore, we are amending the regulations in § 94.1 to remove Surrey County, England, from the list of regions that are considered free of rinderpest and FMD. We are also amending the regulations in § 94.11 to remove Surrey County, England, from the list of regions considered free of rinderpest and FMD but from which the importation of meat and other animal products of ruminants and swine into the United States is subject to additional restrictions. We are imposing this restriction retroactively to August 3, 2007, which is the date that the presence of FMD in this region of England was first confirmed.

We recognize that the United Kingdom immediately responded to the detection of the disease by imposing restrictions on the movement of ruminants and swine and the fresh meat and other animal products of ruminants and swine within and from England and initiating measures to eradicate the disease, and the outbreak appears to be well controlled at this time. Because of the United Kingdom's efforts to ensure that FMD does not spread beyond its borders, we intend to reassess the situation in accordance with the standards of the OIE at a future date. As part of the reassessment process, we will consider all comments received during the comment period on this interim rule. This future reassessment will determine whether it is necessary to continue to prohibit the importation of ruminants and swine and the fresh meat and other animal products of ruminants and swine from Surrey County, England.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of FMD into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a regulatory flexibility analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to August 3, 2007; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry

and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

■ 2. In § 94.1, paragraph (a)(2) is amended by adding the words ''(except for Surrey County, England)'' immediately after the words ''United Kingdom.''

§ 94.11 [Amended]

■ 3. In § 94.11, paragraph (a) is amended by adding the words ''(except for Surrey County, England)'' immediately after the words ''United Kingdom.''

Done in Washington, DC, this 24th day of January 2008.

Paul R. Eggert,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–1653 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0051; Directorate Identifier 2008–NM–001–AD; Amendment 39–15352; AD 2008–03–03]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 airplanes; and Model EMB–145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. This AD requires inspections to detect discrepancies of the components of the elevator control system, repetitive movements of the control column to observe the normal response of the elevators, repetitive inspections to detect discrepancies of the skin of the elevators, and applicable related investigative actions and corrective actions. This AD also provides for optional terminating actions for the inspections and measurements. This AD results from a report indicating that a Model EMB–145 airplane did not rotate in response to the command from the yoke during take-off, which resulted in a rejected take-off. We are issuing this AD to detect and correct discrepancies of the elevator control system, which could result in reduced control of the elevators and consequent reduced controllability of the airplane.

DATES: This AD becomes effective February 14, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 14, 2008.

We must receive comments on this AD by February 29, 2008.

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

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

For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On December 13, 2005, we issued AD 2005–26–15, amendment 39–14436 (70 FR 77303, December 30, 2005). That AD applies to certain EMBRAER Model EMB–135 airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD requires performing repetitive inspections for cracks, ruptures, or bends in certain components of the elevator control system; replacing discrepant components; and, for certain airplanes, installing a new spring cartridge and implementing new logic for the electromechanical gust lock system. That AD also requires eventual modification of the elevator gust lock system to replace the mechanical system with an electromechanical system, which will terminate the repetitive inspections. That AD resulted from reports that cracks have been found in certain components of the elevator control system in the horizontal stabilizer area of several airplanes equipped with a mechanical gust lock system. These cracks have been attributed to damage from strong wind gusts on the ground. The actions specified in that AD are intended to prevent discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced controllability of the airplane.

Since we issued that AD, we received a report indicating that an EMBRAER Model EMB–145 airplane did not rotate in response to the command from the yoke as expected during take-off, and the flightcrew had to perform a rejected take-off. The elevator control system did not respond to elevator inputs from the flightcrew. Investigation revealed that both elevator control rods were broken, and skin damage was found to the elevator control surface. Preliminary investigation reports reveal that the control rods broke under compression load. The reports also reveal that strong, windy conditions prevailed before the incident. The airplane's mechanical elevator gust lock system had not yet been modified into an electromechanical elevator gust lock

system as required in AD 2005–26–15. Discrepancies of the elevator control system, if not corrected, could result in reduced control of the elevators and consequent reduced controllability of the airplane.

Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145–27–A106, Revision 02, dated December 28, 2007. The alert service bulletin describes procedures for:

- Doing a one-time detailed visual inspection to detect discrepancies (i.e., cracks, rupture and/or bends) of the components of the elevator control system, doing a one-time movement of the control column to observe the normal response of the elevators, doing a one-time general visual inspection within touching distance to detect discrepancies (i.e., overtravel at the hinge area) of the lower skins of the elevators, and doing applicable related investigative actions (Part I). The related investigative actions include detailed visual and general visual inspections and measurements to detect discrepancies of components of the elevator control system.

- Repetitively moving the control column to observe the normal response of the elevators, repetitively doing the general visual inspection from the ground, and doing applicable related investigative actions, as described previously (Part II).

- Repetitively moving the control column to observe the normal response of the elevators, repetitively doing the general visual inspection to detect discrepancies (i.e., overtravel at the hinge areas) of the lower and upper skins of the elevators, doing applicable related investigative actions described previously, and doing applicable detailed visual and general visual inspections and measurements to detect discrepancies of components of the elevator control system (Part III).

EMBRAER Alert Service Bulletin 145–27–A106 refers to Task 05–50–26–200–802–A, ''On-Ground Gale-Force Winds,'' dated March 28, 2006, of Chapter 5–50–26 of EMBRAER EMB145 Aircraft Maintenance Manual, as an additional source of service information for accomplishing the related investigative actions and for accomplishing detailed visual and general visual inspections and measurements to detect discrepancies of components of the elevator control system.

FAA's Determination and Requirements of This AD

These airplanes are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Therefore, we are issuing this AD to detect and correct discrepancies of the elevator control system, which could result in reduced control of the elevators and consequent reduced controllability of the airplane. This AD requires accomplishing the actions specified in the EMBRAER alert service bulletin described previously, except as discussed under ''Difference Between the AD and the Referenced Service Bulletin.'' This AD also requires repair and inspection reports of any discrepancy found, and provides for optional terminating actions. The required inspection reports will help determine the extent of the discrepancies in the affected fleet.

Paragraph (l) of this AD provides operators with an option to modify the elevator mechanical gust locks in accordance with paragraphs (c)(1) and (c)(2) of AD 2005–26–15 to end repetitive inspection requirements of this AD. We are currently considering superseding AD 2005–26–15 to reduce the compliance time for that modification and we might use the results of the inspection reports in our considerations.

Difference Between the AD and the Referenced Service Bulletin

The alert service bulletin does not specify instructions on how to repair certain conditions. This AD requires repairing those conditions using a method approved by the FAA or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent). In light of the type of repair that is required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair approved by the FAA or the ANAC is acceptable for compliance with this AD.

The Accomplishment Instructions of the alert service bulletin first defines the term ''detailed inspection,'' but thereafter inadvertently uses the term ''detailed visual inspection.'' This AD refers to all such inspections as ''detailed inspection.''

Paragraph 3.C.(1)(a) of the alert service bulletin specifies that the general visual inspection is performed by a checker. This AD requires that the inspection be done by certified maintenance personnel.

FAA's Justification and Determination of the Effective Date

We have determined that interim repetitive inspections are necessary to ensure long-term continued operational safety, in this case, to detect any discrepancy before it represents a hazard to the airplane. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the proper functioning of the elevator control system and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0051; Directorate Identifier 2008–NM–001–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII,

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

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–03–03 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15352. Docket No. FAA–2008–0051; Directorate Identifier 2008–NM–001–AD.

Effective Date

(a) This AD becomes effective February 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; as identified in EMBRAER Alert Service Bulletin 145–27–A106, Revision 02, dated December 28, 2007.

Unsafe Condition

(d) This AD results from a report indicating that an airplane did not rotate in response to the command from the yoke during take-off, which resulted in a rejected takeoff. We are issuing this AD to detect and correct discrepancies of the elevator control system, which could result in reduced control of the elevators and consequent reduced controllability of the airplane.

Compliance

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

Part I: One-Time Inspections and Movements

(f) Within 20 flight hours after the effective date of this AD, do a one-time detailed inspection of the components and general visual inspection of the lower skin of the elevators, and observation of the movement of the elevator control surfaces, by accomplishing all the applicable actions specified in Part I of the Accomplishment Instructions of the EMBRAER Alert Service Bulletin 145–27–A106, Revision 02, dated December 28, 2007, unless the terminating actions specified in paragraph (l) of this AD have been done.

(1) If no structural damage or abnormal operation is detected, regardless of observed wind velocity, no further action is required by this paragraph.

(2) If any structural damage or abnormal operation is detected, regardless of observed wind velocity, before further flight, do the detailed visual and general visual inspections and measurements (related investigative action) by accomplishing all the applicable actions specified in Part I of the Accomplishment Instructions of the service bulletin.

Note 1: EMBRAER Alert Service Bulletin 145–27–A106, Revision 02, dated December 28, 2007, refers to Task 05–50–26–200–802–A, dated March 28, 2006, of Chapter 5–50–26 of EMBRAER EMB 145 Aircraft Maintenance Manual, as an additional source of service information for accomplishing the corresponding inspections and measurements required by paragraphs (f)(2), (h)(2), and (j) of this AD.

(g) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145–27–A106, dated December 23, 2007; or Part I of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145–27–A106, Revision 01, dated December 27, 2007; are acceptable for compliance with the corresponding requirements of paragraphs (f) and (f)(2) of this AD only.

Part II: Daily Movements and Inspections

(h) Prior to first flight of the day after accomplishing all the actions required by paragraph (f) of this AD, or within 10 flight hours after the effective date of this AD, whichever occurs later, do the observation of the movements of the elevator control surfaces and general visual inspection from the ground by accomplishing all the applicable actions specified in Part II of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145–27–A106, Revision 02, dated December 28, 2007, except as required by paragraph (i) of this AD, until the terminating actions specified in paragraph (l) of this AD are done.

(1) If no structural damage or abnormal operation is detected, repeat the movement observations and inspections thereafter prior to first flight of each day of operation.

(2) If any structural damage or abnormal operation is detected, before further flight, do the related investigative actions by accomplishing all the applicable actions specified in Part II of the Accomplishment Instructions of the service bulletin. Repeat the movement observations and inspections thereafter prior to first flight of each day of operation.

(i) Where paragraph 3.C.(1)(a) of the Accomplishment Instructions of the service bulletin specifies that the general visual inspection is performed by a checker, this AD requires that the inspection be done by an authorized person identified in section 43.3 of the Federal Aviation Regulations (14 CFR 43.3).

Part III: Repetitive Inspections and Movements

(j) At the applicable times specified in Table 1 of this AD, do the actions specified in Table 1 of this AD by accomplishing all the applicable actions specified in Part III of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145–27–A106, Revision 02, dated December 28, 2007. Repeat the applicable actions thereafter at intervals not to exceed 600 flight hours until the terminating actions specified in paragraph (l) of this AD are done; except if the gust lock position and wind conditions specified in paragraph (j)(2) or (j)(3) of this AD occur within that time, the repeat inspection must be done before further flight.

TABLE 1.—REPETITIVE INSPECTIONS, MOVEMENTS, AND MEASUREMENTS, AS APPLICABLE

For airplanes parked on the ground with the gust lock—	Do the following actions—
(1) Engaged and the airplane is exposed to winds of less than 50 knots.	Within 600 flight hours after accomplishing all the actions required by paragraph (f) of this AD, do the general visual inspection of the upper and lower skins of the elevators, observation of the movements of the elevator control surface, and all applicable related investigative actions. Do all applicable related investigative actions before further flight.
(2) Engaged and the airplane is exposed to any winds of 50 knots or more.	Before further flight, do the general visual inspection of the upper and lower skins of the elevators, observation of the movements of the elevator control surface, and all applicable related investigative actions.
(3) Disengaged, regardless of wind velocity.	Before further flight, do the detailed visual and general visual inspections and measurements to detect discrepancies of components of the elevator control system.

Corrective Actions

(k) If any discrepancy is detected during any detailed inspection, general visual inspection, or measurement of components of the elevator control system, or applicable related investigative action required by paragraph (f)(2), (h)(2), or (j) of this AD, before further flight, repair it using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent).

Optional Terminating Action

(l) Accomplishing the actions required by paragraph (c)(1) or (c)(2), as applicable, of AD 2005–26–15, amendment 39–14436, terminates the requirements of this AD.

Reporting

(m) Submit a report of any findings of damage or discrepancy found during any inspection required by this AD to the Manager, International Branch, ANM–116, FAA, or to EMBRAER Technical Support Engineering, fax +55–12–3927–2428; e-mail *structure@embraer.com.br*; or Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos-SP, Brazil; at the applicable time specified in paragraph (m)(1) or (m)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(o) None.

Material Incorporated by Reference

(p) You must use EMBRAER Alert Service Bulletin 145–27–A106, Revision 02, dated December 28, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos-SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on January 18, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–1459 Filed 1–29–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0274; Airspace Docket No. 07–AEA–14]

Establishment of Class E Airspace; Lewistown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Lewistown, PA. The existing controlled airspace serving nearby airports does not adequately support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing the required controlled airspace for this approach around the Lewistown Hospital in Lewistown, PA.

DATES: Effective 0901 UTC, April 10, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before March 17, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building's Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0274; Airspace Docket No. 07–AEA–14, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

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

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, System Support Group,

Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5581, Fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0274; Airspace Docket No. 07–AEA–14.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Lewistown, PA providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 247 Point in Space (PinS) approach developed for the Lewistown Hospital Heliport. Although Class E airspace exists in the area, it is insufficient for this approach which will serve medical Lifeguard flights. Controlled airspace, known as class E5 Airspace, extending upward from 700 feet Above Ground Level (AGL) is required to encompass, to the extent practical, all Instrument Approach Procedures (IAPs) and Instrument Flight Rule (IFR) operations, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile radius Class E5 airspace area at Lewistown, PA. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace to serve the Lewistown Hospital Heliport in Lewistown, PA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Lewistown, PA [NEW]

Lewistown Hospital Heliport

(lat. 40°37′05″ N., long. 77°34′01″ W.)
Point in Space Coordinates
(lat. 40°37′46″ N., long. 77°33′19″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space coordinates (lat. 40°37′46″ N., long. 77°33′19″ W.) serving the Lewistown Hospital Heliport.

* * * * *

Issued in College Park, Georgia, on December 17, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–331 Filed 1–29–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0162; Airspace Docket No. 07–AEA–13]

Establishment of Class E Airspace; Marienville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Marienville, PA to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the East Marien High School Heliport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace to protect for this approach near the high school in Marienville, PA.

DATES: Effective 0901 UTC, April 10, 2008. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before March 17, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Management, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0162; Airspace Docket No. 09–AEA–13, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–A2007–0162; Airspace Docket No. 07–AEA–13.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Marienville, PA, providing the controlled airspace required to support the new Copter RNAV (GPS) 047 Point in Space (PinS) instrument approach developed for the East Marien High School Heliport. In today's environment where speed of treatment for medical injuries is imperative, various landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights. The East Marien High School has been chosen as one of these sites. Controlled airspace, known as Class E5 airspace, extending upward from 700 feet Above Ground Level (AGL) is required for IFR operations and to encompass all IAPs to the extent practical; therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile Class E5 airspace area at Marienville, PA. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive order 13132.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the East Marien High School Heliport in Marienville, PA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Marienville, PA [NEW]

East Marien High School Heliport
(Lat. 41°28′30″ N., long. 79°07′34″ W.)
Point in Space Coordinates
(Lat. 41°27′41″ N., long. 79°07′54″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space coordinates (lat. 41°27′41″ N., long. 79°07′54″ W.) serving the East Marien High School Heliport.

* * * * *

Issued in College Park, Georgia, on December 17, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–330 Filed 1–29–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0275; Airspace Docket No. 07–AEA–15]

Establishment of Class E Airspace; Emporium, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Emporium, PA to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Emporium High School Heliport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace for this approach around Emporium, PA.

DATES: Effective 0901 UTC, April 10, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before March 17, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Management, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0275; Airspace Docket No. 07–AEA–15, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

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

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal**

Register indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to the rule must submit a self-addressed, stamped postcard on which the following statement is made; ''Comments to Docket No. FAA–2007–0275; Airspace Docket No. 07–AEA–15,'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Emporium, PA providing the controlled airspace required to support the New Copter RNAV (GPS) 144 Point in Space (PinS) instrument approach developed for the Emporium High School Heliport. In today's environment where speed of treatment for medical injuries is imperative, various landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights; the Emporium High School has been chosen as one of these sites. Controlled airspace, known as Class E5 airspace, extending upward from 700 feet Above Ground Level (AGL) is required for Instrument Flight Rule (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile radius Class E5 airspace area at Emporium, PA. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R signed august 15, 2007 effective September 15,2007, which is incorporated by reference in 14 CFR part 7.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Emporium High School Heliport in Emporium, PA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Emporium, PA [New]

Emporium High School Heliport
(lat. 41°30′49″ N., long. 78°14′54″ W.)
Point in Space Coordinates
(lat. 41°31′54″ N., long. 78°16′28″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space coordinates (lat. 41°31′54″ N., long. 78°16′28″ W.) serving the Emporium High School Heliport.

* * * * *

Issued in College Park, Georgia, on December 17, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–329 Filed 1–29–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0161; Airspace Docket No. 07–ASO–25]

Establishment of Class E Airspace; New Albany, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at new Albany, MS. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for New Albany-Union County Airport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations in the area by providing the required controlled airspace to protect for these approaches around new Albany, MS.

DATES: Effective 0901 UTC, April 10, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before March 17, 2008.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0161; Airspace Docket No. 07–ASO–25, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0161; Airspace Docket No. 07–ASO–25.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at New Albany, MS, providing the controlled airspace required to support new SIAPs that were developed for the New Albany-Union County Airport. No Class E5 airspace exists in the airport area, so controlled airspace must be developed. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass all SIAPs to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E5 airspace at New Albany, MS. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative

comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace around the New Albany-Union County Airport.

Lists of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO MS E5 New Albany, MS [NEW]

New Albany-Union County Airport, MS
(lat. 34°32′55″ N., long. 89°01′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of New Albany-Union County Airport and within 4 miles each side of the 176° bearing from the airport extending from the 7.1-mile radius to 10.3 miles southeast of the airport.

Issued in College Park, Georgia, on December 14, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–322 Filed 1–29–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 51

RIN 1400–AC28

[Public Notice: 6084]

Revisions to Passport Regulations; Correction

AGENCY: Department of State.

ACTION: Final rule; correction.

SUMMARY: This document contains correction to the revised Passport rule published in the **Federal Register** on November 19, 2007 [Public Notice 5991].

DATE: Effective on February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Consuelo Pachon, Office of Legal Affairs and Law Enforcement Liaison, Bureau of Consular Affairs, 2100 Pennsylvania Avenue, NW., Suite 3000, Washington, DC, telephone number 202–663–2431.

Correction

The final rule published on November 19, 2007 (72 FR 64930) is corrected as follows:

■ 1. In the **SUPPLEMENTARY INFORMATION** section, on page 64930, in the third column, final paragraph, the first sentence is corrected by removing the words ''for first time passport applicants.'' The sentence as corrected reads ''The passport application process is designed to verify the citizenship and identity of the applicant.''

■ 2. On page 64932, 22 CFR 51.1(j) is corrected to read as follows:

''§ 51.1 Definitions.

* * * * *

(j) *United States* when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and all other United States territories and possessions.

* * * * *

■ 3. On page 64936, 22 CFR 51.51(e) is corrected to place quotes around the term ''enhanced border security'' and reads as follows:

''§ 51.51 Passport fees.

* * * * *

(e) An ''enhanced border security'' surcharge on the filing of each application for a regular passport in an amount set administratively by the Department and published in the Schedule of Fees for Consular Services.

* * * * *

Dated: January 24, 2008.

Ann Barrett,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E8–1670 Filed 1–29–08; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0183; FRL–8514–5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Revisions to Emission Reduction Market System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In 1997, Illinois adopted and submitted rules establishing a cap and trade program regulating emissions of volatile organic compounds (VOC). The program, known as the Emission Reduction Market System (ERMS), was designed to address VOC sources in the Chicago area with potential to emit at least 25 tons per year. Then, in 2004, the Chicago ozone nonattainment area was in effect reclassified from severe to moderate, which according to EPA guidance revised the applicable definition of major sources from 25 tons per year to 100 tons per year. This ''reclassification'' could have resulted in the program no longer including sources with potential to emit more than 25 but less than 100 tons per year. Instead, Illinois adopted rule revisions, submitted to EPA on January 10, 2007, which required that these sources remain part of the program. Illinois' rule revisions also address other ramifications of the ''reclassification.'' EPA is approving these rule revisions.

DATES: This direct final rule will be effective March 31, 2008, unless EPA

receives adverse comments by February 29, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0183, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: 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, 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–2007–0183. 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* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the 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 John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Description and Review of Illinois' Submittal
II. What Action is EPA Taking?
III. Statutory and Executive Order Reviews

I. Description and Review of Illinois' Submittal

On January 10, 2007, Illinois submitted revisions to Part 205 of Title 35 of the Illinois Administrative Code, entitled ''Emissions Reduction Market System'' (ERMS). ERMS is a cap and trade program addressing VOC emissions in the Chicago area. Under ERMS, Illinois issues allowances equivalent to 12 percent less than baseline VOC emission levels, and requires affected sources to hold allowances equivalent to their VOC emissions during the ozone season. The program thereby requires overall VOC emission levels to be reduced to 12 percent below baseline levels. The original rules for this program were adopted on November 20, 1997, and were submitted by Bharat Mathur of the Illinois EPA on December 16, 1997. EPA approved those rules on October 15, 2001, at 66 FR 52359.

Part 205 requires participation of all major VOC sources in the Chicago area. More specifically, the 1997 version of Section 205.200 that Illinois adopted in 1997 stated that ''The requirements of this Part shall apply to any source * * * located in the Chicago ozone nonattainment area that is required to obtain a [Title V permit], and [has VOC emissions during the ozone season of at least 10 tons].'' The requirement for a Title V operating permit applies to major sources. Since the Chicago area at that time was classified as a severe ozone nonattainment area, major sources were defined to include sources with the potential to emit 25 tons per year or more of VOC.

In 2004, EPA classified the Chicago ozone nonattainment area as moderate for the 8-hour ozone standard, and effective in 2005 rescinded the severe classification for the 1-hour ozone standard. The definition of major sources for moderate ozone nonattainment areas includes sources with the potential to emit 100 tons per year or more of VOC. According to EPA guidance (see 69 FR 23951, April 30, 2004), the replacement of the prior classification of severe with a classification of moderate thus meant that sources with potential to emit at least 25 tons per year but less than 100 tons per year of VOC would no longer be required to have Title V operating permits. As a result, the sources in the Chicago area in this size range would no longer be subject to the ERMS requirements, given the applicability criteria in Section 205.200 as quoted above.

Illinois estimated that the loss of these intermediate sized sources from ERMS would result in a loss of 330 tons of VOC emission reduction per ozone season associated with these sources. Illinois sought to avoid this loss of sources from the program. Consequently, Illinois revised Section 205.200 to redefine applicability to include sources with potential to emit at least 25 tons of VOC (and sources otherwise required to have a Title V permit) and at least 10 tons of VOC emissions during the ozone season. By this means, Illinois revised its applicability provisions to include the same set of sources as were included in 1997, notwithstanding the change in the classification of the Chicago area.

Under the 1997 rules, Illinois established several elements of the ERMS program by means of Title V permits. Most notably, the source's Title V permit is used to specify the number of allowances to be issued to the source (Cf. Section 205.315) and the source-specific VOC monitoring methods (Cf.

Section 205.330). Since ERMS included sources which under EPA's guidance were not subject to a requirement for a Title V permit, the State needed an alternative means of specifying source-specific ERMS provisions.

Illinois therefore adopted Section 205.316, to provide that sources that are not required to obtain a Title V permit (i.e., under EPA's guidance, sources with potential emissions between 25 and 100 tons per year) shall either request a Title V permit anyway or apply for a federally enforceable state operating permit (FESOP). The FESOP is to specify the provisions (relating for example to the number of allowances allocated to the source and the source-specific monitoring requirements) that would otherwise be specified in the Title V permit.

Title V provides for defining some operations with trivial or no emissions as insignificant activities. The 1997 version of Section 205.220 of Illinois' rules exempts these activities from ERMS. The revised version of Section 205.220 extends this exemption to sources obtaining FESOPs. That is, the revised Section 205.220 provides that any activity meeting the criteria in Part 201 Subpart F of Title 35 of the Illinois Administrative Code for insignificant activities may be exempted from the ERMS program, whether the source is subject to a Title V permit or a FESOP.

In ozone nonattainment areas classified as severe, major new sources and existing sources undergoing major modifications must obtain 1.3 tons of offsets for every ton of new emissions. In ozone nonattainment areas classified as moderate, major new sources and existing sources undergoing major modifications need only obtain 1.1 tons of offsets for every ton of new emissions. New source review rules require that any change in offset ratio applies only prospectively, to sources permitted after the change in ratio, and that sources permitted before the change in ratio must continue to have offsets in at least the ratio that applied at the time the source was permitted.

Under Section 205.150 of the 1997 ERMS rules, major new sources and sources undergoing major modifications were required to obtain 1.3 allowances for every ton of new emissions. Illinois' revised rules provide for modified ratios as the applicable ratios change. Section 205.150(f)(1) of the revised rules states: ''If the nonattainment classification of the Chicago area for ozone is changed such that the required offset ratio is no longer 1.3 to 1 and a new offset ratio applies, as specified in 35 Ill. Adm. Code 203.302, that ratio shall then apply in lieu of the 1.3 to 1 ratio set forth in subsections (c)(2), (d)(1), and (e) of this Section. Such new ratio shall not apply to any part of a source or any modification already subject to the 1.3 to 1 ratio or other previously effective offset ratio established prior to the effective date of the new ratio.'' Section 205.150(f)(2) provides that the ratio becomes 1 to 1 if the Chicago area is redesignated to attainment.

These revisions address the ramifications of a revised classification according to EPA guidance as cited above. However, while Illinois was adopting these rule revisions, EPA's ozone implementation guidance was being challenged in court. On December 22, 2006, with clarification on June 8, 2007, the Court of Appeals for the District of Columbia Circuit ruled against elements of EPA's ozone implementation guidance, including the ''backsliding'' inherent in allowing an area originally classified as severe and subsequently classified as moderate to apply the less stringent major source definition for moderate areas. *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). As stated in a memorandum from Robert Meyers to EPA's Regional Administrators dated October 7, 2007, the effect of the court's ruling is to restore the applicability thresholds and offset ratios of the higher, 1-hour ozone classification. The court's decision also signifies that operating permits under Title V of the Clean Air Act also must be obtained according to major source thresholds as defined for the 1-hour ozone classification, e.g., for sources in the Chicago area with potential emissions of at least 25 tons per year. This decision would also restore the 1.3 to 1 offset ratio for new VOC sources in the Chicago area. The Meyers memorandum states further that EPA intends two rulemakings, the first to establish applicability thresholds and offset ratios in accordance with the court's ruling and the second to develop rules that would define the circumstances under which the provisions associated with 1-hour classifications might be terminated.

Fortunately, Illinois' rules achieve the intended effect notwithstanding these developments regarding applicable size thresholds and offset ratios. Section 205.200 provides that Part 205 requirements apply to sources with potential to emit at least 25 tons of VOC per year, without regard to whether the major source threshold is 25 or 100 tons per year. Resumption of a 25 ton per year definition of major source simply means that sources with potential emissions between 25 and 100 tons that were subject to ERMS in 1997 because they were major sources are again subject to ERMS because they are again major sources. Since any source with potential to emit more than 25 tons per year now by definition must obtain a Title V permit, it is a moot point whether the State provides a FESOP option for sources of that size that are not subject to the Title V permitting requirement. With respect to offsets, Section 205.150 simply applies required holding allowances for new sources in accordance with the applicable offset ratio. While the ratio for a time was interpreted to be 1.1 to 1, the court decision means that this ratio is reverting back to 1.3 to 1, and Section 205.150 provides that the ratio used for ERMS shall indeed revert back to 1.3 to 1. Thus, the Illinois rules accommodate the effects of the court's ruling, and the court's ruling does not alter the approvability of Illinois' Part 205 rules.

Illinois requested that EPA defer rulemaking on Section 205.150(e). This section provides that new sources providing offsets by holding trading program allowances in the proper ratio need not also provide offsets in their new source permit. Illinois made a similar request for deferral of EPA rulemaking on this section in conjunction with its 1997 submittal of ERMS rules. While a new source may use a shutdown for both purposes, purchasing the necessary allowances from a shutdown source and simultaneously using the shutdown in the new source permit to satisfy offset requirements, the deferral of rulemaking provides that the two requirements must be met independently.

Illinois made a corollary change, changing the term ''Chicago ozone nonattainment area'' to the term ''Chicago area.'' The term ''Chicago area'' is defined to mean the same area as the previous term ''Chicago ozone nonattainment area,'' but the revised term more clearly signifies that the program will remain in effect even if the Chicago area is redesignated as an attainment area.

In addition to the rules identified above, Illinois made conforming revisions to multiple other rules. These revisions generally replace the term ''Chicago nonattainment area'' with the term ''Chicago area'' or mention FESOPs as a possible vehicle for specifying source-specific provisions to implement the ERMS rules.

EPA finds these changes approvable. The change in the applicability provisions merely assures that the original program applicability criteria continue to apply, notwithstanding any change in the classification or designation of the area. The requirement

for sources with potential emissions between 25 and 100 tons per year to obtain FESOPs is a reasonable means of implementing the ERMS requirements at any time when these sources are not required to obtain a Title V permit. Illinois' provision for offset ratios, wherein new source emissions are offset at the ratio that reflects the offset ratio that is mandated at the time the permit authorizing the new source emissions is issued, properly matches offset requirements. The use of the term ''Chicago area'' also properly clarifies that the program continues even if the area is redesignated to attainment.

II. What action is EPA taking?

EPA is approving Illinois' revisions to the ERMS program, except that EPA is deferring action on Section 205.150(e). EPA is publishing this action without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective March 31, 2008 without further notice unless EPA receives relevant adverse written comments by February 29, 2008. If EPA receives such comments, EPA will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If EPA does not receive any comments, this action will be effective March 31, 2008.

Illinois did not change every rule in part 205. The State submitted only those rules that it changed. Thus, the revised rules being approved here must be viewed in conjunction with the unrevised rules approved at 40 CFR 52.720(c)(158).

III. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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 (59 FR 22951, November 9, 2000).

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). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

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.).

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 18, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(180) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(180) On January 10, 2007, Illinois submitted revisions to its rules for the Emission Reduction Market System. These revisions assure that sources in the Chicago area with potential emissions of VOC between 25 and 100 tons per year will remain subject to the program, irrespective of changes in the area's ozone nonattainment classification or designation and any associated changes in whether such sources are defined to be major sources. EPA is again deferring action on section 205.150(e).

(i) *Incorporation by reference.*

(A) The following sections of 35 Illinois Administrative Code Part 205, as effective June 13, 2005: sections 205.120, 205.130, 205.150 (except for 205.150(e)), 205.200, 205.205, 205.210, 205.220, 205.300, 205.310, 205.315, 205.316, 205.318, 205.320, 205.330, 205.335, 205.337, 205.400, 205.405, 205.410, 205.500, 205.510, 205.610, 205.700, 205.730, 205.750, and 205.760.

[FR Doc. E8–806 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0145; FRL–8347–3]

Boscalid; Denial of Objections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final order.

SUMMARY: In this order, EPA denies objections filed by the Natural Resources Defense Council (''NRDC'') to a final rule under section 408 of the Federal Food, Drug, and Cosmetic Act (''FFDCA''), (21 U.S.C. 346a), establishing tolerances for the pesticide boscalid on various leafy greens. NRDC argues that EPA has unlawfully removed the additional safety factor for the protection of infants and children required by Food Quality Protection Act of 1996.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division, (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–9443; e-mail address: *kish.tony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. How Can I Access Electronic Copies of Materials in the Docket?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0145. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents.

II. Introduction

A. What Action Is the Agency Taking?

In this order, EPA denies objections filed by the Natural Resources Defense Council (''NRDC'') to a final rule under section 408 of the Federal Food, Drug, and Cosmetic Act (''FFDCA''), (21 U.S.C. 346a), establishing tolerances for the pesticide boscalid on various leafy greens. (Ref. 1). NRDC argues that EPA must retain an additional ten-fold (10X) safety factor for the protection of infants and children due to data showing that juvenile animals are more sensitive than adults. Retention of this additional safety factor, NRDC contends, shows that the tolerances are unsafe. Additionally, NRDC contends that EPA's tolerance decision was arbitrary and capricious because (1) EPA failed to explain adequately its reason for not applying a 10X safety factor for infants and children and (2) the safe dose for boscalid established by EPA is ''clearly contrary to the data . . . .'' (Id. at 3-4, 7–8).

B. What Is the Agency's Authority for Taking This Action?

The procedure for filing objections to tolerance actions and EPA's authority

for acting on such objections is contained in section 408(g) of the FFDCA and regulations at 40 CFR part 178. (21 U.S.C. 346a(g)).

III. Statutory and Regulatory Background

A. Statutory Background

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

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

2. *Safety standard for pesticide tolerances*. A pesticide tolerance may only be promulgated by EPA if the tolerance is ''safe.'' (21 U.S.C. 346a(b)(2)(A)(i)). ''Safe'' is defined by the statute to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' (21 U.S.C. 346a(b)(2)(A)(ii)). Section 408 directs EPA, in making a safety determination, to ''consider, among other relevant factors– . . . . available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources.'' (21 U.S.C. 346a(b)(2)(D)(vi)).

Section 408(b)(2)(C) requires EPA to give special consideration to risks posed to infants and children. Specifically, this provision states that EPA ''shall assess the risk of the pesticide chemical based on available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults, and effects of *in utero* exposure to pesticide chemicals . . . .'' (21 U.S.C. 346a(b)(2)(C)(i)(II) and (III)). This provision further directs that ''[i]n the case of threshold effects, . . . an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.'' (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to ''use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.'' (Id.). The additional safety margin for infants and children is referred to throughout this order as the ''children's safety factor.''

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

4. *Other EPA statutory authority over pesticides*. EPA also regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), (7 U.S.C. 136 et seq). While the FFDCA authorizes the establishment of legal limits for pesticide residues in food, FIFRA requires the approval of pesticides prior to their sale and distribution, (7 U.S.C. 136a(a)), and establishes a registration regime for regulating the use of pesticides. FIFRA regulates pesticide use in conjunction with its registration scheme by requiring EPA review and approval of pesticide labels and specifying that use of a pesticide inconsistent with its label is a violation of Federal law. (7 U.S.C. 136j(a)(2)(G)).

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

1. *In general*. The process EPA follows in evaluating FFDCA petitions to establish tolerances and in determining the safety of the petitioned-for tolerances includes two steps. First, EPA determines an appropriate residue level value for the tolerance taking into account data on levels that can be expected in food. Second, EPA evaluates the safety of the tolerance relying on toxicity and exposure data and guided by the statutory definition of ''safe'' and the statutory requirements concerning risk assessment. Only on completion of the second step can EPA make a decision on whether a tolerance may be established. Below, EPA explains in detail, the reasons for this approach.

2. *Choosing a tolerance value*. In the first step of the tolerance evaluation process (choosing a tolerance value), EPA reviews data from experimental crop field trials in which the pesticide has been used in a manner, consistent with the draft FIFRA label, that is likely to produce the highest residue in the crop in question (e.g., maximum application rate, maximum number of applications, minimum pre-harvest interval between last pesticide application and harvest). (Refs. 2 and 3). These crop field trials are generally conducted in several fields at several geographical locations. (Ref. 3 at pages

5, 7, and Tables 1 and 5). Several samples are then gathered from each field and analyzed. (Id. at 53). Generally, the results from such field trials show that the residue levels for a given pesticide use will vary from as low as non-detectable to measurable values in the parts per million (ppm) range with the majority of the values falling at the lower part of the range. EPA uses a statistical procedure to analyze the field trial results and identify the upper bound of expected residue values. This upper bound value is used as the tolerance value. (Ref. 4). (As discussed below, the safety of the tolerance value chosen is separately evaluated.).

There are three main reasons for closely linking tolerance values to the maximum value that could be present from maximum label usage of the pesticide. First, EPA believes it is important to coordinate its actions under the two statutory frameworks governing pesticides. (See 61 FR 2378, 2379, January 25, 1996). It would be illogical for EPA to set a pesticide tolerance under the FFDCA without considering what action is being taken under FIFRA with regard to registration of that pesticide use. (Cf. 40 CFR 152.112(g) (requiring all necessary tolerances to be in place before a FIFRA registration may be granted)). In coordinating its actions, one basic tenet that EPA follows is that a grower who applies a pesticide consistent with the FIFRA label directions should not run the risk that his or her crops will be adulterated under the FFDCA because the residues from that legal application exceed the tolerance associated with that use. To further this goal, crop field trials require application of the pesticide in the manner most likely to produce maximum residues. Second, choosing tolerance values based on FIFRA label rates helps to ensure that tolerance levels are established no higher than necessary. If tolerance values were selected solely in consideration of health risks, in some circumstances, tolerance values might be set so as to allow much greater application rates than necessary for effective use of the pesticide. This could encourage misuse of the pesticide. Finally, closely linking tolerance values to FIFRA labels helps EPA to police compliance with label directions by growers because detection of an overtolerance residue is indicative of use of a pesticide at levels, or in a manner, not permitted on the label.

3. *The safety determination—risk assessment.* Once a tolerance value is chosen, EPA then evaluates the safety of the pesticide tolerance using the process of risk assessment. To assess risk of a pesticide, EPA combines information on pesticide toxicity with information regarding the route, magnitude, and duration of exposure to the pesticide.

In evaluating a pesticide's potential hazards (e.g., liver effects, carcinogenicity), EPA examines both short-term (e.g., ''acute'') and longer-term (e.g., ''chronic'') adverse effects from pesticide exposure. (Ref. 2 at 8–10). EPA also considers whether the ''effect'' has a threshold - a level below which exposure has no appreciable chance of causing the adverse effect. For non-threshold effects, EPA assumes that any exposure to the substance increases the risk that the adverse effect may occur. At present, EPA only considers one adverse effect, the chronic effect of cancer, to potentially be a non-threshold effect. (Ref. 2 at 8–9). Not all carcinogens, however, pose a risk at any exposure level (i.e., ''a non-threshold effect or risk''). Advances in the understanding of carcinogenesis have increasingly led EPA to conclude that some pesticides that cause carcinogenic effects only cause such effects above a certain threshold of exposure.

Once the hazard for a durational scenario is identified, EPA must determine the toxicological level of concern and then compare estimated human exposure to this level of concern. This comparison is done through either calculating a safe dose in humans (incorporating all appropriate safety factors) and expressing exposure as a percentage of this safe dose (the reference dose (''RfD'') approach) or dividing estimated human exposure into an appropriately protective dose from the relevant studies (the margin of exposure (''MOE'') approach). How EPA determines the level of concern and assesses risk under these two approaches is explained in more detail below. EPA's general approach to estimating exposure is also briefly discussed.

a. *Levels of concern and risk assessment*—i. *threshold effects.* In assessing the risk from a pesticide's threshold effects, EPA evaluates an array of toxicological studies on the pesticide. In each of these studies, EPA attempts to identify the lowest observed adverse effect level (''LOAEL'') and the next lower dose at which there are no observed adverse affect levels (''NOAEL''). Generally, EPA will use the lowest NOAEL from the available studies, taking into account the route and duration of exposure, as a starting point in estimating the level of concern for humans for a given exposure scenario (e.g., acute oral exposure). This selected NOAEL is usually referred to as the Point of Departure. In estimating and describing the level of concern, however, the Point of Departure is at times manipulated differently depending on whether the risk assessment addresses dietary or non-dietary exposures. (Refs. 2 at 3–8; 5 at 8, 52–53; and 6).

For dietary risks, EPA uses the Point of Departure to calculate a safe dose or RfD. The RfD is calculated by dividing the Point of Departure by applicable safety or uncertainty factors. Typically, a combination of safety or uncertainty factors providing a hundredfold (100X) margin of safety is used: 10X to account for uncertainties inherent in the extrapolation from laboratory animal data to humans and 10X for variations in sensitivity among members of the human population as well as other unknowns. Further, to account for deficiencies in the database or the results seen in the database, EPA has traditionally added additional safety factors on a case-by-case basis. The FQPA amendments to FFDCA section 408 require an additional safety factor of 10X to protect infants and children (to address data completeness and pre- and post-natal toxicity concerns), unless reliable data support selection of a different factor. To some extent, the FQPA safety factor addresses concerns related to the factors driving EPA's traditional use of additional safety factors.

In implementing FFDCA section 408, EPA's Office of Pesticide Programs, also calculates a variant of the RfD referred to as a Population Adjusted Dose (''PAD''). A PAD is the RfD divided by any portion of the FQPA children's safety factor that does not correspond to one of the traditional additional safety factors used in general Agency risk assessment. (Ref. 5 at 13–16). The reason for calculating PADs is so that other parts of the Agency, which are not governed by FFDCA section 408, can, when evaluating the same or similar substances, easily identify which aspects of a pesticide risk assessment are a function of the particular statutory commands in FFDCA section 408. Today, RfDs and PADs are generally calculated for both acute and chronic dietary risks although traditionally a RfD or PAD was only calculated for chronic dietary risks. Throughout this document general references to EPA's calculated safe dose are denoted as a RfD/PAD.

To quantitatively describe risk using the RfD/PAD approach, estimated exposure is expressed as a percentage of the RfD/PAD. Dietary exposures lower than 100 percent of the RfD/PAD are generally not of concern.

For non-dietary, and often for combined dietary and non-dietary, risk assessments of threshold effects, the toxicological level of concern is not expressed as a safe dose or RfD/PAD but rather as the margin of exposure (MOE) that is necessary to be sure that exposure to a pesticide is safe. To calculate the MOE for a pesticide for a given exposure scenario, the expected human exposure to the pesticide is divided into the dose identified as the Point of Departure. A safe MOE is generally considered to be a margin at least as high as the product of all applicable safety factors for a pesticide. For example, if a pesticide needs a 10X factor to account for interspecies differences, a 10X factor for intraspecies differences, and a 10X FQPA children's safety factor, the safe or target MOE would be a value of at least 1,000. In contrast to the RfD/PAD approach, the higher the pesticide's MOE, the safer the pesticide would be considered. Accordingly, if the target MOE for a pesticide is 1,000, MOE's for that pesticide exceeding 1,000 would generally not be of concern. Like RfD/PADs, specific MOEs are calculated for exposures of different durations. For non-dietary exposures, EPA typically examines short-term, intermediate-term, and long-term exposures. Additionally, non-dietary exposure often involves exposures by various routes including dermal, inhalation, and oral.

The RfD/PAD and MOE approaches are fundamentally equivalent. For a given risk and given exposure of a pesticide, if the pesticide were found to be safe under a RfD/PAD analysis it would also pass under the MOE approach, and vice-versa.

ii. *Non-threshold effects*. For risk assessments for non-threshold effects, EPA does not use the RfD/PAD or MOE approach if quantitation of the risk is deemed appropriate. Rather, EPA calculates the slope of the dose-response curve for the non-threshold effects from relevant studies using a model that assumes that any amount of exposure will lead to some degree of risk. The slope of the dose-response curve can then be used to estimate the probability of occurrence of additional adverse effects as a result of exposure to the pesticide. For non-threshold cancer risks, EPA generally is concerned if the probability of increased cancer cases exceed the range of 1 in 1 million.

b. *Estimating human exposure*. Equally important to the risk assessment process as identifying hazards and determining the toxicological level of concern is estimating human exposure. Under FFDCA section 408, EPA is concerned not only with exposure to pesticide residues in food but also exposure resulting from pesticide contamination of drinking water supplies and from use of pesticides in the home or other non-occupational settings. (See 21 U.S.C. 346a(b)(2)(D)(vi)). There are two critical variables in estimating exposure in food:

i. the types and amount of food that is consumed; and

ii. the residue levels in that food. Consumption is estimated by EPA based on scientific surveys of individuals' food consumption in the United States conducted by the U.S. Department of Agriculture. (Ref. 2 at 12). Information on residue levels comes from a range of sources including crop field trials; data on pesticide reduction due to processing, cooking, and other practices; information on the extent of usage of the pesticide; and monitoring of the food supply. (Id. at 17).

In assessing exposure from pesticide residues in food, EPA, for efficiency's sake, follows a tiered approach in which it, in the first instance, conducts its initial, screening-level exposure assessment using the worst case assumptions that 100 percent of the crop in question is treated with the pesticide and 100 percent of the food from that crop contains pesticide residues at the tolerance level. (Id. at 11). When such an assessment shows no risks of concern, EPA's resources are conserved because a more complex risk assessment is unnecessary and regulated parties are spared the cost of any additional studies that may be needed. If, however, a first tier assessment suggests there could be a risk of concern, EPA then attempts to refine its exposure assumptions to yield a more realistic picture of residue values through use of data on the percent of the crop actually treated with the pesticide and data on the level of residues that may be present on the treated crop. These latter data are used to estimate what has been traditionally referred to by EPA as ''anticipated residues.'' Use of percent crop treated data and anticipated residue information is appropriate because EPA's worst case assumptions of 100 percent treatment and residues at tolerance value significantly overstate residue values. (72 FR 52112, July 18, 2007; 71 FR 43906, 43909–43910, August 2, 2006).

In estimating pesticide exposure levels in drinking water, EPA most frequently uses mathematical water exposure models rather than pesticide-specific monitoring data. (69 FR 30042, 30058, May 26, 2004). EPA's models are based on extensive monitoring data and detailed information on soil properties, crop characteristics, and weather patterns. These models calculate estimated environmental concentrations of pesticides using laboratory data that describe how quickly the pesticide breaks down to other chemicals and how it moves in the environment (i.e., does it bind to the soil or is it highly water soluble). Although computer modeling provides an indirect estimate of pesticide concentrations, these concentrations can be estimated continuously over long periods of time, and for places that are of most interest for any particular pesticide. Modeling is a useful tool for characterizing vulnerable sites, and can be used to estimate peak concentrations from infrequent, large storms. Whether EPA assesses pesticide exposure in drinking water through monitoring data or modeling, EPA uses the higher of the two values from surface and ground water in assessing overall exposure to the pesticide. In most cases, pesticide residues in surface water are significantly higher than in ground water.

Generally, in assessing residential exposure to pesticides, EPA relies on its Residential Standard Operating Procedures (''SOPs''). (Ref. 7). The SOPs establish models for estimating application and post-application exposures in a residential setting where pesticide-specific monitoring data is not available. SOPs have been developed for many common exposure scenarios including pesticide treatment of lawns, garden plants, trees, swimming pools, pets, and indoor surfaces including crack and crevice treatments. The SOPs are based on existing monitoring and survey data including information on activity patterns, particularly for children. Where available, EPA relies on pesticide-specific data in estimating residential exposures.

C. Children's Safety Factor Policy

As part of implementation of the major changes to FFDCA section 408 included in the FQPA, EPA has issued a number of policy guidance documents addressing critical science issues. On January 31, 2002, EPA released its science policy guidance on the children's safety factor. (Ref. 5) [This policy is hereinafter referred to as the ''Children's Safety Factor Policy'']. The Children's Safety Factor Policy emphasizes throughout that EPA interprets the children's safety factor provision as establishing a presumption in favor of application of an additional 10X safety factor for the protection of infants and children. (Id. at 4, 11, 47, A–6). Further, the policy notes that the children's safety factor provision permits a different safety factor to be

substituted for this default 10X factor only if reliable data are available to show that the different factor will protect the safety of infants and children. (Id.). Given the wealth of data available on pesticides, however, the policy indicates a preference for making an individualized determination of a protective safety factor if possible. (Id. at 11). The policy states that use of the default factor could under- or over-protect infants and children due to the wide variety of issues addressed by the children's safety factor. (Id.). Further, the policy notes that ''[i]ndividual assessments may result in the use of additional factors greater or less than, or equal to 10X, or no additional factor at all.'' (Id.).

In making pesticide-specific assessments regarding the magnitude of the children's safety factor, the policy stresses the importance of focusing on the statutory language that ties the children's safety factor to concerns regarding potential pre- and post-natal toxicity and the completeness of the toxicity and exposure databases. (Id. at 11–12). As to the completeness of the toxicity database, the policy recommends use of a weight-of-the-evidence approach which considers not only the presence or absence of data generally required under EPA regulations and guidelines but also the availability of ''any other data needed to evaluate potential risks to children.'' (Id. at 20). The policy indicates that the principal inquiry concerning missing data should center on whether the missing data would significantly affect calculation of a safe exposure level. (Id. at 22; accord 67 FR 60950, 60955, September 27, 2002) (finding no additional safety factor necessary for triticonazole despite lack of developmental neurotoxicity (''DNT'') study because the ''DNT [study] is unlikely to affect the manner in which triticonazole is regulated.'')). When the missing data are data above and beyond general regulatory requirements, the policy states that the weight of evidence would generally only support the need for an additional safety factor where the data ''is being required for 'cause,' that is, if a significant concern is raised based upon a review of existing information, not simply because a data requirement has been levied to expand OPP's general knowledge.'' (Ref. 5 at 23).

As to potential pre- and post-natal toxicity, the Children's Safety Factor Policy lists a variety of factors that should be considered in evaluating the degree of concern regarding any identified pre- or post-natal toxicity. (Id. at 27–31). As with the completeness of the toxicity database, the policy emphasizes that the analysis should focus on whether any identified pre- or post-natal toxicity raises uncertainty as to whether the RfD/PAD is protective of infants and children. (Id. at 31). Once again, the presence of pre- or post-natal toxicity, by itself, is not regarded as determinative as to the children's safety factor. Rather, the policy stresses the importance of evaluating all of the data under a weight-of-evidence approach focusing on the safety of infants and children. (Id.).

In evaluating the completeness of the exposure database, the policy explains that a weight-of-the-evidence approach should be used to determine the confidence level EPA has as to whether the exposure assessment ''is either highly accurate or based upon sufficiently conservative input that it does not underestimate those exposures that are critical for assessing the risks to infants and children.'' (Id. at 32). EPA describes why its methods for calculating exposure through various routes and aggregating exposure over those routes generally produce conservative exposure estimates – i.e. health-protective estimates due to overestimation of exposure. (Id. at 40–43). Nonetheless, EPA emphasizes the importance of verifying that the tendency for its methods to overestimate exposure in fact were adequately protective in each individual assessment. (Id. at 44).

IV. The Challenged Tolerances

Boscalid is a fungicide used both on agricultural food crops as well as turf. It has a wide variety of agricultural uses including berries, nuts, soybeans, and various vegetables. (40 CFR 180.589(a)). Tolerances have also been established to cover inadvertent residues on various other crops as a result of rotation of these crops onto fields previously treated with boscalid. (40 CFR 180.589(d)). On December 20, 2006, EPA promulgated new boscalid tolerances for residues in or on leafy greens crop subgroup 4A, except head and leaf lettuce, and leafy petioles crop subgroup 4B. (71 FR 76185, December 20, 2006).

In promulgating these tolerances, EPA assessed the risk from boscalid based on aggregate boscalid exposure. Animal studies indicated that repeat dosing with boscalid resulted in effects in the liver and/or thyroid in various species. Mechanistic studies indicated that the thyroid effects were derivative of enzymatic effects on the liver. (Ref. 8 at 4). The chronic RfD/PAD was based on the results of three studies that showed similar effects at similar levels. (Id. at 23–24). The boscalid database showed no effects that were attributable to a single dose, and thus boscalid was deemed not to pose an acute risk. Testing involving *in utero* and/or post-natal exposure of animals showed no developmental or reproductive effects; however, this testing resulted in some findings of qualitative or quantitative sensitivity with regard to body weight effects in the young. EPA concluded there was low concern regarding these sensitivity findings for various reasons including that clear NOAELs were identified for these effects and the effects were transient in nature or inconsistent. EPA assessed exposure to boscalid in food relying on the worst case assumption that boscalid residues in all crops to which boscalid may be legally applied had residues at the tolerance level.

EPA concluded that chronic exposures to boscalid did not raise safety concerns because the most highly exposed population subgroup, children 1–2 years old, had exposures below the PAD or safe dose (exposure was at 38 percent of the PAD). (71 FR 76188). Short-term exposures from golf course turf was also judged to be safe having a MOE of 1,400. (Id.). EPA concluded the cancer risk posed by boscalid was negligible given the weak evidence of carcinogenicity in animal studies. (Id. at 76189). In conducting these assessments, EPA determined that the children's safety factor could be removed because the database was complete, there was low concern for increased sensitivity in the young, and exposure had been estimated in a conservative fashion. (Id. at 76188).

V. NRDC's Objections

On February 20, 2007, NRDC filed objections to the December 2006 rule establishing tolerances for boscalid on various leafy greens. (Ref. 1). On May 21, 2007, NRDC supplemented and expanded its objections by filing comments during the comment period held by EPA on NRDC's initial objections. (Ref. 9).

NRDC's objections have two main thrusts: (1) that EPA erred in removing the children's safety factor given the finding of that young animals had increased sensitivity to boscalid; and (2) that EPA's decision is arbitrary and capricious due to a failure to adequately explain its reasons for removing the children's safety factor and because EPA's selection of NOAELs and the RfD/PAD ''are clearly contrary to the data.'' (Ref. 1).

With regard to increased sensitivity in young animals, NRDC relied in its objections principally on the EPA

finding in the DNT study that rat pups had decreased body weight and decreased body weight gain at a dose of 147 milligrams/kilogram of body weight/day (mg/kg/day) whereas no effects were seen in the maternal animals even at the highest dose tested (1,442 mg/kg/day). Further, NRDC cites the rat reproduction study as evidencing increased sensitivity in rat pups. Given this sensitivity, NRDC argues that it was wrong for EPA to rely on a study on adult animals to set the RfD/PAD without retaining the children's safety factor. In addition to arguing that EPA did not give proper weight to its findings of increased sensitivity to the young, NRDC claims that EPA analyzed the data in several studies in a manner that understates the sensitivity of the young and has selected a RfD/PAD that is under-protective of the young. (NRDC's arguments on these points are presented in more detail in Unit VII.A. below.). EPA's allegedly improper analysis is cited as grounds for retaining the children's safety factor. NRDC claims that if EPA had retained the children's safety factor it could not have concluded that the boscalid tolerances are safe.

NRDC makes no new arguments to justify its claim that EPA's decision is arbitrary and capricious; rather, NRDC merely cross-references its earlier assertions regarding EPA's interpretation of science data.

In its comments on its objections, NRDC expands on these arguments. First, it argues that EPA erred in discounting the seriousness of the increased sensitivity in the DNT and rat reproduction studies. NRDC claims that EPA's analysis is based on nothing more than speculation. (Ref. 9 at 2–4). Second, NRDC cites a third study as showing sensitivity in young animals, the rabbit developmental study, and argues similarly that EPA has relied on nothing more than speculation to conclude that the demonstrated sensitivity is of low concern. Finally, NRDC provides greater detail in support of its argument that EPA's selection of a RfD/PAD for boscalid is not protective of children and does not justify removal of the children's safety factor.

VI. Public Comments

Upon receipt of the objections, EPA provided a copy of the objections to the tolerance petitioner, BASF Corporation, as required by the statute. Further, on March 28, 2007, EPA published a notice of the availability of the objections and established a 60–day comment period. (72 FR 14551, March 28, 2007). Other than from BASF, EPA received significant comments only from NRDC – commenting on its own objections.

BASF's comments stressed that a complete database had been submitted on boscalid including neurotoxicity studies that went beyond the core toxicology database requirements. In addition, BASF asserted that these studies showed ''no toxicologically meaningful effects [in young animals] were observed at a dose below one that produced toxicity to the parental animals.'' (Ref. 10 at 2). BASF contended that effects in rat pups in the DNT and the two-generation reproduction study that occurred at doses lower than effects in maternal animals were small and/or transient decreases in pup body weight. (Id.).

Because NRDC's comments on its own objections were a supplementation of its objections, these comments were provided to BASF and BASF was given a 30–day period for response. (Ref. 11). As to NRDC's new arguments concerning sensitivity in the young, BASF asserts that the data did not support that conclusion. As regards the two-generation reproduction study and the DNT, BASF notes that, although toxicity in the parental animals was not seen in the DNT study and was seen only at the high dose in the reproduction study, in the chronic/carcinogenicity study in rat, where systematic toxicity is examined more thoroughly, adverse effects were seen at doses corresponding to the mid and high doses in the DNT and reproduction studies. Thus, BASF concludes that the findings of adverse effects in the young at the mid and high doses in the DNT and reproduction studies do not show increased sensitivity in the young. As to the rabbit developmental study, BASF argues that, because the effects on the fetuses (increased number of abortions) occurred at a dose that showed the maternal animals were under stress (decreased weight gain), the study does not show increased sensitivity in the fetuses. According to BASF, ''[t]he rabbit is prone to spontaneously abort as a response to maternal stress, and feed restriction alone during the gestational period may trigger abortions in rabbits.'' (Id. at 3). Finally, BASF defends EPA's use of the NOAEL from the chronic dog study as the Point of Departure for setting the cRfD/PAD by presenting a ''benchmark dose'' analysis of the relevant studies. Benchmark dose analysis involves fitting a mathematical model to the dose response data for the purpose of estimating the threshold effect level (i.e., the no adverse effect level) reflecting a selected benchmark response (e.g., 5%, 10%). BASF's benchmark dose analysis revealed that the NOAEL from the chronic dog study was lower than the benchmark dose from DNT and two-generation reproduction studies.

VII. EPA's Response to the Objections

For the reasons stated below, EPA denies each of NRDC's objections.

A. NRDC's Challenge to EPA's Children's Safety Factor Determination

NRDC contends that EPA's decision to remove the children's safety factor was erroneous based on (1) the legal argument that whenever EPA identifies increased sensitivity in the young it is required to retain the full 10X children's safety factor; and (2) the scientific claim that EPA did not have a reasoned basis for its conclusion that the sensitivity identified in animal studies was of low concern in evaluating whether the 10X children's safety factor should be retained or a different factor selected.

Before reaching the merits of these arguments, one preliminary matter needs to be addressed. In a prior order on an objection to EPA's removal of the children's safety factor as to different pesticides, EPA denied the objection where retention of the children's safety factor would not have altered EPA's conclusion on the pesticide's safety (72 FR 39318, 39323–39324, July 18, 2007). For boscalid, the retention/removal decision appears to be critical to the safety determination because EPA concluded that chronic exposure to boscalid for the highest exposed population subgroup is at 38 percent of the RfD/PAD. If no other change is made to the boscalid risk assessment other than retaining the 10X children's safety factor, then the calculation that boscalid exposure uses 38 percent of the RfD/PAD for the most highly-exposed subgroup would increase by a factor of 10. Because of the conservativeness of the exposure assessment for boscalid (assuming all foods that may be legally treated bear tolerance level residues), however, EPA strongly suspects that a more realistic exposure assessment will not show a risk of concern. Exposure refinements from the worst case assumptions of all foods containing tolerance level residues generally reduce exposure estimates by an order of magnitude or more. (70 FR 46706, 46732, August 10, 2005). Nonetheless, because EPA has not completed a revised risk assessment for boscalid at this time, it will address in this order the substance of NRDC's challenge to EPA's decision on the children's safety factor. It should be noted that EPA's decision on the children's safety factor for boscalid relied in part on the conservativeness of EPA's exposure

assessment. This consideration continues to be relevant, even if, at this point, it does obviate NRDC's objection entirely.

1. *NRDC's legal argument.* NRDC argues that, because section 408 ''requires that the additional FQPA tenfold safety factor 'shall be applied' to 'take into account' 'potential pre- and post-natal toxicity,'' . . . [t]he clear evidence that juveniles are significantly more vulnerable than adults compels EPA to retain or increase the default FQPA tenfold safety factor for boscalid.'' (Ref. 1 at 3).

On repeated occasions EPA has rejected the interpretation that the children's safety factor provision mandates that the absence of a particular study or a finding of pre- or post-natal toxicity or increased sensitivity in the young removes EPA's discretion to choose a different safety factor. (72 FR 52108, 52115–52117, September 12, 2007; 71 FR 43906, 43919, August 2, 2006). EPA explained its rationale recently in responding to NRDC objections which made precisely the same argument in this case:

> The statute does direct EPA to consider ''susceptibility of infants and children'' to pesticides. (21 U.S.C. 346a(b)(2)(C)(i)(II)). It also states that an additional safety factor to protect infants and children shall be applied ''to take into account potential pre- and post-natal toxicity . . . .'' (21 U.S.C. 346a(b)(2)(C)). Nonetheless, in clear and unmistakable language, Congress decreed that, ''[n]otwithstanding such requirement for an additional margin of safety'' to take into account potential pre- and post-natal toxicity, EPA is authorized to choose a different safety factor if EPA has reliable data showing a different factor is safe. (Id.). Interpreting the statute as creating a rigid, per se rule that the identification of sensitivity in the young removes EPA's discretion to choose a different safety factor is inconsistent with this language and the flexibility granted to the Agency.

(72 FR at 52117). NRDC has raised no arguments in its current objections which convince EPA to vary from its long-held interpretation.

2. *NRDC's scientific argument.* NRDC makes five claims as to why the evidence on increased sensitivity in the young is of such significance that it was inappropriate for EPA to remove the children's safety factor. NRDC also argues that an alleged lack of reliable data supporting EPA's derivation of the boscalid RfD/PAD demonstrates that it was unlawful to remove the children's safety factor. Each claim is addressed in turn below.

a. *The degree of increased sensitivity seen in the DNT.* NRDC claims that adverse effects on auditory startle reflex were seen at all doses in the offspring in the DNT study and thus the dose EPA identified as a NOAEL for the offspring (14 mg/kg/day) is actually a LOAEL. According to NRDC, this demonstrates a higher degree of sensitivity in the offspring. NRDC notes that a draft EPA assessment of the DNT study concluded that there were adverse effects on the auditory startle reflex in offspring at all tested doses. The final EPA review of the DNT study took the opposite position: that there was not a significant effect on the auditory startle reflex at any dose. NRDC argues that EPA's final review is flawed because EPA misused data on the historical level of the auditory startle reflex in rat controls in other studies (''historical control data''). According to NRDC, EPA erred by comparing historical control data to the results in the treated animals in the boscalid DNT study to determine if the treated animals varied from control animals generally. NRDC argues that the only valid use of historical control data is as a check on whether there is a problem with the controls in a particular study.

EPA disagrees with NRDC's analysis and reaffirms its conclusion that boscalid did not elicit an adverse effect on auditory startle reflex in the DNT study. In its initial analysis of the DNT, an EPA reviewer concluded that there were treatment-related decreases in auditory startle reflex at all doses on post-natal-day (''PND'') 24. This finding was based on a statistically significant decrease in auditory startle reflex in males at both the low and high doses in the first block of five trials and for the average effect over all trials. The average decrease was greater in the low dose group (24%) than the high dose group (19%). The mid-dose group had a slightly lower decrease of 15%. In females, a statistically significant effect was only seen in the second block of the low and mid-dose groups but no such effect was seen for the average across blocks. Again, there was no dose-response effect in that greater decreases were seen at the low dose than at the mid or high dose. No statistically significant effects on auditory startle reflex were seen on PND 60. Noting the ''limitations'' in the data, the EPA reviewer nonetheless tentatively found a treatment-related effect at all doses.

In response to this tentative conclusion, the boscalid registrant submitted historical control data on auditory startle reflex and data concerning one male pup that died on PND 25. After examining the historical control data, EPA concluded that the auditory startle reflex of the controls from the boscalid DNT study were similar to historical controls and thus the controls from the boscalid study ''should be considered the primary source for analysis and consideration'' for this study. (Ref. DER at 30). As to the rat which died, EPA concluded that it was suffering from an underlying illness unrelated to treatment and removed its data from the study. As a result, none of the individual block trials nor the average from all trials for males evidenced a statistically significant decrease in auditory startle reflex at PND 24. EPA also reanalyzed the statistical significance of the results for the females and found a statistically significant effect only at the low dose for the second block. Given the revised finding of a statistically significant effect in only one block trial (out of five) at one dose (out of three) in one sex on one day of testing (out of two) and the lack of a dose response (effects only at the low dose), EPA concluded that there was no treatment-related effect on auditory startle reflex.

NRDC's objection here is denied. As a preliminary matter, EPA would note that it disagrees with NRDC's claim that historical control data can only be used for the narrow purpose of evaluating the fitness of a study's controls. (Refs. 12a, 12b, and 12c). This disagreement, however, is beside the point because for the boscalid DNT study EPA used historical control data in precisely the manner that NRDC argues they should be used. EPA's review of the DNT specifically found that ''[h]istorical control data provided indicated that the mean startle amplitude on PND 24 for the current study of [boscalid] was similar to the control means of the submitted studies on PND 24. Therefore the analysis of this group's relation to treatment groups is valid and should be considered the primary source for analysis and evaluation.'' (Ref. 13 at 30). Finally, EPA's conclusion that the DNT study showed no treatment-related effect on auditory startle reflex was based upon a reasonable evaluation of the data, as demonstrated above.

b. *The sensitivity of DNT Study.* NRDC claims that the DNT study is an insensitive study because it involves examination of only one male and one female pup per litter and that therefore EPA should have attached more significance to the finding of increased sensitivity in the young in that study. NRDC also criticizes the statistical analysis of the DNT study for only including probability values (''p-values'') representing confidence levels of 95 percent (p-value of 0.05) and 99 percent (p-value of 0.01). (Basically, a p-value defines the probability that an observed difference between a control group and a treatment group is based on

chance alone.). NRDC argues that rather than analyze the data against the p-values of 0.05 and 0.01, EPA should calculate the ''actual p-value statistic,'' and thus EPA could use its ''expert judgment on the significance of the findings, given the limitations of the study.'' (Ref. 1 at 5).

EPA believes that the significance attached to findings of sensitivity in a DNT study should be driven primarily by an evaluation of the results of the study itself. EPA would note that the development and design of the DNT study underwent an exhaustive independent scientific peer review as well as public comment process. (Ref. 14). This process included multiple reviews by EPA's FIFRA Scientific Advisory Panel and public comment opportunities as well as a scientific workshop involving outside experts organized expressly to evaluate developmental neurotoxicity testing issues. (Id.). NRDC's criticisms of use of reporting statistical significance at the 95 and 99 percent confidence levels are misplaced. Use of p-values of 0.01 and 0.05 to document statistically significant differences between treated and control animal groups is a long-established practice in the scientific community. (Refs. 15a, 15b, 15c, 15d, and 15e). EPA can calculate different levels of statistical confidence if for some reason the data suggest that may be valuable; however, in EPA's judgment no such reasons were present in the circumstances of the boscalid DNT study.

c. *Weight-of-the-evidence evaluation of the two-generation reproduction study in rats*. NRDC argues that EPA undervalues the importance of increased sensitivity identified in the two generation reproduction study in rats based on nothing more than speculation. According to NRDC, EPA was just ''guess[ing]'' when it stated that: ''The degree of concern is also low for the quantitative evidence of susceptibility seen in the 2-generation reproduction study in rats because the decreases in body weight and body weight gains were seen primarily in the [second] generation. These *may have been* due to exposure of the parental animals to high doses (above the Limit Dose).'' (Ref. 9 at 2 (citing to 76 FR 76188) (emphasis added by NRDC)). NRDC also suggests that EPA's ''speculation'' is ''nonsensical'' because if the second generation pups had effects due to high dose exposures of the parents, then these effects should have been seen in the first generation pups because their parents had the same high dose exposures.

In comments on NRDC's objections, BASF argues that young animals are not more sensitive to boscalid than adult animals given that adult animals in the chronic/carcinogenicity study in the rat experienced adverse effects at similar dose levels as the pups in the two generation rat study. BASF makes the same contention with regard to the DNT study. (See Unit VII.A.2.d., below).

EPA does not believe that the sensitivity evidenced in the pups in the two-generation reproduction requires retention of the 10X children's safety factor. As discussed in detail in Unit VII.A.2.f., the NOAEL from the chronic dog study used for the Point of Departure in setting the chronic RfD/PAD for the liver effects is protective of the body weight effects seen in the second generation male pups at mid and high doses in the two-generation reproduction study. EPA disagrees with NRDC that it was somehow improper to take into account that the body weight effects in the pups in the two-generation reproduction study were only seen in males and only in the second generation. These factors bear on significance of the effects seen. Effects seen in only one sex and only after dosing for two generations are generally regarded as less significant than effects seen in both sexes and in both generations of a two-generation study. Moreover, there is other evidence from the study suggesting that body weight effects in the young were not entitled to great weight in EPA's weight-of-the-evidence analysis. First, absolute body weight and bodyweight gain of the male F_2 offspring of treated dams were similar to those of the offspring of the control dams at birth. Birth is a more sensitive time point to indicate susceptibility than subsequent time periods. (Refs. 16a, 16b, and 16c). Second, there was a lack of consistency in the observed body weight decreases (i.e, decreased on days 7 and 21 but not on days 4 and 17). (Ref. 17 at 20). EPA believes these factors are important to informing its expert judgment regarding the level of concern regarding, or the significance of, the increased sensitivity observed in this study. In any event, EPA's determination that the chronic RfD/PAD is protective of the pup effects seen in the reproduction study is alone sufficient to allay any concerns regarding increased sensitivity and pre- and post-natal toxicity raised by the two-generation reproduction study.

NRDC places special emphasis on EPA's suggestion that the body weight effect may be due to the very high dose given the maternal animals. EPA's statement on this issue was in error because, as noted, the body weight effects were seen at both the mid and high doses in the study in the second generation pups. Nonetheless, for the reasons described above, identification of a clear NOAEL for body weight effects and limited nature of the body weight effects (e.g., one sex only, inconsistent findings at the mid dose), EPA concludes that the chronic RfD/PAD based on a safety factor of 100X is safe for infants and children.

EPA does not agree that BASF has made an appropriate comparison of the results of the two-generation reproduction study and the chronic/carcinogenicity study given the substantial difference in time of exposure to boscalid in the two studies.

d. *Weight-of-the-evidence evaluation of the DNT Study*. NRDC argues that EPA errs in downplaying the significance of the decreased weight gain in pups seen in the DNT. NRDC states that EPA found there to be low concern for the decreases in pup body weight on post-natal days 1–4 because no effects on body weight were seen at any other time and the effects only occurred when the maternal animals were receiving an extremely high dose (above the Limit Dose) suggesting that pup effects were derivative of effects on the maternal animals. This reasoning is attacked by NRDC as mere speculation. NRDC claims that ''the Agency does not and cannot assert that inadequate weight gain on days 1–4 is an insignificant adverse effect. Any significant reduction in weight gain during early development is potentially harmful and may cause permanent adverse effects.'' (Ref. 9 at 3). Further, NRDC states that EPA has presented no empirical evidence to support its conclusion that the high dose to the maternal animals might have been the reason for the pup effect.

For similar reasons to those relied upon in rejecting NRDC's arguments concerning the two-generation reproduction study, EPA does not believe that the sensitivity evidenced in the pups in the DNT study requires retention of the 10X children's safety factor. As discussed in detail in Unit VII.A.2.f., the NOAEL from the chronic dog study used for the Point of Departure in setting the chronic RfD/PAD for the liver/thyroid effects is protective of the transient body weight effects seen in the pups at mid dose and the more severe pup body weight effects at the high dose in the DNT study. EPA disagrees with NRDC that it was somehow improper to take into account that the body weight effects in the mid-dose pups were transient in nature – i.e., statistically significant decreases in body weight were seen on post-natal

days 1–4 but the animals had recovered by day 11. The severity of an effect aids in evaluation of the dose response curve for a pesticide; in this case, it indicates that mid dose was not far from the actual no adverse effect level. In any event, EPA's determination that the chronic RfD/cPAD is protective of the pup effects seen in the DNT study is alone sufficient to allay any concerns regarding increased sensitivity and pre- and post-natal toxicity raised by the DNT study.

NRDC challenges EPA's reasoning that the effects on pups' body weight may be due to the maternal animals being exposed above the Limit Dose. The Limit Dose is regarded as the highest dose possible that can be given an animal without overwhelming its defense mechanisms. As a general matter, EPA does not believe NRDC's argument is well-founded because discounting the weight of effects seen only at or above the Limit Dose is a well-accepted scientific precept. Here, however, EPA erred by mentioning the Limit Dose because effects were present in the pups at the mid dose as well as at the dose that exceeded the Limit Dose. Nonetheless, for the reasons described above, identification of a clear NOAEL for body weight effects and limited nature of the body weight effects (e.g., one sex only, transient nature of effects at the mid dose), EPA concludes that the RfD/PAD based on a safety factor of 100X is safe for infants and children.

For the same reason as stated in Unit VII.A.2.c., EPA disagrees with BASF's comparison of the DNT study and the chronic/carcinogenicity study.

e. *Weight-of-the-evidence evaluation of the rabbit developmental study*. NRDC claims that EPA wrongfully disregards the qualitative evidence of increased sensitivity seen in the rabbit developmental study. According to NRDC, EPA expressed a low degree of concern for increased abortions or early delivery effects on the young because they were seen only at the Limit Dose and may have been caused by maternal stress. NRDC faults EPA for not providing empirical evidence to support this conclusion and argues that the Limit Dose might not be the maximum tolerated dose for boscalid in rabbits. This type of ''speculation,'' NRDC claims, cannot meet the ''reliable data'' requirement for choosing a different children's safety factor.

NRDC's claims as to the rabbit developmental study, have even less merit than its arguments as to the two-generation reproduction and DNT studies. Not only is the chronic RfD/PAD for the thyroid effects protective of the qualitative sensitivity seen in the rabbit developmental study but the chronic RfD/cPAD is protective by an order of magnitude of an effect seen only at a ''limit dose.'' The chronic RfD/PAD is based on a NOAEL from the chronic dog study of 21.8 mg/kg/day as compared to the NOAEL for the fetal effects in the rabbit developmental study of 300 mg/kg/day. The fetal effects (abortions and early delivery) were seen only at the Limit Dose. (Unlike in the two-generation reproduction and DNT studies, adverse effects were only seen in the young at the high dose.). Moreover, the fetal effects were seen only in the presence of adverse effects in the maternal animals. The primary adverse effects in the maternal animals were abortions and early delivery (considered an adverse effect on both maternal animals and fetuses) but the study evidenced decreased food consumption and decreased body weight in the maternal animals as well. Although a definitive conclusion was not reached on whether the food consumption effects were treatment-related, evaluation of the individual animals showed that three of the four does that aborted or delivered early experienced dramatic reductions in food consumption. Given these results, it was reasonable for EPA to take into account its scientific expertise with rabbit toxicology studies which indicated that maternal animals put under stress had a tendency to abort or deliver early. Based on all of this evidence, EPA rejects NRDC's arguments concerning the rabbit developmental study and concludes that the qualitative sensitivity evidenced in the fetuses in the rabbit developmental study does not require retention of the 10X children's safety factor. (Refs. 18 and 19).

f. *Derivation of the chronic RfD/PAD*. NRDC claims that EPA erred in its selection of a NOAEL to calculate the chronic RfD/PAD by not relying on the lowest NOAEL from the applicable chronic studies. (Ref. 1 at 5–6). NRDC argues that, because EPA's justification for the RfD/PAD is allegedly nothing more than speculation, EPA lacks the reliable data necessary to remove the children's safety factor. (Ref. 9 at 4–5).

EPA relied on three co-critical studies in selecting a NOAEL for the chronic RfD/PAD: chronic toxicity in the rat, carcinogenicity in the rat, and chronic toxicity in the dog. Each of these studies showed liver effects and the rat studies also evidenced secondary effects on the thyroid. The NOAELs for the studies tightly bunched between 21.8 and 30 mg/kg/day. EPA selected the 21.8 mg/kg/day NOAEL from the chronic dog study to calculate the chronic RfD/PAD. EPA considered but rejected lower NOAELs from three other studies: the 90–day subchronic toxicity study in the dog; the two-generation reproduction study in the rat; and the developmental neurotoxicity study. EPA's rationale for not using the NOAELs from these studies was that the lower NOAELs from these studies were an artifact of dose selection given the wide range between NOAEL and LOAEL in the studies and the minimal effects seen at the LOAEL.

NRDC challenges EPA's conclusion claiming that EPA has ignored ''effects at significantly lower doses in juvenile animals (2-gen repro and DNT).'' (Ref. 1 at 4). NRDC also argues that EPA's decision is speculative because (1) ''EPA does not identify any reliable data to support its theory that a 10x differential between NOAELs and LOAELs – as occurred [with the three studies with lower NOAELs] – can never result from well designed and conducted studies;'' and (2) ''EPA offers no reliable data to support its assumption that the relationship between the LOAELs and NOAELs across studies with different designs and with different test species must always be the same . . . .'' (Ref. 9 at 4).

NRDC's arguments are without merit. First, NRDC is wrong to contend that EPA, in setting the chronic RfD/PAD, ignored ''effects at significantly lower doses in juvenile animals'' in the two-generation reproduction study and the DNT. EPA based the chronic RfD/PAD on the chronic dog study. In that study the lowest dose in which adverse effects were seen was 57.4 mg/kg/day. On the other hand, in the two-generation reproduction study and the DNT, the lowest doses at which adverse effects were seen were 101.2 mg/kg/day and 147 mg/kg/day, respectively. (Ref. 18 at 17). Second, EPA is not contending, nor does its analysis depend on, the supposition that a ''10x differential between NOAELs and LOAELs . . . can never result from well designed and conducted studies.'' The differential between a study's NOAEL and LOAEL depends on the dose spacing in the study – studies with more and closely-spaced doses are likely to yield a lower differential than studies with fewer and widely-spaced doses. EPA is not arguing that it is inappropriate to design a study with a factor of 10 between doses. Third, EPA is not contending that the relationship between NOAELs and LOAELs across studies must always be the same. Rather, EPA concluded that the data for boscalid indicated that the NOAEL it selected as the Point of Departure for calculating the chronic

RfD/PAD would be protective of all effects.

In making this conclusion, EPA relied on several factors. First, EPA compared the NOAELs and LOAELs of the six chronic studies that had NOAELs that were relatively close. This exercise is appropriate because the NOAEL from any one study is, in part, an artifact of the dose selection process, and does not identify the no adverse effect level just the level at which no effects were observed in the particular study. In animal testing, animals are generally dosed at three or four different levels. The dose levels are fairly widely spread (generally 2X – 10X) so that there is a good chance of identifying both a NOAEL and a LOAEL. The actual no adverse effect level or lowest adverse effect level will be somewhere between the identified NOAEL and LOAEL. When multiple studies produce results in a similar range, they often can provide valuable information about where the true no adverse effect and lowest adverse effect levels are. The NOAELs and LOAELs for the six studies are presented in Table 1.

TABLE 1.—SELECTED CHRONIC AND SUBCHRONIC STUDIES FOR BOSCALID

Study	NOAEL male/female (m/f) in mg/kg/day	LOAEL m/f in mg/kg/day
Chronic toxicity in rats	21.9/30	110/150.3
Carcinogenicity in rats	23/29.7	116.1/155.6
Chronic toxicity in dogs	21.8/22.1	57.4/58.3
Subchronic toxicity in dogs	7.6	78.1
Two-generation reproduction study in rats	10.1/12.3 (offspring)	101.2/123.9 (offspring)
DNT in rats	14 (offspring)	147 (offspring)

Just based on the dose spread alone, the chronic dog study appears to provide valuable information because it has the tightest spread between NOAEL and LOAEL.

Second, EPA considered the effects seen in the studies. The NOAEL/LOAELs for the chronic rat, carcinogenicity rat, and chronic dog studies were all based primarily on effects on the liver and/or thyroid. The other three studies had NOAEL/LOAELs based on decreased body weight and decreased body weight gain. The first three studies also demonstrated body weight effects but at the same or higher doses than the organ effects. Organ effects are generally judged to be of more serious concern than systemic toxicity as shown through body weight effects. Given the heightened concern with the liver and thyroid effects and the fact that body weight effects only occurred at the same or higher doses, evaluation of the effects seen in the studies also supported reliance on the NOAEL from the chronic dog study.

Finally, EPA undertook a one-to-one comparison of the chronic dog study with the three studies that had a lower NOAEL. Given that the subchronic dog study was conducted in the same species as the chronic dog study and that the results of the subchronic dog study were fully consistent with the chronic dog study (i.e., based on the chronic dog study it would be expected that 7.6 mg/kg/day would be a NOAEL and 78.1 a LOAEL), the subchronic dog study supported reliance on the NOAEL from the chronic dog study. Further, the strength of the findings at the LOAEL in the two-generation reproduction study and the DNT study, did not suggest that the actual no adverse effect level for the effects seen in these studies is far below the identified LOAEL. In the two-generation reproduction and DNT studies, the body weight effects at the LOAEL were either transient in nature (DNT study), not seen in both sexes (two-generation reproduction study), or not consistently seen post-natally (DNT and two-generation reproduction studies). (See Units VII.A.2.c., VII.A.2.d., and VII.A.2.e.).

Given the weight-of-the-evidence, EPA concludes it was reasonable to choose the NOAEL from the chronic dog study in calculating the chronic RfD/PAD. Contrary to NRDC's contention, this decision is not based on speculation but on careful consideration of the entire database – a complete database that provides reliable data on which to choose a safety factor that is protective of the safety of infants and children. In any event, EPA would note that selecting the NOAEL from the DNT study or the two-generation reproduction study would not change the safety conclusion on the boscalid tolerances even without any further refinement of the worst case exposure assumptions relied upon in the tolerance document. EPA estimated exposure was at 38 percent of the chronic RfD/PAD and a lowering of the chronic RfD/PAD by a factor of two due to reliance on the two-generation reproduction study (i.e. using a NOAEL of 10.1 mg/kg/day instead of 21.8 mg/kg/day) would still show worst case exposure to be below the chronic RfD/PAD.

BASF, in its comments, presents a benchmark dose analysis of the DNT and two-generation reproduction studies in support of EPA's selection of 21.9 mg/kg/day as the Point of Departure. The benchmark dose calculated by BASF is supportive of EPA's decision in that all of the benchmark doses covering various endpoints in these two studies were higher than 21.8 mg/kg/day. Although BASF's description of the method it used for calculating these benchmark doses appears scientifically appropriate, BASF has not submitted supporting documentation for its calculation and EPA has not independently verified it.

3. *Conclusion on children's safety factor*. EPA disagrees both with NRDC's legal claim that a finding of sensitivity always requires retention of the children's safety factor and factual assertion that the particular evidence of increased sensitivity on boscalid requires such a result. NRDC's legal argument ignores the plain language of the statute. NRDC's factual argument fails to take into account the entire database.

EPA has a complete toxicity database for boscalid. The toxicity studies for boscalid show it generally to have low mammalian toxicity and the database reveals no reproductive or developmental concerns, including no developmental neurotoxic concerns. Data involving the testing of young animals did show increased quantitative sensitivity in the young with regard to body weight effects and qualitative

sensitivity in one developmental study. Clear NOAELs were identified for all of these effects. Moreover, the body weight effects at the LOAELs in these studies were either transient or inconsistent and qualitative sensitivity occurred at the Limit Dose in the presence of maternal toxicity. EPA reasonably concluded that using the NOAEL from the chronic dog study was protective of all of the effects seen in the developmental and reproduction studies. That the chronic dog study only involved the testing of adult dogs does not raise concerns for the young because, as noted, EPA found the NOAEL from that study to be protective of the effects seen in all studies with the young, and the effects of concern in the dog study, increased liver weights and hepatic enzyme induction, are not common developmental concerns. In any event, when rats were exposed to boscalid pre- and post-natally as well as into adulthood in the two generation reproduction study, increased liver weights were only seen at the Limit Dose. Thus, increased sensitivity to liver effects in the young is not a concern. Finally, EPA has conservatively estimated human exposure to boscalid, relying on worst case exposures in food (assuming all registered crops contain residues at the tolerance level), and conservative models as well as pesticide-specific data in estimating exposure from residues in drinking water and from residential uses. Based on consideration of all of these data, EPA reasonably concluded it had reliable data showing that infants and children would be safe without application of an additional 10X safety factor.

B. NRDC's Claim That EPA's Decision is Arbitrary and Capricious

NRDC argues that EPA's tolerance decision on boscalid was arbitrary and capricious because (1) EPA failed to adequately explain its safety factor decision; and (2) ''[t]he NOAELs and cPAD established by EPA for boscalid are clearly contrary to the data . . . .'' (Ref. 1 at 7–8). In the section of its objections addressing this claim, NRDC provides nothing in support of its assertion that EPA provided insufficient explanation for its children's safety factor determination. Presumably, NRDC is referring to the aspects of the children's safety factor determination challenged in an earlier portion of its objections and addressed by EPA in Unit VII.A. of this order. Thus, EPA relies on Unit VII.A. as responsive to NRDC's arbitrary and capricious claim as to the children's safety factor decision, and denies the objection for the reasons there stated. Similarly, to the extent NRDC is arguing that EPA's selection of a NOAEL in the DNT study or its selection of the NOAEL from the chronic dog study as the Point of Departure for deriving the chronic RfD/PAD were arbitrary and capricious, EPA denies this objection for the reasons contained in Units VII.A.2.a. and VII.A.2.f.

VIII. Regulatory Assessment Requirements

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

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

X. References

1. NRDC, ''Objection To The Establishment Of Tolerances For Pesticide Chemical Residues Of Boscalid Docket Id No. EPA–HQ–OPP–2005–0145'' (February 20, 2007).

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

3. U.S. EPA, ''Residue Chemistry Test Guidelines: OPPTS 860.1500 Crop Field Trials'' (August 1996).

4. Office of Pesticide Programs, U.S. EPA and Pest Regulatory Management Agency, Health Canada, ''NAFTA Guidance Document for Guidance for Setting Pesticide Tolerances Based on Field Trial Data '' (September 28, 2005).

5. Office of Pesticide Programs, U.S. EPA, ''Determination of the Appropriate FQPA Safety Factor(s) in Tolerance Assessment'' (January 31, 2002).

6. Office of Pesticide Programs, U.S. EPA, ''The Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorous and Carbamate Pesticides'' (August 18, 2000).

7. Office of Pesticide Programs, U.S. EPA, Versar Corporation, ''Standard Operating Procedures (SOPs) for Residential Exposure Assessments'' (Draft, December 19, 1997).

8. Office of Prevention, Pesticides and Toxic Substances, U. S. EPA, Memorandum from Yan Donovan to Dennis McNeilly/R.Keigwin, ''PP# 1F06313 —Human Health Risk Assessment for New Fungicide BAS 510 F (Common Name: Boscalid) — Proposal for Tolerances for Residues in/on Numerous Crops and Livestock Commodities'' (September 8, 2003).

9. NRDC, ''Objection to the Establishment of Tolerances for Pesticide Chemical Residues of Boscalid'' (May 21, 2007.

10. BASF, ''Docket ID Number EPA–HQ–OPP–2005–0145: BASF Response to NRDC Objection to Boscalid Pesticide Tolerances'' (May 29, 2007).

11. Email Communication, Bryant Crowe, U.S. EPA to Khalid Akkari, BASF, ''Notification: Boscalid – Objections'' (July 10, 2007).

12a. W. Kaufmann. 2003. ''Current Status of Developmental Neurotoxicity: An Industry Perspective.'' *Toxicology Letters*, 140–141; pages 161–169.

12b. U. Deschl, B. Kittle et al. 2002. ''The value of historical control data-scientific advantages for pathologists, industry and agencies.'' *Toxicologic Patholology*, Vol. 30, number 1, pages 80–87.

12c. J.K. Haseman. 1995. ''Data Analysis: Statistical Analysis and Use of Historical Control Data.'' *Regulatory Toxicology and Pharmacology*, Vol. 21, pages 52–59.

13. Health Effects Division, Office of Pesticide Programs, US EPA, ''Data Evaluation Record: Developmental Neurotoxicity Study – Rat; BAS 910 F'' (Date) (EPA Reviewer: William F. Sette).

14. U.S. EPA, ''Response to Petition to Compel the U.S. EPA to Repeal Its Test Guidelines for Developmental Neurotoxicity'' (January 3, 2005) (available at ''http://docket.epa.gov/edkpub/do /EDKStaffCollection DetailView?objectId =0b0007d480525f44)''.

15a. H.L. Adler and E. B. Roessler 1977. ''Introduction to Probability and Statistics.'' 6th ed. H. Freeman. New York. 1977.

15b. S. Gad and C.S. Weil. ''Statistics and Experimental Design for the Toxicologist.'' Telford Press, NJ. 1986.

15c. M. Hollander and D.A. Wolfe. ''Non parametric Statistical Methods.'' John Wiely & Sons. New York. 1973.

15d. R.R. Holson et al., 2007. ''Statistical Issues and Techniques Appropriate for Developmental Neurotoxicity Testing.'' *Neurotoxicology and Teratology.*

15e. Haseman, Joseph K. 1981. ''Statistical Issues in the Design, Analysis and Interpretation of Animal Carcinogenicity Studies.'' In: *Environmental Health Perspectives*, Vol. 58, pp. 385–392.

16a. U.S. Environmental Protection Agency. ''Guidelines for Reproductive

Toxicity Risk Assessment.'' **Federal Register** 61: 56274–56322.

16b. U.S. Environmental Protection Agency. ''Guidelines for Developmental Toxicity Risk Assessment.'' **Federal Register**. 56: 63798–63826.

16c. ''An Evaluation and Interpretation of Reproductive Endpoints For Human Health Risk Assessment.'' International Life Science Institute. Health and Environmental Sciences Institute. Developmental and Reproductive Toxicity Committee. November 1998.

17. Health Effects Division, Office of Pesticide Programs, US EPA, ''Data Evaluation Record: Reproduction and Fertility Effects Study – Rat; BAS 910 F'' (March 23, 2002) (EPA Reviewer: Alan Levy).

18. Office of Prevention, Pesticides and Toxic Substances, U. S. EPA, Memorandum from Alan Levy to Yan Donovan, ''BAS 510 F - Report of the Hazard Identification Assessment Review Committee'' (March 7, 2003).

19. Health Effects Division, Office of Pesticide Programs, US EPA, ''Data Evaluation Record: Prenatal Developmental Toxicity Study – Rabbit; BAS 910 F'' (March 23, 2002) (EPA Reviewer: Alan Levy).

List of Subjects in 40 CFR Part 180

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

Dated: January 17, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E8–1523 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0481; FRL–8341–6]

Fluopicolide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fluopicolide, 2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide, as an indicator of combined residues of fluopicolide and its metabolite, 2,6-dichlorobenzamide (BAM), in or on grape at 2.0 parts per million (ppm); grape, raisin at 6.0 ppm; vegetable, cucurbit, group 9 at 0.50 ppm; vegetable, fruiting, group 8 at 1.6 ppm; vegetable, leafy, except brassica, group 4 at 25 ppm; and vegetable, tuberous and corm, subgroup, except potato, 1D at 0.02 ppm. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 30, 2008. Objections and requests for hearings must be received on or before March 31, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0481. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Janet Whitehurst, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6129; e-mail address: *whitehurst.janet@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0481 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk

as required by 40 CFR part 178 on or before March 31, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0481, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of June 14, 2006 (71 FR 34345) (FRL–8071–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F7016) by Valent U.S.A. Company, 1600 Riviera Ave., Walnut Creek, CA 94596–8025. The petition requested that 40 CFR 180.627 be amended by establishing a tolerance for residues of the fungicide fluopicolide, 2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide, in or on grape at 2.0 ppm; raisin at 6.0 ppm; vegetable, leafy (except brassica) (group 4) at 20.0 ppm; vegetable, fruiting (group 8) at 0.8 ppm; vegetable, cucurbit (group 9) at 0.4 ppm; potato at 0.02 ppm; sweet potato, roots at 0.02 ppm; wheat, forage at 0.2 ppm; wheat, grain at 0.02 ppm; and wheat, hay and straw at 0.5 ppm. That notice referenced a summary of the petition prepared by Valent U.S.A. Company, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the tolerances proposed for vegetable, leafy, except brassica, group 4; vegetable, fruiting, group 8; and vegetable, curcurbit, group 9. The appropriate tolerances for vegetable, leafy, except brassica, group 4; vegetable, fruiting, group 8; and vegetable, curcurbit, group 9 are 25, 1.6, and 0.50 ppm, respectively. These tolerances were determined considering residue/processing data and, as applicable, recent agency guidance (''NAFTA Guidance Document for Guidance for Setting Pesticide Tolerances Based on Field Trial Data,'' Regulatory Proposal PRO2005–04, U.S EPA and Health Canada, Pest Management Regulatory Agency, 2005 (*http://www.pmra-arla.gc.ca/english/pdf/pro/pro2005–04-e.pdf*).

For the reasons stated in Unit V., EPA is not establishing at this time the following petitioned-for tolerances: Potato; wheat, forage; wheat, grain; and wheat, hay and straw.

The existing tolerances for imported grape at 2.0 ppm, and grape, raisin at 6.0 ppm now apply to all imported and U.S. domestic grapes. Additionally, the residue definition in paragraph (a) of the tolerance expression is being changed from only fluopicolide, to: Tolerances are established for residues of fluopicolide, 2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide, as an indicator of combined residues of fluopicolide and its metabolite, 2,6-dichlorobenzamide (BAM).

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of fluopicolide, 2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide, as an indicator of combined residues of fluopicolide and its metablite, BAM, on grape at 2.0 ppm; grape, raisin at 6.0 ppm; vegetable, cucurbit, group 9 at 0.50 ppm; vegetable, fruiting, group 8 at 1.6 ppm; vegetable, leafy, except brassica, group 4 at 25 ppm; and vegetable, tuberous and corm, subgroup, except potato 1D at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by fluopicolide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the document entitled *Fluopicolide: Human Health Risk Assessment for Proposed Uses on tuberous and corm vegetables, leafy vegetables (except brassica), fruiting vegetables, cucurbit vegetables, grapes, turf, and ornamentals, and for indirect or inadvertent residues on the rotational crop wheat* at regulations.gov. BAM (AE C653711) is a common metabolite and/or environmental degradate of fluopicolide as well as the herbicide dichlobenil. Because the toxicological endpoints of BAM and fluopicolide are different, a separate human health risk assessment was conducted for BAM residues. The BAM risk assessment considered residues resulting from both fluopicolide and dichlobenil uses. However, BAM residues generated from fluopicolide uses are expected to be significantly lower than BAM residues from dichlobenill uses. Specific information regarding the metabolite of

fluopicolide can be found in the document entitled *2,6-Dichlorobenzamide (BAM) as a Metabolite/Degradate of Fluopicolide and Dichlobenil. Human Health Risk Assessment for Proposed Uses of fluopicolide on tuberous and corm vegetables, leafy vegetables (except brassica), fruiting vegetables, cucurbit vegetables, grapes, turf, and ornamentals, and for indirect or inadvertent residues on the rotational crop wheat* (PC Codes: 027402 BAM and 027412 (fluopicolide), Petition No: 5F7016 at regulations.gov). Both referenced documents are available in the docket established for this action, which is described under **ADDRESSES**, and is identified as docket ID number EPA–HQ–OPP–2006–0481.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified the LOAEL is sometimes used for risk assessment. Uncertainty (UFs)/ safety factors are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

A summary of the toxicological endpoints for fluopicolide used for human risk assessment can be found at regulations.gov in the document entitled *Fluopicolide: Human Health Risk Assessment for Proposed Uses on tuberous and corm vegetables, leafy vegetables (except brassica), fruiting vegetables, cucurbit vegetables, grapes, turf, and ornamentals, and for indirect or inadvertent residues on the rotational crop wheat* (PC Code: 027412, Petition No: 5F7016 (71 FR 34345) (FRL–8071–4) in docket ID number EPA–HQ–OPP–2006–0481). A summary of the toxicological endpoints for BAM used for human risk assessment can be found at regulations.gov in the document entitled *2,6-Dichlorobenzamide BAM as a Metabolite/Degradate of Fluopicolide and Dichlobenil. Human Health Risk Assessment for Proposed Uses of fluopicolide on tuberous and corm vegetables, leafy vegetables (except brassica), fruiting vegetables, cucurbit vegetables, grapes, turf, and ornamentals, and for indirect or inadvertent residues on the rotational crop wheat* (PC Codes: 027402 BAM and 027412 Fluopicolide, Petition No: 5F7016 (71 FR 34345) (FRL–8071–4) in docket ID number EPA–HQ–OPP–2006–0481).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluopicolide, EPA considered exposure under the petitioned-for tolerances as well as all existing fluopicolide tolerances in (40 CFR 180.627). EPA assessed dietary exposures from fluopicolide in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for fluopicolide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

A conservative acute dietary exposure assessment for the metabolite of fluopicolide, BAM, was conducted. Maximum residues of BAM from fluopicolide field trials on tuberous and corm vegetables, leafy vegetables (except brassica), fruiting vegetables, cucurbit vegetables, grapes (domestic and imported), (except potato), and from dichlobenil field trials on food commodities with established/pending tolerances (40 CFR 180.231) were included in the assessments. The assessments used 100% percent crop treated (PCT) except for apples, blueberries, cherries, cranberries, peaches, pears, and raspberries.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessments EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 Continuing Surveys of Food Intakes by Individuals (CSFII). Two chronic assessments were conducted: One assessment for parent fluopicolide (including residues of concern other than the metabolite BAM) and one assessment for BAM. As to residue levels in food, EPA assumed for the parent fluopicolide assessment that all foods for which there are tolerances were treated and contain tolerance-level residues. A conservative chronic dietary exposure assessment for the metabolite of fluopicolide, BAM, was conducted as described in Unit III.C.1.i. for the acute assessment.

iii. *Cancer.* Fluopicolide is not likely to be carcinogenic to humans; therefore, a cancer risk assessment was not conducted for parent fluopicolide. The carcinogenic potential of BAM has been evaluated in only one species, the rat. That study showed increased incidence of hepatocellular adenomas in high-dose females that was marginally statistically significant. To be conservative, EPA has assumed that BAM's potential for carcinogenicity is similar to the parent having the greatest carcinogenic potential. As noted, fluopicolide has been classified as not likely to be carcinogenic to humans; dichlobenil is classified as ''Group C, possible human carcinogen'' with the reference dose (RfD) approach utilized for quantification of human risk. Accordingly, BAM's cancer risk is based on the chronic risk assessment and no separate cancer risk or exposure assessment has been conducted.

iv. *Anticipated residue and PCT information.* Anticipated residues and PCT information were used for the acute and chronic dietary risk assessments for BAM. Maximum residues of BAM from fluopicolide field trials on tuberous and corm vegetables (except potato) leafy vegetables (except brassica), fruiting vegetables, cucurbit vegetables, grapes (domestic and imported), and from dichlobenil field trials on food commodities with established/pending tolerances (40 CFR 180.231) were included in the assessments. The assessments assumed 100% CT for fluopicolide and dichlobenil, except for the following dichlobenil-treated crops:

a. For the acute assessment: Apples (2.5%), blueberries (2.5%), cherries (2.5%), peaches (2.5%), pears (2.5%), and raspberries (5%).

b. For the chronic assessment: Apples (1%), blueberries (1%), cherries (1%), cranberries (45%), peaches (1%), pears (1%), and raspberries (5%).

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for fluopicolide in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on

the environmental fate characteristics of fluopicolide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of fluopicolide for acute exposures are estimated to be 26.81 parts per billion (ppb) for surface water and 0.64 ppb for ground water. The EECs for chronic (non cancer) exposures are estimated to be 8.34 ppb for surface water and 0.64 ppb for ground water. The EECs for chronic (cancer) exposures are estimated to be 6.14 ppb for surface water and 0.64 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 8.34 ppb was used to access the contribution to drinking water. Considering residues of BAM in drinking water from uses of dichlobenil and fluopicolide, the uses on dichlobenil will result in the highest residues in drinking water. Therefore, the results from dichlobenil (from the use of nutsedge at 10 lb. dichlobenil active ingredient/Acre (ai)/(A)) are used in this assessment, i.e., 56.2 ppb was used as the value of BAM residues in drinking water in the dietary assessment for both the acute and chronic assessments.

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

Fluopicolide is proposed for registration on the following residential non-dietary sites: Residential turfgrass and ornamental plants. EPA assessed residential exposure using the following assumptions: Residential handlers may receive short-term dermal and inhalation exposure to fluopicolide when mixing, loading, and applying the formulations. Residential postapplication exposure via the dermal route is likely for adults and children entering treated lawns. Toddlers may also experience exposure via incidental non-dietary ingestion (i.e., hand-to-mouth, object-to-mouth (turfgrass), and soil ingestion) during postapplication activities on treated turf.

While it is necessary to evaluate residential exposure from all sources of fluopicolide's metabolite BAM, the use pattern for dichlobenil is not expected to result in scenarios with significant residential/non-occupational exposure. Therefore, BAM exposure estimates are based on fluopicolide use only.

Residential handler exposure was evaluated for parent fluopicolide only because the metabolite BAM is believed to form slowly in plants and soil after the product containing the parent (fluopicolide) has been applied.

Residential postapplication exposure via the dermal route is likely for adults and children entering treated lawns. Toddlers may also experience exposure via incidental non-dietary ingestion (i.e., hand-to-mouth, object-to-mouth (turf grass), and soil ingestion) during postapplication activities on treated turf.

Residential short-term/intermediate-term postapplication MOEs were estimated for ''Day 0'' exposure (i.e., the day of application).

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluopicolide and any other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluopicolide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Fluopicolide and dichlobenil can form the common metabolite, BAM. To support existing tolerances and to establish new tolerances for fluopicolide, EPA conducted a human health risk assessment for exposure to BAM resulting from the use of all current and pending uses of fluopicolide and the herbicide dichlobenil. The risk assessment is conservative in terms of potential dietary and non-dietary exposures. In addition, the Agency retained the additional tenfold (10X) FQPA safety factor (SF) for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those composed of infants and children. The Agency's complete risk assessment can be found at regulations.gov, docket ID number EPA–HQ–OPP–2006–0481.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional 10X margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA SF value based on the use of traditional UFs and/or special FQPA SFs, as appropriate.

2. *Prenatal and postnatal sensitivity*. Since there was evidence of increased susceptibility of offspring following exposure to fluopicolide in rat developmental study, a Degree of Concern Analysis was performed to:

i. Determine the level of concern for the effects observed when considered in the context of all available toxicity data.

ii. Identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment for this chemical.

EPA concluded that there is low concern for the qualitative susceptibility because: The offspring toxicity was well characterized and was accompanied by maternal toxicity; there was a clear NOAEL/LOAEL for offspring toxicity; and because the dose/endpoint selected for long-term risk assessments is considerably lower and would address the concerns for offspring toxicity seen in this study. Therefore, there are no residual uncertainties for prenatal and/or postnatal toxicity.

3. *Conclusion*. As to fluopicolide, EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA SF to 1X. That decision is based on the following findings:

i. The toxicity database for fluopicolide is complete.

ii. There is no indication that fluopicolide is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats, the risk assessment team did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of fluopicolide. The degree of concern for prenatal and/or postnatal toxicity is low.

iv. There are no residual uncertainties identified in the exposure data bases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. Conservative ground water and surface water modeling estimates were used. Similarly conservative Residential Standard Operating Procedues (SOPs) were used to assess postapplication exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluopicolide.

EPA is retaining the 10X FQPA SF for BAM for those exposure scenarios that do not rely on dichlobenil toxicity data. These scenarios are acute dietary for the general population including infants and children, females 13–49 years of age, chronic dietary, and incidental oral non-dietary. This is due to the incompleteness of the data base with regard to the systemic neurotoxic potential of BAM, including olfactory toxicity via the oral route of exposure.

For the dermal and inhalation routes of exposures, for which the Agency is relying on dichlobenil toxicity data. EPA has reduced the FQPA SF for BAM toxicity to 1X. The reasons for this are that, based on a comparison of toxicity via the intraperitoneal route of exposure, higher doses of BAM are needed to induce levels of olfactory toxicity that are similar to those caused by dichlobenil (Brandt et al. 1990; Brittebo et al. 1991; Eriksson and Brittebo 1995). Olfactory toxicity was the endpoint chosen for these exposure scenarios.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. EPA does not expect that fluopicolide will pose an acute risk because an endpoint attributable to a single dose was not identified from the available data for fluopicolide.

The acute dietary exposure estimates for BAM at the 99.9th percentile of the exposure distribution are 11% of the aPAD for the general U.S. population and 28% aPAD for all infants <1 year old), the most highly exposed group.

2. *Chronic risk*. The chronic dietary exposure estimates for fluopicolide are 6% cPAD for the general U.S. population and 9% cPAD for children 1–2 years old, the most highly exposed subgroup. Based on the use pattern, chronic residential exposure to residues of fluopicolide is not expected.

The chronic dietary exposure estimates for BAM are 29% of the chronic cPAD for the general U.S. population and 93% cPAD for all infants (< year old), the most highly exposed group which is not of concern to the Agency.

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

Fluopicolide is proposed for registration for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for fluopicolide.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures result in aggregate MOEs greater than the LOC of 100 for all population groups, and the aggregate short-term risk estimates for fluopicolide are below the Agency's level of concern. Short-term exposures for fluopicolide's metabolite BAM, may occur as a result of activities on treated turf. Incidental oral exposures related to turf activities have been combined with chronic dietary exposure estimates to assess short-term aggregate exposure for BAM. Since aggregate MOEs for BAM are greater than the LOC, they represent risk estimates that are below the Agency's level of concern.

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

Fluopicolide is proposed for registration for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for fluopicolide.

The intermediate-term aggregate risk for fluopicolide and BAM is the same as calculated above for the short-term aggregate risk.

5. *Long-term aggregate risk*. In examining long-term aggregate risk, the Agency has assumed that the only pathway of exposure relevant to that time frame is dietary exposure (i.e., any non-dietary exposures are short-term and/or intermediate-term in duration). Therefore, the long-term aggregate risk is composed of exposures to fluopicolide residues in food and drinking water and is equivalent to the chronic dietary risk. The chronic risk estimates are below the Agency's level of concern for all population subgroups.

6. *Aggregate cancer risk for U.S. population*. Fluopicolide has been classified as ''not likely to be carcinogenic to humans'' and, is thus not expected to pose a cancer risk. As explained in Unit III. the chronic risk assessment for BAM is protective of any potential cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, the Liquid Chromatography/Mass Spectrometry (LC/MS/MS) method is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue limits (MRLs) or tolerances have been established for fluopicolide.

C. Response to Comments

One comment was received from B. Sachau. Ms. Sachau's comments regarding general exposure to pesticides contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to fluopicolide, including all anticipated dietary exposures and other exposures for which there is reliable

information. This comment as well as her comments regarding animal testing have been responded to by the Agency on several occasions. For examples, see the **Federal Register** issues of January 7, 2005 (70 FR 1349) (FRL–7691–4) and October 29, 2004 (69 FR 63083) (FRL–7681–9).

V. Conclusion

Therefore, tolerances are established for residues of fluopicolide, 2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide, as an indicator of combined residues of fluopicolide and its metabolite, BAM, on grape at 2.0 ppm; grape, raisin at 6.0 ppm; vegetable, cucurbit, group 9 at 0.50 ppm; vegetable, fruiting, group 8 at 1.6 ppm; vegetable, leafy, except brassica, group 4 at 25 ppm; and vegetable, tuberous and corm, except potato, subgroup 1D at 0.02 ppm. Additional livestock feeding studies and livestock tolerance enforcement methods are needed to support tolerances for: Potatoes and wheat. Tolerances for these commodities are not established at this time.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 17, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.627 is amended by revising paragraph (a) to read as follows:

180.627 Fluopicolide; tolerances for residues.

(a) *General.* Tolerances are established for residues of fluopicolide, 2,6-dichloro-*N*-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide, as an indicator of combined residues of fluopicolide and its metabolite, 2,6-dichlorobenzamide (BAM).

Commodity	Parts per million
Grape	2.0
Grape, raisin	6.0
Vegetable, cucurbit, group 9	0.50
Vegetable, fruiting, group 8	1.60
Vegetable, leafy, except brassica, group 4	25
Vegetable, tuberous and corm (except potato), subgroup 1D	0.02

* * * * *

[FR Doc. E8–1525 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing

BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Baker County, Florida, and Incorporated Areas Docket No.: FEMA–B–7724			
Barber Bay Tributary	At Confluence with South Prong Saint Mary's River	+85	City of Macclenny.
	1,100 feet upstream of County Road 228	+124	
	3,000 feet upstream of County Road 228	+128	
South Prong Saint Mary's River	6,459 feet downstream from the confluence with Barber Bay Tributary.	+79	Baker County (Unincorporated Areas).
	8,800 feet upstream from the confluence with South Prong St. Mary's River Tributary 8.	+100	
South Prong Saint Mary's River Tributary 8.	At confluence with South Prong Saint Mary's River	+97	Baker County (Unincorporated Areas).
	12,660 feet upstream from the confluence with South Prong St. Mary's River.	+122	
Turkey Creek	1,680 feet upstream of the confluence with Turkey Creek Tributary 2.	+111	Baker County (Unincorporated Areas).
	1,250 feet upstream of Barber Road	+116	
	810 feet downstream of Barber Road	+117	
Turkey Creek Tributary 1	At confluence with Turkey Creek	+95	Baker County (Unincorporated Areas).
	8,960 feet upstream of State Highway 121	+138	
Turkey Creek Tributary 1.1	At confluence with Turkey Creek Tributary 1.1	+98	Baker County (Unincorporated Areas).
	1,190 feet upstream of Woodlawn Road	+117	
	1,280 feet upstream of Woodlawn Road	+118	
	1,940 feet upstream of Woodlawn Road	+119	
Turkey Creek Tributary 2	At Confluence with Turkey Creek	+109	City of Macclenny.
	3,080 feet upstream of the confluence with Turkey Creek Tributary 2.1.	+125	
	145 feet upstream of U.S. Highway 90	+129	
	At Interstate 10	+129	
Turkey Creek Tributary 2.1	At confluence with Turkey Creek Tribuatry 2	+115	City of Macclenny.
	At Powerline Road	+122	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	3,040 feet upstream of Canal Road	+132	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Macclenny
Maps are available for inspection at 32 South 5th Street, Macclenny, FL 32063.

Baker County (Unincorporated Areas)
Maps are available for inspection at 55 North 3rd Street, Macclenny, FL 32063.

Northumberland County, Pennsylvania, and Incorporated Areas
Docket No.: FEMA–B–7701

Boile Run	Approximately 905 feet downstream of State Road 147	+432	Township of Lower Augusta.
	Approximately 690 feet upstream of State Road 147	+432	
Dalmatia Creek	Approximately at 90 feet downstream of State Road 147	+416	Township of Lower Mahanoy.
	Approximately at 900 feet upstream of State Road 147	+416	
Limestone Run	Approximately at 1,110 feet downstream of Filbert Street	+468	Borough of Milton, Township of Turbot.
	Approximately at 1,600 feet upstream of Township Route 594.	+519	
Mahanoy Creek	Approximately 2,120 feet downstream of State Road 147	+427	Township of Jackson.
	Approximately 2,900 feet upstream of State Road 147	+427	
Mahantango Creek	Approximately 1,000 feet downstream of State Road 147	+400	Township of Lower Mahanoy.
	Approximately at 3,000 feet upstream of State Road 147	+404	
Muddy Run	Approximately at 3,120 feet downstream of Legislative Route 49102.	+472	Township of Turbot.
	Approximately at 50 feet downstream of Township Route 572.	+472	
Shamokin Creek	Approximately 2,500 feet downstream of State Road 61	+583	Township of Ralpho, Township of Shamokin.
	Approximately 2,250 feet upstream of Irish Valley Road	+617	
Susquehanna River	Approximately 18.6 miles downstream of Route 61, at Northumberland/Dauphin County line.	+400	Borough of Herndon, Borough of Northumberland, Borough of Riverside, City of Sunbury, Township of Lower Augusta, Township of Lower Mahanoy, Township of Point, Township of Rush, Township of Upper Augusta.
	Approximately 3.9 miles upstream of Route 54, at Northumberland/Montour County line.	+468	
Tributary No. 1 to Limestone Run.	Approximately 2,055 feet downstream of State Road 254	+476	Township of Turbot.
	Approximately 250 feet downstream of State Road 254	+476	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Borough of Herndon
Maps are available for inspection at Herndon Borough Municipal Building, P.O. Box 385, Herndon, PA 17830.

Borough of Milton
Maps are available for inspection at Milton Borough Office, 2nd Filbert Street, Milton, Milton, PA 17847.

Borough of Northumberland
Maps are available for inspection at Northumberland Borough Building, 221 Second Street, Northumberland, PA 17857.

Borough of Riverside
Maps are available for inspection at Riverside Borough Building, 301 Dewart Street, Riverside, PA 17868.

City of Sunbury
Maps are available for inspection at Sunbury City Code Administration Office, 225 Market Street, Sunbury, PA 17801.

Township of Jackson
Maps are available for inspection at Jackson Township Municipal Building, RR 2 Box 605, Herndon, PA 17830.

Township of Lower Augusta

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected

Maps are available for inspection at Lower Augusta Township Building, Rd #3, Box 28, Sunbury, PA 17801.

Township of Lower Mahanoy

Maps are available for inspection at Lower Mahanoy Township Hall, Rd 1, Box 38, Dalmatia, PA 17017.

Township of Point

Maps are available for inspection at Point Township Municipal Building, 759 Ridge Road, Northumberland, PA 17857.

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

Dated: January 22, 2008.

David I. Maurstad,

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

[FR Doc. E8–1651 Filed 1–29–08; 8:45 am]

BILLING CODE 9110–12–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

DATES: *Effective Date:* This rule is effective as of January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295–1624; *mcohan@lsc.gov*.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(c) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The revised figures for 2008 set out below are equivalent to 125% of the current Federal Poverty Guidelines as published on January 23, 2008 (73 FR 3971).

In addition, LSC is publishing charts listing income levels that are 200% of the Federal Poverty Guidelines. These charts are for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 200% of the applicable Federal Poverty Guidelines amount, but less than 200% of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

List of Subjects in 45 CFR Part 1611

Grant programs—law, Legal services.

■ For reasons set forth above, 45 CFR part 1611 is amended as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

■ 2. Appendix A of part 1611 is revised to read as follows:

APPENDIX A OF PART 1611.—LEGAL SERVICES CORPORATION 2008 POVERTY GUIDELINES*

Size of household	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$13,000	$16,250	$14,950
2	17,500	21,875	20,125
3	22,000	27,500	25,300
4	26,500	33,125	30,475
5	31,000	38,750	35,650
6	35,500	44,375	40,825
7	40,000	50,000	46,000
8	44,500	55,625	51,175
For each additional member of the household in excess of 8, add	4,500	5,625	5,175

* The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

REFERENCE CHART.—200% OF DHHS FEDERAL POVERTY GUIDELINES

Size of household	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$20,800	$26,000	$23,920
2	28,000	35,000	32,200
3	35,200	44,000	40,480
4	42,400	53,000	48,760
5	49,600	62,000	57,040
6	56,800	71,000	65,320
7	64,000	80,000	73,600
8	71,200	89,000	81,880
For each additional member of the household in excess of 8, add:	7,200	9,000	8,280

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. E8–1574 Filed 1–29–08; 8:45 am]

BILLING CODE 7050–01–P

Proposed Rules

Federal Register
Vol. 73, No. 20
Wednesday, January 30, 2008

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

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2007–0023]

Privacy Act of 1974: Implementation of Exemptions

AGENCY: Department of Homeland Security.

ACTION: Notice of proposed rule making.

SUMMARY: The Department of Homeland Security (DHS) is giving concurrent notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the Immigration and Customs Enforcement (ICE) Pattern Analysis and Information Collection (ICEPIC) system and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

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

ADDRESSES: You may submit comments, identified by docket number DHS–2007–0023, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel, III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For system related questions please contact: Steven W. Cooper (202–616–7571), Executive Information Unit, Office of Investigations, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536. For privacy issues, please contact: Hugo Teufel III (571–227–3813), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION: *Background:* The Immigration and Customs Enforcement (ICE) Pattern Analysis and Information Collection (ICEPIC) system allows ICE law enforcement agents and analysts to look for non-obvious relationship patterns among individuals and organizations that are indicative of violations of the customs and immigration laws that are enforced by DHS agencies, as well as possible terrorist threats and plots. From these relationships, ICE agents develop specific leads and intelligence for active and new investigations. Identified relationships will also be recorded for reuse in subsequent investigative analyses. The information processed by ICEPIC comes from existing ICE investigative and apprehension records systems, as well as immigration and alien admission records systems. ICEPIC includes capabilities that assist investigators to record results of analyses performed in support of investigations and to capture additional relevant information obtained from outside sources. The information collected by, on behalf of, in support of, or in cooperation with DHS and its components may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. In this notice of proposed rulemaking, DHS now is proposing to exempt ICEPIC, in part, from certain provisions of the Privacy Act.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for ICEPIC. Some information in ICEPIC relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and of immigration and border management and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable

exemptions may be waived on a case by case basis.

A notice of system of records for the Department's ICE Pattern Analysis and Information Collection (ICEPIC) System is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to part 5 a new paragraph 6 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

6. The Immigration and Customs Enforcement (ICE) Pattern Analysis and Information Collection (ICEPIC) System consists of electronic and paper records and will be used by DHS and its components. ICEPIC is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws (including the immigration law); investigations, inquiries, and proceedings there under; and national security and intelligence activities. ICEPIC contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies.

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–1554 Filed 1–29–08; 8:45 am]

BILLING CODE 4410–10–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 708a and 708b

RIN 3133–AD40

Mergers, Conversion From Credit Union Charter, and Account Insurance Termination

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking and request for comment (ANPR).

SUMMARY: NCUA is considering whether to issue regulations to govern merger of a federally insured credit union (FICU)

into or a FICU's conversion to a financial institution other than a mutual savings bank (MSB). NCUA currently does not have regulations governing these transactions. Also, NCUA is considering amending its regulations regarding mergers, charter conversions, and changes in account insurance to address various issues these transactions present that affect member rights and ownership interests. These issues include accuracy of communications to members, voting integrity, fiduciary duty obligations for insiders, and member interest in credit union equity, for example, through merger dividends. NCUA seeks comment on the necessity of amending its current regulations to address these issues, any additional issues relevant to these transactions not noted in this ANPR, and, if commenters believe regulatory amendments are needed, suggestions on how to address these issues.

DATES: Comments must be received on or before March 31, 2008.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name]—Comments on Advanced Notice of Proposed Rulemaking for Parts 708a and 708b'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

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

SUPPLEMENTARY INFORMATION:

A. Background

The primary focus of this ANPR is protection of member interests in transactions where members have a great deal at stake because the transactions involve fundamental changes in their ownership or the structure of their credit union, including, in some cases, termination of a credit union charter or termination of federal account insurance. This ANPR concerns six types of transactions: Merger of a FICU into a FICU; merger of a FICU into a privately insured credit union (PICU); conversion of a federally-insured state credit union (FISCU) into a PICU; conversion of a FICU to an MSB; merger of a FICU into a financial institution other than an MSB; and conversion of a FICU into a financial institution other than an MSB.

While these transactions are legally permissible, member ownership can be extinguished or diluted and members may have lesser voting rights or be deprived of the security of federal share insurance. These transactions raise various issues, as discussed below, that NCUA believes its current regulations may not adequately address. NCUA is considering amendments to make certain member interests are adequately protected, including helping members understand the risks and rewards associated with these transactions. In addition, NCUA has not promulgated rules on the merger of a FICU or conversion of a FICU into a financial institution other than an MSB and NCUA is considering the necessity of issuing rules to govern these transactions. As in all rulemaking it undertakes, NCUA's focus is on providing flexibility and fairness, imposing minimal regulatory burden on credit unions whose members choose to pursue any of these transactions, and protecting the National Credit Union Share Insurance Fund (NCUSIF).

NCUA's legal authority to regulate these transactions derives from the Federal Credit Union Act (Act). The Act specifically authorizes the NCUA Board to prescribe rules governing mergers of FICUs, including mergers or consolidations with any noninsured credit union or institution. 12 U.S.C. 1766(a), 1785(b), 1785(c), and 1789(a). By definition, ''noninsured'' means not insured by the NCUSIF, 12 U.S.C. 1752(7), and, therefore, NCUA may prescribe rules governing mergers, conversions, or consolidations with PICUs or other financial institutions, for example, banks or thrifts insured by the Federal Deposit Insurance Corporation.

Part 708b of NCUA's regulations, which is limited to ''credit union into credit union'' mergers, generally requires: (1) Approval of a merger plan by the boards of directors of each credit union; (2) submission of a written plan and other documents to NCUA; and (3) approval of a plan or proposal by NCUA and, for federal credit unions, by members. 12 CFR Part 708b. If a federal credit union is in danger of insolvency, member approval is not required. 12 CFR 708b.105(b). NCUA considers various factors in approving or disapproving a merger including protecting member interests and effects on the NCUSIF.

Similar to FICU to FICU mergers, NCUA broadly regulates the procedures and substance of FICU to PICU mergers including: (1) Approval of a merger plan by the boards of directors of each credit union; (2) submission of a written plan and other documents to NCUA; and (3) approval of plan or proposal by NCUA and, for federal credit unions, by members. NCUA imposes additional notice, voting, and approval requirements on this type of transaction, including the use of form documents. 12 CFR Part 708b, Subpart B–Voluntary Termination or Conversion of Insured Status, and Subpart C–Forms. These requirements apply as well where a FISCU converts to a PICU.

The Act specifically addresses FICU to MSB conversions. 12 U.S.C. 1785(b)(2). While a FICU may convert to an MSB without the prior approval of the NCUA Board, 12 U.S.C. 1785(b)(2)(A), it must provide notice to each of its members who is eligible to vote on the matter of its intent to convert 90, 60, and 30 days before the date of the member vote on the conversion. 12 U.S.C. 1785(b)(2)(C). In this context, the Act requires NCUA's regulations to be consistent with rules promulgated by other federal financial regulators and must be no more or less restrictive than those applicable to charter conversions by other financial institutions. 12 U.S.C. 1785(b)(2)(G)(i). NCUA administers the member vote, which is verified by the federal or state regulatory agency that would have jurisdiction over the institution after the conversion. If either NCUA or that regulatory agency disapproves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by NCUA or the other agency. 12 U.S.C. 1785 (b)(2)(G)(ii). Additionally, the Act specifically provides that no director or senior management official may receive any economic benefit in connection with a conversion of the credit union other than director fees and other compensation and benefits paid in the ordinary course of business. 12 U.S.C. 1785(b)(2)(F).

NCUA has implemented its statutory authority to administer FICU to MSB conversions. 12 CFR Part 708a. While the decision to convert belongs to members, to make this decision, members must be fully informed as to the reasons for the conversion and be

able to consider the advantages and disadvantages.

In 2006, NCUA revised Part 708a to improve the information available to members and the board of directors as they consider a possible conversion. 71 FR 77150 (December 22, 2006). The revisions included amended disclosures, revised voting procedures, procedures to facilitate communications among members, and procedures for members to provide their comments to directors before the credit union board votes on a conversion plan.

NCUA has not issued regulations regarding the merger or conversion of a FICU into a financial institution other than an MSB. The NCUA Board has statutory authority to approve or disapprove these two kinds of transactions and authority to promulgate rules to regulate the substance and procedures of them. 12 U.S.C. 1766(a), 1785(b)(1)(A), 1785(b)(1)(D), 1789(a)(11). In approving or disapproving these transactions, the NCUA Board must consider a number of criteria including: (1) The history, financial condition, and management policies of the credit union; (2) the adequacy of the credit union's reserves; (3) the economic advisability of the transaction; (4) the general character and fitness of the credit union's management; (5) the convenience and needs of the members to be served by the credit union; and (6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. 12 U.S.C. 1785(c). NCUA has not issued regulations regarding these transactions because there have been only a handful of these transactions; in those instances, credit unions sought Board approval by petition, fashioning a submission and following procedures generally in line with the requirements of Part 708a.

B. Discussion

1. Credit Union Merger or Conversion Into a Financial Institution Other Than an MSB

NCUA seeks comment on whether issuing rules to govern credit union mergers or conversions into a financial institution other than an MSB would be beneficial for credit union members. NCUA is considering establishing an administrative framework and procedures rather than the case-by-case approach that has been used. Potential downsides to issuing a rule are that, having a rule in place, might encourage these transactions and many observers believe they are, only in unusual circumstances, in the best interests of members. Nevertheless, having a rule in place, with appropriate safeguards for member interests, could assist all parties, including the NCUA Board, in protecting protect member interests in their credit unions.

If it is determined a new rule would be beneficial, NCUA believes the rule, in brief, would establish a comprehensive administrative framework to process these transactions, while including provisions to ensure the protection of member rights and interests. In addition, NCUA would consider clarifying in a rule the criteria it would apply in approving these transactions. Procedurally, a new rule could be modeled after part 708b, including the use of form documentation and, in addition to borrowing the certain provisions of part 708b, it could address the issues discussed below that the Board believes would also be present in these transactions.

Some observers have argued that direct merger or conversion of a FICU into a stock issuing bank may have potential advantages. For example, it would enable a FICU that anticipates the need to eventually issue stock as a bank to accomplish this goal in a more efficient one-step process as opposed to the typical two-step process (FICU to MSB then MSB to stock bank) that has been the pattern in recent years in the FICU to MSB conversion scenario. Another advantage of a rule permitting these types of transactions is that it could be structured in a manner to give economic protection to members by making certain they share in the distribution of cash, free stock, or transferable stock subscription rights as compensation for their equity interest in their credit union.

A potential issue with a rule for these transactions is that the rule would likely be complex because it would need to cover: (1) Both mergers and conversions; (2) charter changes to federal and state banks; and (3) charter changes to freestanding stock banks and those within a mutual holding company structure or stock holding company structure.

NCUA requests comment on whether it should issue a rule regulating these transactions or continue to address them under NCUA's statutory authority on an as-needed basis. If a commenter is in favor of NCUA issuing a rule, the commenter should also suggest how the rule could be structured, how NCUA should address the four issues discussed in B.2. below in the context of the rule, and what other issues should be addressed.

2. Issues

NCUA believes there are significant issues affecting member interests arising across the spectrum of the restructuring transactions contemplated in this ANPR, including those for which NCUA currently has regulations in place and those, discussed above, for which it does not. This ANPR sets out the issues for comment in four categories: Management's Duties, Member Right to Equity, Communications to Members, and Member Voting. NCUA is interested in receiving comments on how its regulations should best address these issues. A discussion of the issues follows.

(a) Management's Duties. In this category, the ANPR seeks comment on two issues: the need for a regulation to address the fiduciary duty credit union directors owe to members and the need for additional regulatory provisions to guard against insider enrichment.

(i) Fiduciary Duty

A credit union's board of directors has a fiduciary duty to act in the best interests of its members.[1] The Act makes numerous references to the NCUA Board's responsibility to act in the best interests of credit union members, including:

- The NCUA Board may act to remove or prohibit any institution-affiliated party at a FICU if that action meets certain requirements, including that the ''interests of the insured credit union's members have been or could be prejudiced.'' 12 U.S.C. 1787(g)(1)(B).
- Credit unions applying for federal account insurance must agree to maintain such special reserves as the NCUA Board may require ''for protecting the interests of the members.'' 12 U.S.C. 1781(b)(6).
- The NCUA Board must review the application of any individual to become a director or senior manager at a newly chartered or troubled FICU, and disapprove that application, if acceptance of the applicant would not be in the best interests of the depositors (members). 12 U.S.C. 1790a.
- When acting as the conservator or liquidating agent of a FICU, the NCUA Board may take any action it determines is in the best interests of the credit union's account holders (members). 12 U.S.C. 1787(b)(2)(J)(2).

As discussed in a previous rulemaking, although referring

[1] This duty is based on the relationship of trust and confidence between the members and directors and arises because members' property is entrusted to the entity to be managed for the members benefit. Jean E. Maess, J.D., Corpus Juris Secundum 47 (2007).

specifically to the NCUA Board, these provisions support the conclusion that credit union directors have a fiduciary obligation to credit union members. 71 FR 77150 (December 22, 2006).

> A closer look at how the cited provisions function, however, connects them to the [credit union's board of] directors. Specifically, the best interests of the members will dictate the [NCUA] Board's actions when removing or prohibiting a director, approving the appointment of a director, operating a conserved credit union in the role of the board of directors, and reviewing the propriety of a board of directors' decision to pursue a voluntary liquidation. If the best interests of the members standard guides the conduct of the [NCUA] Board, it must also guide the conduct of [the credit union's board of] directors.

Id.

While it is important for a credit union's board of directors to understand its duty to act in the best interests of the members in the ordinary course of business, NCUA believes it is especially important when the board is considering a proposal to change the credit union's charter or insurance status. These extraordinary transactions not only result in a fundamental shift in the credit union, but tend to present more conflicts between member interests and the personal financial interests of credit union management.

While the existence of a fiduciary duty owed by directors to members is clear, neither the Act nor NCUA regulations establish or provide any guidance as to what that standard of care is for directors. NCUA is considering establishing a regulatory standard of care for directors that will help ensure they meet their fiduciary duty to their members when directors are making decisions in connection with the transactions discussed in this ANPR.

NCUA has considered the standards of care that have developed in this area of the law, which, to a great extent, have developed in case law, applying fiduciary principles not only to situations involving trusts, but also in the corporate context. The result is that a credit union board currently must look to state law and case law to understand the scope of its fiduciary duties to members and the standard of care required as articulated by its particular state. Unfortunately, case law and state law can vary widely from jurisdiction to jurisdiction causing confusion for credit unions and a lack of uniformity between credit unions in one state and others in other states. As a result, the standard of care applying to these transactions can span a broad spectrum ranging from only requiring a board of directors to have a rational basis for making a decision to requiring the board to demonstrate that its decisions are made in the best interests of its members and based on a full consideration and documented analysis of all the alternatives.

Considering the unique interests, concerns, and structure of credit unions as financial cooperatives, NCUA believes having a uniform federal standard may be useful to eliminate confusion resulting from differences in state law and may make it easier for credit union boards to fulfill their duties to members. NCUA solicits comment on whether it should establish, by regulation, a uniform federal standard of care for the transactions discussed in this ANPR, including specific suggestions on the standard that should be applied and if there should be a separate standard of care for transactions where the credit union member will no longer be a member of a credit union.

(ii) Insider Enrichment

NCUA's experience with FICU to MSB conversions suggests that in some cases credit union officials have pursued personal enrichment to the detriment of members, and NCUA has issued disclosure requirements to make members aware of the potential for this. NCUA is aware of conversion transactions where family members of credit union officials had joined the credit union in noticeable numbers prior to the conversion. These new members, who may be motivated to share in the profits from an eventual sale of stock, can also skew the member vote on conversion in some instances, especially in a close vote.

NCUA is considering specific regulatory requirements regarding the record date for members voting on a conversion proposal or other transaction to prevent this problem. NCUA is interested in comments on any aspect of this issue.

(b) Member Right to Equity.

NCUA is broadly considering the issue of how to deal with unequal net worth ratios among merging credit unions. This imbalance may result in unfair treatment of members of a credit union with a higher net worth. One method NCUA is considering to address this issue is to require a merger dividend. Another option could be to simply require the board of directors of a merging credit union to consider this issue as part of its due diligence, come to its own conclusion, and then justify that decision to its members.

Generally, federal credit unions may only return net worth to members in the form of dividends or a return of interest. 12 U.S.C. 1761b, 1763. Dividends must be based on an account balance as of a specific date or calculated over a period of time, whether a month, a quarter, or several years. 12 CFR 707.7(a), Appendix B (b). Often, credit unions undertake a calculation of a dividend going back for a period of years to permit a credit union to reward long-time members.

As noted, a merging credit union often has a higher net worth ratio than the continuing credit union. Also, a merging credit union may have other valuable characteristics for which the continuing credit union is willing to pay a premium, such as a complementary field of membership, thus increasing the net worth of the merging credit union in the context of the merger. In recent merger transactions, issues about merger dividends, also sometimes called a ''share adjustment'' and ''capital equalization,'' have arisen because of the nature of dividends in credit unions. NCUA's Office of General Counsel has addressed this issue and concluded that so-called ''per capita'' dividends (a flat amount paid to all members) are legally impermissible. OGC Op. 07–0410 (April 13, 2007), OGC Op. 97–0813 (September 29, 1997).

NCUA recognizes that requiring a merger dividend or other return of interest in certain circumstances could include the following advantages: (1) Rewarding the merging credit union's members; (2) equalizing an imbalance in net worth between the credit unions, although this could lessen the merging credit union's value to the continuing credit union; and (3) establishing a consistent approach (e.g., setting a record date or dividend period, identifying the kinds of accounts to receive the merger dividend, and so forth).

On the other hand, NCUA recognizes that not imposing a merger dividend requirement in this area allows credit unions the flexibility to decide for themselves whether to include a merger dividend as part of their due diligence and negotiations and leaves calculation of any dividend to the merging credit unions, essentially allowing market forces and the wishes of the members to determine if a dividend is appropriate.

The Board notes that, in a recent FICU to stock bank merger, the merging FICU returned to its members their equity interest in the credit union plus a premium, and the Board believes a return of equity can be a fair way to compensate members for the loss of the credit union they own. In other transactions, such as FICU to MSB conversions, NCUA has noticed that

many of the converting credit unions seek to convert at a time when their net worth is high. In some instances, the conversion appears timed to occur after a period where the credit union has purposefully acted to increase its net worth. NCUA believes that, in those instances where excess equity has been built up, fairness to members may dictate payment of some equity to members of a merging or converting credit union instead of transferring it to a new institution where the credit union members will have less control and have diluted or no ownership interests.

NCUA seeks comment on all possible options for dealing with this issue either as an amendment to current regulations or by issuing a new regulation.

(c) Communications to Members: Improper or Misleading Communications to Members.

NCUA fully supports members' rights to vote, in accordance with the Act, to make changes to their charter or account insurance but believes the linchpin in these transactions is that communications to members regarding the risks and benefits of the transactions must be accurate, sufficiently comprehensive, and not misleading.

NCUA encourages a FICU converting to an MSB to communicate freely with its members. There are no limits or restrictions on the number or kind of communications, provided the communications are accurate and not misleading and otherwise comply with NCUA's rules for written member communications. An example of an improper, conversion-related communication is one that implies NCUA endorses the conversion or conversion-related materials. In a recent conversion transaction, NCUA discovered a credit union made this kind of improper communication to its members. Although the instances in which this issue has been most prevalent are FICU to MSB conversions, it also could arise in any transaction in which a credit union sends materials to its members, such as federal to private insurance conversions and FICU to bank mergers.

NCUA is considering the need for a regulatory provision that specifically prohibits communications from credit union officials that state or imply that NCUA has endorsed the charter change transaction or accompanying credit union materials. NCUA is also considering requiring a credit union to include a statement in its materials to that effect, namely, that NCUA has not endorsed the transaction. NCUA requests comment in this regard.

In a charter change transaction, a credit union may communicate with its members about the kind and quality of services it will provide after completion of the transaction. For example, a credit union may close or move branch offices or modify other services available to members, such as ATM services. It may choose to do this as a cost savings measure, to achieve better compatibility with the continuing financial institution, or for other reasons. In the FICU to MSB conversion context, a converting credit union may be legally required to close or move a branch located in a federal building that has been provided by a federal agency on a rent-free and utility-free basis.[2] Under any of these circumstances, members may face the diminution of services or have less convenient access to them.

An issue in a past FICU to MSB conversion was whether the credit union would be legally required to close or move a number of its rent-free branches located in federal buildings. In that transaction, the credit union made what appeared to be potentially inaccurate statements about its ability to continue to operate the branches in the same locations following conversion to an MSB.

In another FICU to MSB conversion, the credit union made arguably misleading statements to members about its ability to continue to participate in a shared branch/shared service center network after conversion. In that transaction, the credit union told its members it was seeking approval to obtain post-conversion access to the network but failed to disclose that its request could be denied resulting in the members not having access to the network.

Members need full and accurate information about a conversion to cast an informed vote, including if the transaction will result in the credit union closing or moving branches, losing access to shared branch/shared service center networks, or modifying other services available to members. NCUA is considering requiring converting credit unions to research this aspect of a transaction and disclose their findings to members. Alternatively, NCUA could issue a more general rule to address the need for full and accurate information. NCUA solicits comments on all aspects of this issue.

Another communications issue, which NCUA's rules do not specifically address, is the so-called ''hostile takeover'' scenario, where an institution communicates directly with the members of a target credit union to encourage a merger or other consolidation.[3] In the credit union context, the term ''hostile takeover'' may be a misnomer because there is no saleable stock. Generally, a hostile takeover refers to a takeover of a target company against the wishes of the target's management and board of directors through the purchase of a controlling interest in the target's stock. Failed merger negotiations between two federal credit unions recently resulted in the potential acquiring credit union communicating directly with the potentially merging credit union's members in a fashion that was deemed hostile by the management of the target credit union.

NCUA could consider addressing third party merger communications by relying on current regulations or issuing a new regulation. As noted above, NCUA regulations do not directly address this situation, although part 740 prohibits a FICU from using any advertising or making any representation that is inaccurate or deceptive or in any way misrepresents its services, contracts, or financial condition. 12 CFR Part 740. The limitations of current regulations such as Part 708b and Part 740 are also, in part, that they only extend to insured credit unions. While a new regulation addressing mergers by a hostile institution may be more effective than the *status quo,* it would not be without its own limitations. Specifically, NCUA has no direct jurisdiction over communications by non-credit union institutions with credit union members. Alternatively, an approach could be to establish communication standards that would have to be met as a condition of NCUA approval of a merger.

NCUA seeks comment on this topic in general and regulatory approaches to

[2] The Act authorizes federal agencies to provide federal credit unions space in federal buildings on a rent-free and utility-free basis if certain conditions are met. 12 U.S.C. 1770. The key condition is that ''at least 95 percent of the membership of the credit union to be served by the allotment of space * * * is composed of persons who either are presently federal employees or were federal employees at the time of their admission into the credit union, and members of their families * * *'' See also 41 CFR 102–79.40. MSBs do not have any similar authority, although it appears that, under General Service Administration regulations, commercial entities, including banks, can lease space on a rental basis in publicly-accessible areas of federal buildings.

[3] Outside of the credit union context, where there is a tender offer for stock of a public company (the mechanism by which a hostile bidder solicits the stockholders of the target), it triggers the provisions of the Securities Exchange Act of 1934 and Securities and Exchange Commission (SEC) rules. These provisions address communications by third parties to stockholders and, as noted in OGC Op 07–0342 (April 6, 2007), those SEC provisions provide detailed requirements regarding disclosures, tender offers, and other matters. SEC oversight in this regard helps protect stockholders by ensuring they are informed with accurate information about the transaction.

protecting the interests of credit union members in this context.

(d) *Member Voting: Right to Request a Recount and Use of Interim Tallies.*

For the transactions that are the subject of this ANPR, NCUA is considering permitting any member of a credit union to request a formal recount of the vote in any situation in which the margin of decision is less than a certain percentage of the total votes cast. NCUA has not determined the appropriate margin for triggering recount rights and believes examining state law on political vote recounts in this regard could be appropriate and useful. NCUA is also considering a recount provision if sufficient evidence exists that the original vote tabulation is unreliable.

NCUA has reviewed the voting procedures of a number of close votes in recent years. In those cases, NCUA found irregularities and improprieties that called into question the reliability of the vote. Examples of problems found include the credit union or its agent: Failing to compile a proper membership list thereby excluding some members from the vote; improperly excluding members from voting for causing a loss to the credit union; allowing individuals not fully qualified as members to vote; improperly handling mail ballots returned as undeliverable; employing poor internal controls in securing, counting, and recording votes; using inconsistent procedures for determining if a vote cast was invalid; and being generally unable to reconcile the tally.

An unreliable voting process, whether intentionally manipulated or the result of incompetence, deprives members of their right to choose the fate of their credit union. NCUA requests comment on providing members the right to request a recount, under what circumstances and criteria a recount should be undertaken, and procedures for exercising such a right.

The use by management of an interim vote tally presently is primarily an issue in the FICU to MSB conversion context but could be an issue anytime management has an interest in influencing the outcome of a membership vote. NCUA has observed in the voting procedures in some FICU to MSB conversions that credit union management seek periodic running tallies from the election teller as to how many members have voted yes and no and which members have not voted. Credit union management has justified this practice by stating they only use the information for the purpose of encouraging members to vote. In investigations of recent conversions, NCUA has discovered that, in practice, some credit unions use this information only for encouraging votes in favor of the conversion. This violates both Part 708a and typical credit union policies aimed at neutrality in this regard. For example, some credit unions have pressured, required, or paid employees to encourage members to vote in favor of conversion even where the employees did not wish to do so or did not believe conversion was in the members' best interests. NCUA has learned that some credit unions have targeted likely ''yes'' voters in an attempt to sway the vote in favor of conversion. Other tactics include determining how a member voted in violation of the voting secrecy requirement, using periodic voting tallies to management's advantage and to the disadvantage of those members opposed to the conversion by not sharing that information with members, and improperly handling ballots for members instead of having members mail them directly to the independent election teller.

NCUA is considering: (1) Prohibiting credit union management from obtaining interim voting tallies from the election teller; (2) prohibiting credit union management from obtaining lists of members who have not voted from the election teller; (3) prohibiting credit union employees from soliciting members to vote; and (4) prohibiting credit union employees from completing member ballots or otherwise handling ballots. NCUA would appreciate comments on these means for ensuring the integrity of the voting process.

Request for Comments

The NCUA Board invites comment on any of the issues discussed above including: (1) If NCUA's regulations should be amended to address the issues discussed in this ANPR; (2) if NCUA should promulgate new regulations for credit union merger or conversion into a financial institution other than an MSB and, if so, what those regulations should cover; and (3) any other relevant issues NCUA has not considered.

By the National Credit Union Administration Board on January 24, 2008.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E8–1572 Filed 1–29–08; 8:45 am]

BILLING CODE 7535–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 384

[Docket No. 2007–1 CRB DTRA–BE]

Determination of Rates and Terms for Business Establishment Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations that set the rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period 2009–2013.

DATES: Comments and objections, if any, are due no later than February 29, 2008.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1995, Congress enacted the Digital Performance in Sound Recordings Act, Public Law No. 104–39, which created an exclusive right for copyright owners

of sound recordings, subject to certain limitations, to perform publicly sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of the section 114 statutory license was expanded in 1998 upon passage of the Digital Millennium Copyright Act of 1998 (''DMCA''), Pub. L. No. 105–304, in order to allow for the public performance of a sound recording when made in accordance with the terms and rates of the statutory license, 17 U.S.C. 114(d), by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission. In addition to expanding the section 114 license, the DMCA also created a statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for a later transmission. *Id.* The license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than the one phonorecord permitted under the exemption set forth in section 112(a). 17 U.S.C. 112(e).

The rates and terms for the making of ephemeral recordings of sound recordings by a business establishment service have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Parts 261 and 262. However, the Copyright Royalty and Distribution Reform Act of 2004 (''CRDRA''), Public Law No. 108–419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges (''Judges''). 17 U.S.C. 801(b)(1). The current rates for this license set forth in 37 CFR Part 262 will remain in effect until December 31, 2008. *See* Section 6(b)(3) of the CRDRA (rates and terms for section 112(e) in effect on December 31, 2004, ''shall remain in effect until the later of the first applicable effective date for successor terms and rates specified in [17 U.S.C.] section 804(b)(2)''); 17 U.S.C. 804(b)(2)(successor rates to become effective on January 1, 2009).

On January 5, 2007, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(II), the Copyright Royalty Judges published a notice in the **Federal Register** announcing commencement of the proceeding to determine rates and terms of royalty payments for the making of ephemeral recordings by business establishment services under section 112(e) and requesting interested parties to submit their petitions to participate. 72 FR 584 (January 5, 2007). Petitions to participate in this proceeding were received from Music Choice, Royalty Logic, Inc. (''RLI''), Muzak, LLC, SoundExchange, Inc., Sirius Satellite Radio, Inc. (''Sirius''), and XM Satellite Radio (''XM''). The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than October 31, 2007.

On October 31, 2007, the Judges received a notice of settlement entered into by all parties to the proceeding, with the exception of Muzak, which had withdrawn from the proceeding on October 5, 2007, and RLI. Accompanying the notice of settlement was a motion by SoundExchange requesting that the Judges adopt the proposed rates and terms. SoundExchange also filed its written direct statement, given that RLI had not agreed to the proposed settlement. RLI did not file a written direct statement or an opposition to SoundExchange's motion.

Prior to a ruling on the motion to publish the proposed rates and terms for notice and comment, SoundExchange filed a motion to dismiss RLI from this proceeding for failure to file a written direct statement and renewed its request that the Judges issue a notice of proposed rulemaking seeking comment on the proposed rates and terms. *See* Motion filed November 28, 2007. The Judges received no opposition to this motion from RLI. Consequently, on December 6, 2007, the Judges granted SoundExchange's motion and dismissed RLI from this proceeding. *See*, Order Granting SoundExchange's Motion to Dismiss Royalty Logic, Inc., in Docket No. 2007–1 CRB DTRA–BE (December 6, 2007).

Since all remaining parties to this proceeding have agreed to the settlement, the Judges are publishing the proposed rates and terms for notice and comment pursuant to their authority under 17 U.S.C. 801(b)(7)(A).

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Rates and terms adopted pursuant to this provision are binding on all copyright owners of sound recordings and business establishment services making an ephemeral recording of a sound recording for the period 2009–2013.

As discussed above, the public may comment and object to any or all of the proposed regulations contained in this notice of proposed rulemaking. Those who do comment and object, however, must be prepared to participate in further proceedings in this docket to set rates and terms for the making of ephemeral recordings by business establishment services.

List of Subjects in 37 CFR Part 384

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to add part 384 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES

Sec.
384.1 General.
384.2 Definitions.
384.3 Royalty fees for Ephemeral Recordings.
384.4 Terms for making payment of royalty fees and statements of account.
384.5 Confidential information.
384.6 Verification of royalty payments.
384.7 Verification of royalty distributions.
384.8 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 801(b)(1).

§ 384.1 General.

(a) *Scope.* This part 384 establishes rates and terms of royalty payments for

the making of Ephemeral Recordings by a Business Establishment Service, as defined in § 384.2(a), in accordance with the provisions of 17 U.S.C. 112(e), during the period 2009–2013 (the ''License Period'').

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 shall comply with the requirements of that section, the rates and terms of this part and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services shall apply in lieu of the rates and terms of this part to the making of Ephemeral Recordings within the scope of such agreements.

§ 384.2 Definitions.

For purposes of this part, the following definitions shall apply:

Business Establishment Service means a service making transmissions of sound recordings under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv).

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the License Period, the Collective is SoundExchange, Inc.

Copyright Owner is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory license under 17 U.S.C. 112(e).

Ephemeral Recording is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), and subject to the limitations specified in 17 U.S.C. 112(e).

Licensee is a Business Establishment Service that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings.

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a certified public accountant.

§ 384.3 Royalty fees for Ephemeral Recordings.

(a) *Basic royalty rate.* For the making of any number of Ephemeral Recordings in the operation of a service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), a Licensee shall pay 10% of such Licensee's ''Gross Proceeds'' derived from the use in such service of musical programs that are attributable to copyrighted recordings. ''Gross Proceeds'' as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(b) *Minimum fee.* Each Licensee shall pay a minimum fee of $10,000 for each calendar year in which it makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year. These minimum fees shall be nonrefundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(c) *Other royalty rates and terms.* This part 384 does not apply to persons or entities other than Licensees, or to Licensees to the extent that they make other types of ephemeral recordings beyond those set forth in paragraph (a) of this section. For ephemeral recordings other than those governed by paragraph (a) of this section, persons making such ephemeral recordings must pay royalties, to the extent (if at all) applicable, under 17 U.S.C. 112(e) or as prescribed by other law, regulation or agreement.

§ 384.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to Collective.* A Licensee shall make the royalty payments due under § 384.3 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under § 384.3 and to distribute such royalty payments to each Copyright Owner, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners entitled to receive royalties under 17 U.S.C. 112(e) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments.* A Licensee shall make any payments due under § 384.3(a) by the 45th day after the end of each month for that month, except that if the Copyright Royalty Judges issue their final determination adopting these rates and terms after the commencement of the License Period, then payments due under § 384.3(a) for the period from the beginning of the License Period through the last day of the month in which the Copyright Royalty Judges issue their final determination adopting these rates and terms shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any payment due under § 384.3(b) by January 31 of the applicable calendar year, except that:

(1) If the Copyright Royalty Judges issue their final determination adopting these rates and terms after the commencement of the License Period, then payment due under § 384.3(b) for 2009 shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Copyright Royalty Judges and published in the **Federal Register**; and

(2) Payment for a Licensee that has not previously made Ephemeral Recordings pursuant to the license under 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Collective after the due date. Late fees shall accrue from the due date until payment is received by the Collective.

(f) *Statements of account.* For any part of the period beginning on the date the Copyright Royalty Judges issue their final determination adopting these rates and terms and ending on December 31, 2013, during which a Licensee operates a Business Establishment Service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Collective a statement of account containing the information set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Collective. If a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall contain only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.* The Collective shall distribute royalty payments directly to Copyright Owners; Provided that the Collective shall only be responsible for making distributions to those Copyright Owners who provide the Collective with such information as is necessary to identify and pay the correct recipient of such payments. The Collective shall distribute royalty payments on a basis that values all Ephemeral Recordings by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing reports of use of sound recordings by Licensees; Provided, however, that Copyright Owners that authorize the Collective may agree with the Collective to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Copyright Owners entitled to receive payments may agree with the Collective upon payment protocols to be used by the Collective that provide for alternative arrangements for the payment of royalties.

(h) *Permitted deductions.* The Collective may deduct from the payments made by Licensees under § 384.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) may agree to permit the Collective to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Collective relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

§ 384.5 Confidential Information.

(a) *Definition.* For purposes of this part, ''Confidential Information'' shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The Collective shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective or any other person or entity authorized to have access to Confidential Information pursuant to paragraph (d) of this section use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) Board members of the Collective, and members of Collective committees whose primary functions are directly related to royalty collection and distribution, subject to an appropriate confidentiality agreement and for the sole purpose of performing their duties as board or committee members of the Collective, as applicable, provided that the sole confidential information that may be shared pursuant to this paragraph (d)(2) is confidential information contained in monthly statements of accounts provided pursuant to § 384.4(f) that accompany royalty payments;

(3) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to the verification of a Licensee's royalty payments pursuant to § 384.6 or on behalf of a Copyright Owner with respect to the verification of royalty distributions pursuant to § 384.7;

(4) Copyright owners whose works have been used under the statutory license set forth in 17 U.S.C. 112(e) by the Licensee whose Confidential Information is being supplied, or agents thereof, subject to an appropriate confidentiality agreement, provided that the sole confidential information that may be shared pursuant to paragraph (d)(4) of this section are monthly statements of account provided pursuant to § 384.4(f) that accompany royalty payments;

(5) In connection with future proceedings under 17 U.S.C. 112(e) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts; and

(6) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 384.6 or § 384.7, and under an appropriate confidentiality agreement or protective

order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) *Safeguarding of Confidential Information.* The Collective and any person or entity identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Collective, person, or entity.

§ 384.6 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Judges a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 384.7 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner may verify the royalty distributions made by the Collective; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners.

(d) *Acquisition and retention of records.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Copyright Owner requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 384.8 Unclaimed funds.

If a Collective is unable to identify or locate a Copyright Owner who is entitled to receive a royalty payment under this part, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of payment. No claim to such payment shall be valid after the expiration of the 3-year period. After the expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: January 24, 2008.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E8–1680 Filed 1–29–08; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0183; FRL–8514–6]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Revisions to Emission Reduction Market System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In 1997, Illinois adopted and submitted rules establishing a cap and trade program regulating emissions of volatile organic compounds (VOC). The program was designed to address VOC sources in the Chicago area with potential to emit at least 25 tons per year. Then, in 2004, EPA replaced the ''Severe'' classification for the Chicago ozone nonattainment area with a ''Moderate'' classification, which according to EPA guidance revised the applicable definition of major sources from 25 tons per year to 100 tons per year. Illinois adopted rule revisions, submitted to EPA on January 10, 2007, to require that sources with potential to emit at least 25 tons per year remain in the program. Illinois' rule revisions also address other ramifications of the ''reclassification.'' EPA is approving these rule revisions.

DATES: Comments must be received on or before February 29, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0183, by one of the following methods:

1. *http://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, 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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: December 18, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E8–805 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–R08–OW–2007–0153; FRL–8522–5]

Fort Peck Assiniboine and Sioux Tribes in Montana; Underground Injection Control (UIC) Program; Proposed Primacy Approval and Minor Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an application from the Fort Peck Assiniboine and Sioux Tribes in Montana under Section 1425 of the Safe Drinking Water Act (SDWA) to implement an underground injection control (UIC) program for Class II (oil and gas-related) injection wells. EPA is also proposing minor revisions to regulations that are not specific to the Fort Peck Tribes' application. EPA requests public comment and has scheduled a public hearing on this application, the proposed rule, and EPA's supporting documentation. EPA will consider comments received at the public hearing and during the public comment period before taking final action.

DATES: Comments must be received on or before February 29, 2008. The public hearing will be held at the Fort Peck Community College Auditorium located at 605 Indian Avenue in Poplar, Montana at 7 p.m. on Monday, February 25, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OW–2007–0153, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Environmental Protection Agency, 8P–W–GW, 1595 Wynkoop Street, Denver, CO 80202–1129.
- *Hand Delivery:* Deliver your comments to Douglas Minter, Environmental Protection Agency, 8P–W–GW, 1595 Wynkoop Street, Denver, CO 80202–1129, Attention Docket ID No. EPA–R08–OW–2007–0153. Such deliveries are only accepted during the Docket's normal hours of operation: Monday through Friday, between 8 a.m. and 4 p.m., excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OW–2007–0153. 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 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 EPA's Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy in the Ground Water Program, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129. This Docket Facility is open Monday through Friday, between 8 a.m. and 4 p.m., excluding legal holidays. The Docket telephone number is 303–312–6079.

FOR FURTHER INFORMATION CONTACT: Douglas Minter, U.S. Environmental Protection Agency, 8P–W–GW, 1595 Wynkoop Street, Denver, CO 80202–1129. Phone number: 303–312–6079. E-mail address: *minter.douglas@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Category	Examples of potentially regulated entities	North American Industry Classification System
State, Local, and Tribal Governments.	State, local, and Tribal governments that own and operate Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	924110
Industry	Private owners and operators of Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	221310
Municipalities	Municipal owners and operators of Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. Submitting CBI

Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Introduction

The Fort Peck Assiniboine and Sioux Tribes of Montana (the ''Fort Peck Tribes'') have applied to EPA under Sections 1422 and 1425 of the Safe Drinking Water Act (''SDWA''), 42 U.S.C. 300h–1 and 300h–4, for approval of the Fort Peck Tribes' program regulating Class II (oil and gas-related) underground injection wells on the Fort Peck Indian Reservation in Montana. Because the Fort Peck Tribes have sought primacy only for the Class II UIC program, EPA proposes to approve their program under SDWA section 1425. EPA's proposal is based on a careful and extensive legal and technical review of the Tribes' application. As a result of this review, EPA has determined that the Fort Peck Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers. EPA has also determined that the Tribes' program meets all applicable requirements for approval under SDWA section 1425, and that they are capable of administering an effective UIC Class II program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations.

III. Legal Authorities

These regulations are being proposed under authority of sections 1422, 1425, 1450 and 1451 of the Safe Drinking Water Act, 42 U.S.C. 300h–1, 300h–4, 300j–9 and 300j–11.

A. Requirements for State UIC Programs

Section 1421 of the SDWA requires the Administrator of EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger underground sources of drinking water (''USDWs''). Sections 1422 and 1425 of the SDWA establish requirements for States seeking EPA approval of State UIC programs.

For States that seek approval for UIC programs under Section 1422 of the SDWA, EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements. This regulation has been codified in the *Code of Federal Regulations* (40 CFR part 145). It includes requirements for State permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

For States that seek approval under Section 1425 of the SDWA, which provides an alternative set of requirements for Class II programs, EPA has published interim guidance in the **Federal Register** (46 FR 27333–27339, May 19, 1981), describing how States may apply for program approval under Section 1425 and setting forth the criteria EPA will use in approving or disapproving applications under this provision. By demonstrating that its program represents an effective program to prevent endangerment of USDWs and meets the more general statutory requirements of Section 1421(b)(1)(A) through (D), a State may obtain primacy for a Class II UIC program.

B. Tribal UIC Programs

Section 1451 of the SDWA and 40 CFR 145.52 authorize the Administrator of EPA to treat an Indian Tribe in the same manner as a State for purposes of the UIC program if the Tribe demonstrates that: (1) It is recognized by the Secretary of the Interior; (2) it has a governing body carrying out substantial governmental duties and powers over a defined area; (3) the functions to be exercised by the Tribe are within an area of the Tribal government's jurisdiction; and (4) the Tribe is reasonably expected to be capable, in the EPA Administrator's judgment, of implementing a program consistent with the terms and purposes of the SDWA and applicable regulations.

Under Section 1451 of the SDWA and 40 CFR part 145, Subpart E, EPA is authorized to treat Indian Tribes similarly to States and may approve Tribal UIC programs. Tribes may apply for primacy under either or both Sections 1422 and 1425 of the SDWA, and the references in 40 CFR part 145 and EPA's May 19, 1981 interim guidance to ''State'' programs are also construed to include eligible ''Tribal'' programs. (See 40 CFR 145.1(h), which provides that all requirements of parts 124, 144, 145, and 146 that apply to States with UIC primacy also apply to Indian Tribes except where specifically noted.)

IV. Fort Peck Tribes' Application

On December 18, 1995, the Fort Peck Tribes submitted an initial application for primacy for all Class II wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation (the ''Reservation''). On April 22, 1996, EPA determined that the Fort Peck Tribes' application was complete. On September 12, 1997, EPA published a notice in the **Federal Register** (62 FR 48086–48087) requesting initial comments and scheduling a public hearing on the application. A similar public notice was also published in newspapers in Great Falls, Billings, and Poplar, Montana. A public hearing was held on October 16, 1997, in Poplar, Montana. On February 12, 1998, EPA provided a set of formal comments to the Fort Peck Tribes for incorporation into their application. In response, the Fort Peck Tribes submitted a revised application on July 27, 1999, stating that the Fort Peck Tribal Executive Board had formally adopted underground injection control provisions in the Tribal Code and requesting primacy under both Sections 1422 and 1425 of the SDWA.

V. EPA's Proposed Action

EPA is proposing to approve the Fort Peck Tribes' Class II UIC program. Under EPA's proposed approval of the Fort Peck Tribes' application, the Fort Peck Tribes would assume primary enforcement authority (except for the authority that EPA would retain to take criminal actions: (1) Against non-Indians; and (2) against Indians where the potential fine required is greater than $5,000 or where the penalty would require imprisonment for more than one year, in accordance with 25 U.S.C. 1302) for regulating all Class II injection activities on all lands within the exterior boundaries of the Reservation.

EPA's proposed Decision Document in support of EPA's proposed approval is part of the public record and is now available for public review and comment. The proposed Decision Document includes findings that the Fort Peck Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers, and that the Fort Peck Tribes' program meets all applicable requirements for approval under section 1425 of the SDWA.

If approved as proposed, the Fort Peck Tribes would administer and enforce their Class II program with respect to all Class II injection wells on the Reservation. Upon approving the Fort Peck Tribes' Class II program, EPA would amend 40 CFR part 147 as proposed in this notice to revise the reference to the EPA-administered program for Class II injection wells on the Reservation to refer to the Fort Peck Tribes' Class II program. EPA would continue to administer its UIC program for Class I, III, IV, and V wells on the Reservation. (Although the Tribal Code prohibits injection in Class I, III, and IV wells, these prohibitions are separate from the Class II program that EPA proposes to approve in this action.) As noted above, EPA would also retain Class II-related criminal enforcement authority against non-Indians on the Reservation, and against Indians on the Reservation where the potential fine required is greater than $5,000 or where the penalty would require imprisonment for more than one year.

EPA would oversee the Fort Peck Tribes' administration of the Class II program on the Reservation. Part of EPA's oversight responsibility would include requiring quarterly reports of non-compliance and annual UIC program performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the Fort Peck Tribes would require, among other things, that EPA review all permits associated with aquifer exemptions not previously approved by EPA.

The provisions of the Tribal Code that contain standards, requirements, and procedures applicable to owners or operators of Class II wells on the Reservation would be incorporated by reference into 40 CFR part 147. Any provisions incorporated by reference, as well as all Tribal permit conditions or permit denials issued pursuant to such provisions, would be enforceable by EPA pursuant to section 1423 of the SDWA and 40 CFR 147.1(e).

Although the Program Description submitted with the Fort Peck Tribes' application indicates that the Fort Peck Tribes requested an aquifer exemption for the Dakota Sand formation, the Fort Peck Tribes have decided not to pursue this exemption at this time.

VI. Public Comments Received to Date

In connection with the public comment period and hearing that the Fort Peck Tribes held on September 20, 1995, members of the public asked questions about or commented on several aspects of the proposed Tribal program. The Fort Peck Tribes' written and verbal answers to these questions and comments are given in detail in the Fort Peck Tribes' application, which, along with the other contents of the application and related documentation, are available for public review as described in this proposed rule. The general areas of the comments and summaries of the Fort Peck Tribes' answers are presented briefly below. EPA concurs with the answers that the Fort Peck Tribes have provided.

In addition, during EPA's 1997 public comment period on the Fort Peck Tribes' complete application, EPA received comments on the Fort Peck Tribes' proposed program, which are incorporated below.

A. Transition From EPA to Tribal Permits

Well operators asked various questions about how the Tribal permit program would be administered. In response to questions about Tribal re-permitting for existing wells, the Fort Peck Tribes stated that all EPA-issued permits remain in full effect and Tribal permits will be issued upon review of the EPA permit. The Fort Peck Tribes will charge a fee of $200 per year per well. If the Fort Peck Tribes deny an application for a permit, permit renewal, or permit modification, operators would not be able to obtain permits, permit renewals, or permit modifications from EPA. The Tribal program will apply on all land within the exterior boundaries of the Reservation, including land owned in fee by non-members.

B. Requirement To Obtain a Permit

An operator recommended that some wells should be authorized by rule to operate until a permit application is either granted or denied. The Fort Peck Tribes replied that they would not change their regulation or the need to obtain a permit before operating wells. EPA takes the position that States and Tribes are free to promulgate requirements more stringent than the minimum Federal requirements for UIC primacy, and the SDWA does not prevent the Fort Peck Tribes from requiring permits for all wells.

C. Reporting Requirements

Some commenters suggested reducing the reporting requirements by, for example, eliminating the requirement to notify the Fort Peck Tribes within 24 hours of any well workover, suggesting alternative notification requirements, eliminating the monthly reporting requirement, and using monthly rather than daily data. The Fort Peck Tribes elected to retain their reporting requirements, stating, for example, that daily monitoring would reduce the potential to endanger underground sources of drinking water and that monthly reporting makes compliance easier to achieve.

A comment addressed to EPA stated that the Fort Peck Tribes' proposed requirement for monthly and annual injection fluid reports may be too stringent, recommending quarterly reporting instead. In response, EPA notes that section 302(b)(11) of the Tribal Code incorporates the requirements of 40 CFR 144.51, 144.54 and 146.23(b) for reporting and monitoring, with certain additional monitoring requirements, which EPA finds to be reasonable in helping ensure that USDWs are being protected. EPA has determined more frequent monitoring and reporting improves the operator's and the Tribes' ability to promptly identify problems and reduce the potential for violations.

D. Operating Requirements

A commenter questioned the need for the requirement to maintain pressure gauges on the tubing and annulus. The Fort Peck Tribes responded that pressure gauges allowed for agency field inspectors to observe instantaneous wellhead pressures, that several operators on the Reservation already had such pressure gauges, and that this requirement had been developed from protocols used by the State of North Dakota.

E. Financial Responsibility Requirements

A commenter suggested that a company's size and financial stability should be considered in deciding what type of mechanism, if any, to require for demonstrating financial integrity. The Fort Peck Tribes responded that requiring a surety bond is an easy way to enforce financial responsibility, and that a financially sound company should have no difficulty securing one. The Tribes also responded that part of a company's capability to maintain and operate an injection well safely is demonstrated in securing a surety bond. EPA has determined that requiring a surety bond prior to well operation is reasonable since it eliminates the need to require annual financial statements from a company. Review of annual financial statements creates an ongoing compliance monitoring workload and creates the potential for associated violations for failure to submit such documentation.

F. Mechanical Integrity Requirements

Two commenters suggested that mechanical integrity tests should be run at pressures no higher than 500 psi (according to one commenter) or 1,000 psi (according to another commenter), instead of up to the ''maximum permitted injection pressure.'' In response, the Fort Peck Tribes said that they would require mechanical integrity tests to be run at the higher of: (1) 300 psi above the average operational injection pressure; or (2) the highest operational injection pressure recorded during the past year. The Tribes also stated that the testing pressure required would never be higher than the ''maximum permitted injection pressure.'' The Tribes recognized that a ''maximum permitted injection pressure'' much higher than actual operating pressures can be requested by operators in order to avoid the need for subsequent permit modifications. EPA has determined the Tribes' requirement will help ensure that mechanical integrity is maintained up to the ''maximum permitted injection pressure,'' and that operators should keep this requirement in mind when requesting such pressure limits in their permits.

A commenter suggested requiring cement bond logs only in special cases. The Fort Peck Tribes replied that this was an important tool in determining external mechanical integrity and indicated that some States require cement bond logs as a demonstration of mechanical integrity.

G. Conflict of Interest

Some commenters were concerned that the Fort Peck Tribes would not only regulate injection wells themselves but also own or operate them. They made various suggestions to avoid what they perceived as a conflict, such as having the State of Montana regulate all Class II wells in Montana, including those on the Reservation, having EPA rather than the Tribal court handle appeals for non-Indian operators, and having some mediation process for disputes between the Fort Peck Tribes and permittees.

In response, the Fort Peck Tribes explained that the Tribal Office of Environmental Protection, which would administer and enforce the Fort Peck Tribes' regulatory Class II program, is a regulatory body within the Tribal government separate from the entities within the Fort Peck Tribes that own or operate injection wells. The Tribal program would be no different from a State UIC program in which one State department regulates injection activities but another State department maintains mineral holdings. In addition, the Fort Peck Tribes indicated that all surface and royalty agreements relating to mineral leasing and development on the Reservation are required to be approved by the Bureau of Indian Affairs after negotiation by the Fort Peck Tribes. In this sense, the Tribal program would be no different from an approved State UIC program in which appeals would be heard in State court.

The Fort Peck Tribes also cited legal authority in support of their civil jurisdiction over non-Indians on Reservation land, concluding that providing appeals to be heard by a Federal Agency instead of the Tribal courts would be inconsistent with the Fort Peck Tribes' governmental authority.

H. Permitting Fee

Some comments addressed to EPA questioned the annual $200 permitting fees. In response, EPA notes that this fee is intended to help the Fort Peck Tribes cover a portion of the anticipated expense associated with administering their Class II UIC program. The Fort Peck Tribes have estimated annual implementation costs of approximately $55,000, which is considerably more than the amount likely covered by EPA's UIC grant funds to the Tribes. Other UIC programs, such as the program administered by the Montana Board of Oil and Gas Conservation, impose a similar fee on Class II well operators. Although the Fort Peck Tribes expect that the present injection well fee will help cover program administration costs, they will retain the flexibility to raise or lower this fee if appropriate.

VII. Other Changes to UIC Regulations

This proposed rule includes some minor revisions to 40 CFR 147.1 that are not specific to the Fort Peck Tribes. As a convenience to the reader, EPA has included the full text of 40 CFR 147.1 in this proposal. However, this proposal solicits comments only on the specific amendments proposed, which are: (1) To revise 40 CFR 147.1 to include specific references to Tribal programs in light of the fact that EPA is proposing in this notice to approve its first Tribal UIC program; and (2) to reserve 40 CFR 147.1(f), because it duplicates 40 CFR 9.1. It is important and necessary that EPA's regulations codifying approved UIC programs account for the fact that such programs may be run by Tribes.

VIII. Generalized Findings

As described earlier, EPA's proposed decision to approve the Fort Peck Tribes to implement a Class II UIC program includes findings that the Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers. With regard to authority over nonmember activities on nonmember-owned fee lands, EPA is proposing to find that the Tribes have demonstrated such authority under the test established by the United States Supreme Court in *Montana* v. *United States,* 450 U.S. 544 (1981) (*Montana* test). Under the Montana test, the Supreme Court held that absent a Federal grant of authority, Tribes generally lack inherent jurisdiction over the activities of nonmembers on nonmember-owned fee lands. However, the Court also found that Indian Tribes retain inherent sovereign power to exercise civil jurisdiction over nonmember activities on nonmember-owned fee lands within the reservation where: (1) Nonmembers enter into ''consensual relationships with the Tribe or its members, through commercial dealing, contracts, leases, or other arrangements'' or (2) ''* * * [nonmember] conduct threatens or has some direct effect on the political integrity, the economic security or the health or welfare of the Tribe.'' *Id.* at 565–66. In analyzing Tribal assertions of inherent authority over nonmember activities on Indian reservations, the Supreme Court has reiterated that the *Montana* test remains the relevant standard. See e.g., *Strate* v. *A–1 Contractors*, 520 U.S. 438, 445 (1997) (describing *Montana* as ''the pathmarking case concerning Tribal civil authority over nonmembers''); *Nevada* v. *Hicks,* 533 U.S. 353, 358 (2001) (''Indian Tribes'' regulatory authority over nonmembers is governed by the principles set forth in [*Montana*]'').

As part of the public record available for review and comment, EPA's proposed Decision Document, and Appendix A thereto, sets forth the Agency's specific factual findings relating to the Tribes' demonstration of inherent authority over the UIC Class II activities of nonmembers under the *Montana* test and, in particular, the potential for direct effects of nonmember UIC activities on the Tribes' health, welfare, political integrity, and economic security. In addition, EPA is proposing the general findings set forth below regarding the effects of underground injection activities. These general findings provide a foundation for EPA's analysis of the Tribes' assertion of authority under the *Montana* test and, in effect, supplement the Agency's factual findings specific to the Tribes and to the Fort Peck Reservation.

A. General Finding on Political, Economic and Human Health and Welfare Impacts

In enacting part C of the SDWA, Congress generally recognized that if left unregulated or improperly managed, underground injection wells have the potential to cause serious and substantial, harmful impacts on political and economic interests and human health and welfare. Specifically, as stated in legislative history of the SDWA:

> [U]nderground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground injection of sewage, sludge, and other wastes. Industries are injecting chemicals, byproducts, and wastes. Energy production companies are using injection techniques to increase production and to dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all of the foregoing situations insofar as they may endanger underground sources of drinking water (USDWs).[1]

In response to the problem of the substantial risks inherent in underground injection activities, Congress enacted section 1421 of the SDWA '' to assure that drinking water sources, actual and potential, are not rendered unfit for such use by underground injection of contaminants.'' [2]

In enacting part C of the SDWA, Congress more specifically found that mismanaged underground injection activities could have serious and substantial, harmful impacts on the public's economic and political interests, as well as its health and welfare. For example, Congress found that:

[1] *See* H.R. Report No. 93–1185, 93rd Congress, 2nd Session (1974), *reprinted in* ''A Legislative History of the Safe Drinking Water Act,'' February, 1982, by the Government Printing Office, Serial No. 97–9, page 561.

[2] Ibid., page 560.

Federal air and water pollution control legislation have increased the pressure to dispose of waste materials on or below land, frequently in ways, such as subsurface injection, which endanger drinking water quality. Moreover, the national economy may be expected to be harmed by unhealthy drinking water and the illnesses which may result therefrom.[3]

Congress specifically noted several economic and political consequences that can result from the degradation of good quality drinking water supplies, including: (1) Inhibition of interstate tourism and travel; (2) loss of economic productivity because of absence from employment due to illness; (3) limited ability of a town or region to attract workers; and (4) impaired economic growth of a town or region, and, ultimately, the nation.[4]

As the Agency charged by Congress with implementing part C of the SDWA and assuring implementation of effective UIC programs throughout the United States, EPA agrees with these Congressional findings. EPA finds that underground injection activities, if not effectively regulated, can have serious and substantial, harmful impacts on human health, welfare, economic, and political interests. In making this finding, EPA recognizes that: (1) The underground injection activities, currently regulated as five distinct classes of injection wells as defined in the UIC regulations, typically emplace a variety of potentially harmful organic and inorganic contaminants (e.g., brines and hazardous wastes) into the ground; (2) these injected contaminants have the potential to enter USDWs through a variety of migratory pathways if injection wells are not properly managed; and (3) once present in USDWs, these injected contaminants can have harmful impacts on human health and welfare, and political and economic interests, that are both serious and substantial.

In 1980, EPA issued a document entitled, ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' which provides the rationale for the Agency in proposing specific regulatory controls for a variety of underground injection activities. These controls, or technical requirements (e.g., testing to ensure the mechanical integrity of an injection well), were promulgated to prevent release of pollutants through the six primary ''pathways of contamination,'' or well-established and recognized ''ways in which fluids can escape the well or injection horizon and enter USDWs.'' [5] EPA has found that USDW contamination from one or more of these pathways can occur from underground injection activity of all classes (I–V) of injection wells.

The six pathways are:

1. Migration of fluids through a leak in the casing of an injection well and directly into a USDW;
2. Vertical migration of fluids through improperly abandoned and improperly completed wells in the vicinity of injection well operations;
3. Direct injection of fluids into or above a USDW;
4. Upward migration of fluids through the annulus, which is the space located between the injection well's casing and the well bore. This can occur if there is sufficient injection pressure to push such fluid into an overlying USDW;
5. Migration of fluids from an injection zone through the confining strata over or underlying a USDW. This can occur if there is sufficient injection pressure to push fluid through a stratum, which is either fractured or permeable, and into the adjacent USDW; and
6. Lateral migration of fluids from within an injection zone into a portion of that stratum considered to be a USDW. In this scenario, there may be no impermeable layer or other barrier to prevent migration of such fluids.[6]

Moreover, consistent with EPA's findings, the U.S. Department of the Interior has recognized the ability of injection wells to contaminate surface waters that are hydrogeologically connected to contaminated ground water.[7] Such contamination of surface waters could further cause negative impacts on human health and welfare, and economic and political interests.

In sum, EPA finds that, given the common presence of contaminants in injected fluids, serious and substantial contamination of ground water and surface water resources can result from improperly regulated underground injection activities. Moreover, such contamination has the potential to cause correspondingly serious and substantial harm to human health and welfare, and political and economic interests. EPA also has determined that Congress reached a similar finding when it enacted part C of the SDWA, directing EPA to establish UIC programs to mitigate and prevent such harm through the proper regulation of underground injection activities.

B. General Finding on the Necessity of Protecting Safe Drinking Water Supplies as a Necessary Incidence of Self-Government

Consistent with the finding that improperly managed underground injection activities can have direct harmful effects on human health and welfare, and economic and political interests that are serious and substantial, EPA has determined that proper management of such activities serves the purpose of protecting these public health and welfare, and political and economic interests, which is a core governmental function whose exercise is integral to, and a necessary aspect of, self-government. *See* 56 FR 64876, 64879 (December 12, 1991); *Montana* v. *EPA,* 137 F.3d 1135, 1140–41 (9th Cir. 1998). EPA has determined that Congress reached this conclusion in enacting the SDWA and that Congress considered enactment of the SDWA to be a necessary act of self-government, serving to protect essential and vital public interests by ensuring that the public's essential drinking water supplies are safe from contamination, including contamination caused by underground injection activities.

The above findings regarding the effects on public health and welfare, and economic and political interests are generally true for human beings and their communities, wherever they may be located. EPA has determined that the above findings that underground injection regulation is an integral and necessary incident of self-government is generally true for any Federal, State and/or Tribal government having responsibility for protecting public health and welfare. With specific relevance to Tribes, EPA has long noted the relationship between proper environmental management within Indian country and Tribal self-government and self-sufficiency. Moreover, in the 1984 *EPA Policy for the Administration of Environmental Programs on Indian Reservations,* EPA determined that as part of the ''principle of Indian self-government,'' Tribal governments are the ''appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace,'' consistent with Agency standards and regulations. (*EPA Policy for the Administration of Environmental Programs on Indian Reservations,*

[3] Ibid., page 540.

[4] Ibid., page 540.

[5] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA (May, 1980), page 7.

[6] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA, (May, 1980), pp. 7–17.

[7] *See* Federal Water Quality Administration's Order COM 5040.10 (1970), *as referred to in* H.R. Report No. 93–1185, 561.

Paragraph 2, November 8, 1984). EPA interprets section 1451 of the SDWA, in providing for the approval of Tribal programs under the Act, as authorizing eligible Tribes to assume a primary role in protecting drinking water sources. These general findings provide a backdrop for EPA's legal analysis of the Fort Peck Tribes' Application and, in effect, supplement EPA's factual findings specific to the Fort Peck Tribes and to the Fort Peck Reservation, contained in the proposed Decision Document and Appendix A thereto, and the Fort Peck Tribes' similar conclusions, contained in their Application, pertaining specifically to the Fort Peck Tribes and the Fort Peck Reservation.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

The Class II injection wells the Tribes propose to regulate are currently subject to EPA's regulatory program as described in 40 CFR part 147, subpart BB. Additionally, the Tribes' proposed program is, in many respects, identical to, and in some respects, more stringent than, EPA's program.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act because this proposed rule would not impose any new Federal reporting or record-keeping requirements. Reporting or record-keeping requirements would be based on the Tribal Code, and the Fort Peck Tribes are not subject to the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in crude petroleum and natural gas extraction as defined by NAICS Code 211111 according to Small Business Administration size standards for entities employing fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are owners or operators of Class II wells, employing fewer than 500 employees. We have determined that less than 7 small entities will experience an impact of greater than 1% of annual revenues. These entities would be subject to requirements substantially similar to the existing requirements of EPA's program under 40 CFR 147.1351(a) and would not incur significant new costs as a result of this proposed rule. For example, the Tribes propose to charge an annual $200 permitting fee for each Class II well on the Reservation. While this will impose a new cost on a small entity, this cost will not have a significant economic impact on a substantial number of small entities due to the few small entities owning/operating the 23 Class II wells on the Reservation. Moreover, in approving State UIC programs imposing similar fees on a greater number of small entities, EPA determined that these new costs did not have a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The Fort Peck Tribes' program is more stringent than the existing Federal program in certain respects. For example, unlike the existing Federal program, the Fort Peck Tribes' program requires permits for all Class II wells, with no provision for authorization by rule. (See section 202(c) of the Tribal Code.) However, because all Class II wells now in operation on the Reservation currently hold EPA permits, this more stringent requirement will not impose a significant economic impact on the owners or operators of these wells. Other requirements in the Fort Peck Tribes' program that are more stringent than the existing Federal program are identified in the proposed Decision Document available for public review and comment and are mostly minor observation, recording, and reporting requirements. These requirements also will not impose a significant economic effect on the owners or operators of these wells.

We continue to be interested in any potential impacts of the proposed rule on small entities and welcome comments on issues related to any such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome

alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector because the rule imposes no enforceable duty on any State, local, or Tribal governments or the private sector. EPA's proposed approval of the Fort Peck Tribes' program would not constitute a ''Federal mandate'' because there is no requirement that Tribes establish UIC regulatory programs and because the program, if finally approved, will be a Tribal, rather than a Federal program. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. If finalized, the proposed rule would merely put in place a Tribal regulatory program that is identical in many respects to the existing federal program and more stringent in certain respects, as explained in more detail in the proposed Decision Document. EPA will continue to administer its Class I, III, IV, and V UIC programs on the Reservation. Authorizing the Fort Peck Tribes to administer the Class II program will not substantially alter the distribution of power and responsibilities among levels of government or significantly change EPA's relationship with Montana. The substitution of a Tribal Class II program in place of an EPA-administered Class II program on the Fort Peck Reservation will impose no additional costs on the State of Montana. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.''

EPA has concluded that this proposed rule will have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. The Fort Peck Tribes have voluntarily requested EPA authorization to administer their own Class II UIC program and have voluntarily assumed the Tribal share of the costs for doing so. Additionally, EPA is proposing to approve the Tribes' application for UIC Class II primacy and thus replace the existing Federal UIC Class II program for the Fort Peck Indian Reservation with a Tribal program administered pursuant to the laws of the Fort Peck Tribes. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this proposed rule.

EPA consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. (See section IV, V, and VI for more information.)

In the spirit of Executive Order 13175, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

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

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed Fort Peck Tribes' Class II UIC program is more stringent than the existing federal program; the Tribal program requirements have been established to prevent underground injection activities that endanger underground sources of drinking water (USDWs). The Fort Peck Tribal Executive Board has formally adopted underground injection control provisions in the Tribal Code in their program to safeguard these resources for all potential users, including but not limited to children.

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

This proposed 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.

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not decrease the level of protection provided to human health or the environment or lessen current environmental standards. If finalized, this proposed rule would put in place a Tribal regulatory program that is more stringent than the federal program and, therefore, would increase the level of protection. For example, unlike the existing federal program, the Fort Peck Tribes' program requires permits for all Class II wells, with no provision for authorization by rule. Moreover, in proposing to approve the Tribes' own Class II program, EPA is enhancing the Tribes' ability to determine its own UIC affairs on its Reservation.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Incorporation by reference.

Dated: November 16, 2007.

Robert E. Roberts,

Regional Administrator, U.S. EPA Region 8.

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

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

2. Part 147 heading is revised as set forth above.

Subpart A—[Amended]

3. Section 147.1 is revised to read as follows:

§ 147.1 Purpose and scope.

(a) This part sets forth the applicable Underground Injection Control (UIC) programs for each of the States, territories, and possessions identified pursuant to the Safe Drinking Water Act (SDWA) as needing a UIC program, including any Indian country geographically located within those States, territories, and possessions.

(b) The applicable UIC programs set forth in this part may be State-administered programs approved by EPA, Tribally-administered programs approved by EPA, or Federally-administered programs promulgated by EPA. In some cases, the applicable UIC program for a particular area may consist of a State-administered or Tribally-administered program applicable to some classes of wells and a Federally-administered program applicable to other classes of wells. Approval of a State or Tribal program is based upon a determination by the Administrator that the program meets the requirements of section 1422 or section 1425 of the SDWA, any other applicable provisions of this subpart, and the applicable provisions of 40 CFR parts 124, 144, 145 and 146. A Federally-administered program is promulgated in those instances where the State or Tribe has not submitted any program for approval or where the submitted program does not meet the minimum Federal statutory and regulatory requirements.

(c) In the case of each State or Tribal program approved by EPA pursuant to section 1422 of the SDWA, the relevant subpart describes the major elements of that program, including the relevant State or Tribal statutes and regulations, the Statement(s) of Legal Authority, the Memorandum of Agreement, and the Program Description. State or Tribal statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators have been incorporated by reference pursuant to regulations of the Office of the Federal Register. Material incorporated by reference is available for inspection in the appropriate EPA Regional office, in EPA Headquarters, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Other State or Tribal statutes and regulations containing standards and procedures that constitute elements of a State or Tribal program but do not apply directly to owners or operators have been listed but have not been incorporated by reference.

(d) In the case of any program promulgated under section 1422 for a State or Tribe that is to be administered by EPA, the relevant State or Tribal subpart makes applicable the provisions of 40 CFR parts 124, 144, 146, and 148, and any other additional requirements pertinent to the specific State or Tribal program.

(e) Regulatory provisions incorporated by reference (in the case of approved State or Tribal programs) or promulgated by EPA (in the case of EPA-administered programs), and all permit conditions or permit denials issued pursuant to such regulations, are enforceable by the Administrator pursuant to section 1423 of the SDWA.

(f) [Reserved].

Subpart BB—[Amended]

4. Section 147.1351 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 147.1351 EPA-administered program.

(a) *Contents.* The UIC program in the State of Montana for Class I, III, IV, and V wells, and for all Classes of wells in Indian country in Montana, except for Class II wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation, is administered by EPA. * * *

(b) *Effective dates.* The effective date for the UIC program for Class I, III, IV, and V wells for all lands in Montana, including all Indian country in Montana, and for Class II wells for all Indian country in Montana other than the Fort Peck Indian Reservation, is June 25, 1984. The effective date for the EPA-approved State-administered UIC Class II program for all lands in Montana, except for those in Indian country, is provided in § 147.1350.

5. Subpart JJJ is added to read as follows:

Subpart JJJ—Assiniboine and Sioux Tribes

§ 147.3200 Fort Peck Indian Reservation: Assiniboine & Sioux Tribes—Class II wells.

The UIC program for Class II injection wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation is the program administered by the Assiniboine and Sioux (Fort Peck) Tribes approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on [DATE OF FINAL RULE PUBLICATION]; the effective date of this program is [*DATE OF FINAL RULE PUBLICATION*]. This program consists of the following elements as submitted to EPA in the Fort Peck Tribes' program application:

(a) *Incorporation by Reference.* The requirements set forth in the Fort Peck Tribes' statutes, regulations, and resolutions cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the Fort Peck Indian Reservation. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained or inspected at the Fort Peck Tribal Offices, 605 Indian Avenue, Poplar, Montana 59255, at the Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) *Tribal Code.* Provisions of the Tribal Code listed in Appendix A to this Subpart.

(2) Tribal Government Resolution No. 1106–92–6.

(b) *Memorandum of Agreement (MOA).* The MOA between EPA and the Fort Peck Tribes signed by EPA on July 31, 2007.

(c) *Statements of legal authority.* Letters to EPA from Sonosky, Chambers, Sachse, Endreson & Perry, dated September 4, 2003 (attaching a June 17, 2002 letter), March 27, 2001, July 19, 1999, March 13, 1995, March 16, 1994, November 4, 1992, July 14, 1989, and April 13, 1989, and letters submitted as part of the Fort Peck Tribes' application.

(d) *Program Description.* The Program Description submitted as part of the Fort Peck Tribes' application, and any other materials submitted as part of the application or as a supplement to it.

Appendix A to Subpart JJJ of Part 147—Fort Peck Tribal Requirements Incorporated by Reference in Subpart JJJ of Part 147 of the Code of Federal Regulations

The following is an informational listing of Fort Peck Tribal requirements incorporated by reference in Subpart JJJ of part 147 of the Code of Federal Regulations:

Fort Peck Assiniboine and Sioux Tribes

(a) The statutory provisions include portions of the following insofar as they pertain to Class II injection wells:

Fort Peck Assiniboine and Sioux Tribal Underground Injection Control Code, adopted June 1999, Title 18:

Chapter 1. General Provisions
- Section 101. Purposes.
- Section 102. Administration.
- Section 103. Regulations, Criteria, and Standards.
- Section 104. Definitions.
- Section 105. Application.

Chapter 2. General Underground Injection Control Program Requirements
- Section 201. Introduction.
- Section 202. Requirements.

Chapter 3. Underground Injection Control Permit Requirements
- Section 301. Introduction.
- Section 302. Requirements.

Chapter 4. UIC Permitting Procedures
- Section 401. Introduction.
- Section 402. Requirements.

Chapter 5. UIC Technical Criteria and Standards
- Section 501. Introduction.
- Section 502. Requirements.
- Section 503. Additional Requirements.

Chapter 6. Enforcement
- Section 601. Requirements for Compliance Evaluation Programs.
- Section 602. Administrative Enforcement.
- Section 603. Administrative Penalties.
- Section 604. Civil Penalties.
- Section 605. Criminal Violations.
- Section 606. Judicial Relief.
- Section 607. Public Participation in Office of Environmental Protection Enforcement Process.

Chapter 7. Appeals
- Section 701. Judicial Review.

Chapter 8. Public Hearings
- Section 801. Public Hearings.

Chapter 9. Miscellaneous
- Section 901. Savings.
- Section 902. Effective Date.

(b) The provisions of Tribal Government Resolution Number 1106–92–6, adopted June 22, 1992, insofar as this resolution prohibits injection by Class II wells into the Judith River formation.

[FR Doc. E8–1667 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7760]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before April 29, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7760, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief,

Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
Unincorporated Areas of Sutter County, California					
California	Unincorporated Areas of Sutter County.	East Side Canal	Downstream source of the East Side Canal.	*38	*40
			1500 feet downstream of Catlett Road.	*39	*40
California	Unincorporated Areas of Sutter County.	King Slough	Confluence with East Side Canal	*39	*40
			1600 feet upstream of the confluence of North King Slough.	*39	*40
California	Unincorporated Areas of Sutter County.	North King Slough.	Confluence with King Slough	*39	*40
			3200 feet upstream of the confluence with King Slough.	*39	*40

* National Geodetic Vertical Datum.

Depth in feet above ground.

+ North American Vertical Datum.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Sutter County

Maps are available for inspection at Sutter County Administrators Office, 1160 Civic Center Boulevard, Yuba City, CA 95993.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Clatsop County, Oregon, and Incorporated Areas				
Columbia River	Approximately at Warrenton-Astoria Alt Highway south of Astoria Regional Airport.	+9	+12	Unincorporated Areas of Clatsop County, City of Warrenton.
	Approximately 600 feet upstream of SE Anchor Road, West of Burlington Northern railroad.	+9	+12	
Lewis & Clark River	Approximately ½ mile downstream of confluence with Heckard Creek, east of Lewis & Clark River.	+9	+12	Unincorporated Areas of Clatsop County.
	Approximately at confluence with Heckard Creek, east of Lewis & Clark River.	+9	+13	
Youngs River	Approximately 500 feet south of confluence with Battle Creek Slough.	+7	+12	Unincorporated Areas of Clatsop County.
	Approximately at intersection of Wireless Road & Hwy 101 Business.	+9	+12	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Warrenton

Maps are available for inspection at 225 South Main Street, Warrenton, OR 97146.

Unincorporated Areas of Clatsop County

Maps are available for inspection at 800 Exchange Street, Astoria, OR 97103.

Perry County, Pennsylvania, and Incorporated Areas				
Juniata River	Approximately 8,820 feet downstream of State Highway 17 (Sunbury Street).	None	+402	Township of Tuscarora.
	Approximately 5,420 feet upstream of State Highway 17 (Sunbury Street).	None	+408	
Little Buffalo Creek	Approximately 5,200 feet upstream of State Route 4010.	None	+428	Township of Juniata.
	Approximately 5,340 feet upstream of State Route 4010.	None	+428	
Losh Run	Approximately 410 feet downstream of Conrail Railroad.	None	+369	Township of Miller.
	Approximately 930 feet upstream of Conrail Railroad	None	+369	
Losh Run	Approximately 495 feet downstream of Conrail Railroad.	None	+369	Township of Wheatfield.
	Approximately 880 feet upstream of Conrail Railroad	None	+369	
Raccoon Creek	Approximately 30 feet downstream of Local Route 50024.	None	+405	Township of Tuscarora.
	Approximately 1,150 feet upstream of Local Route 50024.	None	+405	
Sugar Run	Approximately 605 feet downstream of Hill Road (T–432).	None	+404	Township of Tuscarora.
	Approximately 330 feet upstream of Hill Road (T–432)	None	+404	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Juniata

Maps are available for inspection at 16 Milford Rd, Newport, PA 17074.

Township of Miller

Maps are available for inspection at 55410 Limekiln Lane, Duncannon, PA 17020.

Township of Tuscarora

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at 72 Cementery Rd, Millerstown, PA 17062.				
Township of Wheatfield				
Maps are available for inspection at Rt. 274, New Bloomfield Road, New Bloomfield, PA 17068.				
Hanover County, Virginia, and Incorporated Areas				
Beaverdam Creek	Approximately 384 feet downstream of Old State Route 156.	*92	*91	Unincorporated Areas of Hanover County.
	Approximately 6,450 feet upstream of the Woodbridge Road.	*152	*151	
Bull Run	Approximately 1,260 feet upstream of the confluence with North Anna River.	*74	*75	Unincorporated Areas of Hanover County.
	Approximately 1,344 feet upstream of the confluence with North Anna River.	*74	*75	
Crump Creek	At approximately 2,800 feet downstream of River Road.	None	*39	Unincorporated Areas of Hanover County.
	Approximately at New Britton Road	None	*191	
Lickinghole Creek	Approximately 643 feet upstream from the confluence with Stony Run.	None	*126	Unincorporated Areas of Hanover County.
	Approximately at Design Road	None	*220	
Little River	Approximately at State Route 688 (Doswell Road)	None	*95	Unincorporated Areas of Hanover County.
	Approximately 7,000 feet upstream from the confluence with Locust Creek.	None	*218	
Mechumps Creek	Approximately 3,258 feet upstream of Route 301	*51	*50	Town of Ashland, Unincorporated Areas of Hanover County.
	Approximately at Route 1	None	*211	
North Anna River	Approximately 3.4 miles upstream of Route 1	None	*104	Unincorporated Areas of Hanover County.
	Approximately 3,015 feet upstream from Greek Bay Road.	None	*201	
Pamunkey River	Approximately 860 feet downstream of the confluence with Whitting Swamp.	None	*11	Unincorporated Areas of Hanover County.
	Approximately at the confluence with North Anna Creek and South Anna Creek.	None	*60	
South Anna Creek	Approximately at State Route 54	None	*110	Unincorporated Areas of Hanover County.
	Approximately 10,750 feet upstream of the confluence with Turkey Creek.	None	*214	
Stony Run	Approximately 50 feet upstream of Route 682	*132	*131	Town of Ashland, Unincorporated Areas of Hanover County.
	Approximately at Elmont Road	None	*220	
Totopotomoy River	Approximately 2,000 feet downstream of the River Road.	None	*28	Unincorporated Areas of Hanover County.
	Approximately at Sliding Hill Road	None	*173	
Tributary to Beaverdam Creek.	Approximately 580 feet upstream of the confluence with Beaverdam Creek.	None	*140	Unincorporated Areas of Hanover County.
	Approximately 1,474 feet upstream of the confluence with Beaverdam Creek.	None	*140	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Ashland

Maps are available for inspection at 101 Thompson Street, Ashland, VA 23005.

Unincorporated Areas of Hanover County

Maps are available for inspection at Department of Public Works, 7497 County Complex Road, Government Administration Building H, Hanover, VA 23069.

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

Dated: January 22, 2008.

David I. Maurstad,

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

[FR Doc. E8–1650 Filed 1–29–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2008–0015]

RIN 2127–AG51

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document supplements NHTSA's August 2005 proposal to upgrade the Federal motor vehicle safety standard on roof crush resistance. We issued that proposal as part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes.

In this document, we ask for public comment on a number of issues that may affect the content of the final rule, including possible variations in the proposed requirements. We are also announcing the release of the results of various vehicle tests conducted since the proposal and are inviting comments on how the agency should factor this new information into its final rule.

DATES: Comments must be received on or before March 17, 2008.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Christopher Wiacek, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–4801.

For legal issues: Mr. Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
  A. Overview of Standard 216
  B. Target Population of Standard 216
  C. Summary of 2005 Proposal
  D. Purpose of this SNPRM
II. Release of Vehicle Test Results
  A. Single-Sided Tests
  B. Two-Sided Tests
III. Discussion
  A. Pass/Fail Rate of the Vehicle Fleet
  B. Impact of Electronic Stability Control Safety Standard on Potential Benefits
  C. Revised Cost and Weight Estimates
  D. Two-Sided Testing Implications
  E. Other Factors
IV. Comments Sought
V. Public Participation
VI. Rulemaking Analyses and Notices
VII. Proposed Regulatory Text

I. Introduction

On August 23, 2005, NHTSA published in the **Federal Register** (70 FR 49223) a notice of proposed rulemaking (NPRM) to upgrade Federal Motor Vehicle Safety Standard (FMVSS) No. 216, *Roof Crush Resistance*.[1] As discussed in the NPRM, this ongoing rulemaking is part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes. In addition to roof crush, other strategies in the comprehensive approach include crash-avoidance initiatives such as electronic stability control which will significantly reduce the number of rollovers, as well as crashworthiness efforts such as ejection mitigation and improved door lock strength which will lower the probability of ejection when rollovers do occur.

A. Overview of Standard 216

FMVSS No. 216 seeks to reduce deaths and serious injuries resulting from the roof being crushed and pushed into the occupant compartment when the roof strikes the ground during rollover crashes. The standard currently applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less.

The standard requires that when a large steel test plate (sometimes referred to as a platen) is placed in contact with the roof of a vehicle and then pressed downward, simulating contact of the roof with the ground during a rollover crash, with steadily increasing force until a force equivalent to 1.5 times the unloaded weight of the vehicle is reached, the distance that the test plate has moved from the point of contact must not exceed 127 mm (5 inches). The criterion of the test plate not being permitted to move more than a specified amount is sometimes referred to as the ''platen travel'' criterion. Under S5 of the standard, the application of force is limited to 22,240 Newtons (5,000 pounds) for passenger cars, even if the unloaded weight of the car times 1.5 is greater than that amount.

B. Target Population of Standard 216

Due to the complex nature of a rollover event and the particularlized effect of each element of the comprehensive and systematic approach taken by the agency to address these crashes, each element addresses a specific segment of the total rollover problem.

Table 1 below shows the target population that could potentially benefit from roof crush improvements.[2] The target population for all light vehicles is stratified by injury severity. The table demonstrates how the final target population is derived from the broad category of rollovers by

[1] Docket No. NHTSA–2005–22143.

[2] The target population reflects a very minimal incorporation of ESC in the vehicle fleet. As discussed later in this SNPRM, the final regulatory analysis will be adjusted to reflect full incorporation of ESC into the vehicle fleet. ESC will significantly reduce the number of rollover fatalities, and further reduce the roof crush target population.

eliminating cases in which roof strength improvements would not be effective. The final target populations are shown in bold at the bottom of the table. Numbers in the table shown in parenthesis are deducted from previous values to arrive at the final target population shown in bold. All other numbers represent the values that result from the restrictions noted in the left column. A full discussion of the basis for the target population is included in the August 2005 Preliminary Regulatory Impact Analysis (PRIA).

One modification to that basis should be noted. In the PRIA, it was assumed that in cases in which there were fatal injuries which involved both the head and another body region at the highest MAIS level, the head injury was the cause of death. More recent analysis indicates that only about ⅔'s of these deaths were attributable to the head injury. Based on this, the ''not sole injury'' category for fatalities was adjusted to reflect the assumption that 67% of these cases would be attributed to head injury, leaving a total of 476 fatalities as the final target population applicable for roof crush.

TABLE 1.—TARGET POPULATION POTENTIALLY AFFECTED BY IMPROVED ROOF STRENGTH

	AIS 1	AIS 2	AIS 3–5	Fatalities
Non-Convertible Light Vehicles in Rollovers	199,549	37,661	21,933	9,011
Roof-Involved Rollover	164,007	32,862	19,520	7,679
No Fixed Object Collision on Top	153,324	29,346	18,029	6,712
Not Totally Ejected	149,632	25,949	12,638	3,227
Using Safety Restraints	116,135	14,234	9,204	1,835
Front Outboard Seats	103,320	13,457	8,653	1,658
Not 12 Years Old or Younger	101,581	13,418	8,635	1,650
Roof Component Intrusion	64,123	10,339	6,747	1,125
Head, Neck, or Face Injury from Intruding Roof Component	23,147	6,508	3,027	731
Injury—Not MAIS *	(0)	(1,872)	(1,382)	(209)
Injury at MAIS—Not Sole Injury	(17,128)	(289)	(250)	(46)
Sole MAIS Injury	6,019	4,346	1,395	476

* This means that the most serious injury was to a portion of the body other than the head, neck or face.

The target population relevant to FMVSS No. 216 in Table 1 is thus a relatively small subset of the occupants injured in rollovers. For fatalities, the estimated total for the target population is 5 percent of all non-convertible light vehicle rollover fatalities (476/9,011). For nonfatal injury categories, the estimated total ranges from 3 to 12 percent. The most significant exclusions resulted from requirements that fatalities occurred in rollovers in which (1) the roof was damaged in a rollover, (2) the damage was not caused by collision with a fixed object, (3) the fatally injured occupants were not ejected, and (4) those occupants were belted.

It is important to understand what this Table indicates about the safety potential of addressing roof crush. Even if there were some way to prevent every single rollover death resulting from roof crush, the total lives saved would be 476, not the approximately 10,000 deaths that result from rollover each year. This is why each initiative in NHTSA's comprehensive program to address the different aspects of the rollover problem is so important. Each initiative has a different target population. We have initiatives in place to:

1. Reduce the occurrence of rollover crashes (e.g., the requirement for Electronic Stability Control on all light vehicles and the NCAP rollover ratings),

2. Keep occupants inside the vehicle when rollovers occur (e.g., NHTSA's unstinting commitment to get passengers to buckle their seat belts every time they ride in a vehicle, as well as the requirement for enhanced door latches and the forthcoming new requirement for ejection mitigation), and

3. Better protect the occupants kept inside the vehicle during the rollover (this rule to require enhanced roof crush resistance).

Each of these three initiatives must work together to address the various aspects of the rollover problem. However, it is important to understand which portion of the rollover problem can be addressed by each of these three initiatives, so that there is a clear and correct understanding of the safety benefits potentially associated with each of the different types of actions to reduce rollover deaths and injuries.

C. Summary of 2005 Proposal

To better address fatalities and injuries occurring in roof-involved rollover crashes, we proposed in 2005 to extend the application of the standard to vehicles with a GVWR of up to 4,536 kilograms (10,000 pounds), and to strengthen the requirements of FMVSS No. 216 by mandating that the vehicle roof structures withstand a force equivalent to 2.5 times the unloaded vehicle weight, and eliminating the 22,240 Newtons (5,000 pounds) force limit for passenger cars. Further, in recognition of the fact that the pre-test distance between the interior surface of the roof and a given occupant's head varies from vehicle model to vehicle model, we proposed to regulate roof strength by requiring that the crush not exceed the available headroom. Under the proposal, this requirement would replace the current limit on test plate movement.

The proposed new limit would prohibit any roof component from contacting the head of a seated 50th percentile male dummy when the roof is subjected to a force equivalent to 2.5 times the unloaded vehicle weight. We note that this value is sometimes referred to as the strength-to-weight ratio (SWR), e.g., a SWR of 1.5, 2.5, and so forth.

D. Purpose of This SNPRM

The agency has been carefully analyzing the numerous comments it received on its proposal. In addition, it has been analyzing the various additional vehicle tests, including both single-side tests and two-sided tests,[3] conducted since the NPRM. In this document, we are inviting comments on how the agency should factor this new information into its decision. While the NPRM focused on a specified force equivalent to 2.5 times the unloaded vehicle weight, the agency could adopt

[3] Note that in the most recent agency testing, headroom reduction had been assessed using a head positioning fixture in lieu of a 50th percentile dummy. Reports on these tests explain the procedure and type of fixture used to assess headroom reduction. (As explained elsewhere in this document, these test reports are being made available to the public through the agency's internet vehicle crash test database.) Please note further that the agency is considering whether this fixture should be specified in the final rule.

a higher or lower value for the final rule. With respect to two-sided vehicle testing, we believe that, with the additional tests conducted by the agency, there is now sufficient available information for the agency to consider a two-sided requirement as an alternative to the single-sided procedure described in the NPRM. The agency plans to evaluate both the single-sided and two-sided testing alternatives for the final rule. We are requesting comments that will help us reach a decision on that issue.

In developing a final rule, the agency will consider the comments submitted on both the August 2005 NPRM and this document. Thus, there is no need for persons to re-submit the comments they provided for the NPRM. We note that we are generally not discussing the comments in this document, except for a few brief references that are relevant to the potential economic impact of our proposal. We also note that the proposed regulatory text in this document includes both the single-sided and two-sided test requirement alternatives. The fact that the proposed regulatory text for the two alternatives does not reflect other changes suggested by commenters on the NPRM does not mean that we will not consider those recommended changes in developing a final rule.

We are providing a 45-day comment period. We believe this is appropriate given that this is an SNPRM with a more limited focus than the NPRM, and given the need to comply with a statutory deadline.

II. Release of Vehicle Test Results

The test reports for the additional vehicle tests conducted by NHTSA are being made available to the public through the agency's internet vehicle crash test database. We are placing a memorandum in the docket which provides the Web address for that database and lists the vehicle models and test numbers that are needed to reference the information in the database. The agency incorporates by reference these test reports as part of the record for this rulemaking.

A. Single-Sided Tests

Since the publication of the NPRM, the agency has conducted 35 additional single-sided tests. In this testing, the force was applied to one side of the roof over the front seat area. Force was applied until there was 127 mm (5 inches) of platen travel, unless head contact occurred first. The strength of the roof was measured prior to any subsequent testing the agency may have conducted on the second side. The agency is releasing these data to the public in conjunction with this document.

A summary of the test results is presented in the Table 2 below.

TABLE 2.—SINGLE-SIDED TEST RESULTS

Vehicle	Unloaded vehicle weight (kg)	Peak strength within 127 mm		Peak strength prior to head contact		Platen displacement at head contact (mm)
		N	SWR	N	SWR	
2006 VW Jetta	1,443	72,613	5.1	72,613	5.1	158
2007 Scion tC	1,326	59,749	4.6	59,749	4.6	113
2006 Volvo XC90	2,020	90,188	4.6	N/A	N/A	N/A
2006 Honda Civic	1,251	55,207	4.5	55,207	4.5	177
2007 Toyota Tacoma	1,489	64,441	4.4	64,441	4.4	123
2006 Mazda 5	1,535	66,621	4.4	66,621	4.4	155
2007 Toyota Camry	1,468	62,097	4.3	62,097	4.3	N/A
2007 Toyota Yaris	1,038	41,073	4	41,073	4	115
2006 Ford 500	1,657	63,181	3.9	63,181	3.9	150
2007 Nissan Frontier	1,615	62,828	3.9	62,828	3.9	167
2006 Subaru Tribeca	1,907	72,306	3.9	72,306	3.9	112
2006 Mitsubishi Eclipse	1,485	51,711	3.6	51,711	3.6	127
2006 Hummer H3	2,128	70,264	3.4	70,264	3.4	185
2006 Hyundai Sonata	1,505	46,662	3.2	46,662	3.2	131
2007 Dodge Caravan	1,759	52,436	3	52,436	3	N/A
2006 Chrysler Crossfire	1,357	38,179	2.9	38,179	2.9	107
2004 Honda Accord	1,413	38,281	2.8	38,281	2.8	140
2007 Saturn Outlook*	2,133	57,222	2.7	57,222	2.7	N/A
2006 Ford Mustang	1,527	40,101	2.7	41,822	2.8	132
2005 Buick Lacrosse	1,590	40,345	2.6	40,345	2.6	126
2006 Sprinter Van*	1,946	49,073	2.6	N/A	N/A	N/A
2004 Cadillac SRX	1,961	50,346	2.6	50,346	2.6	138
2007 Honda CRV	1,529	38,637	2.6	38,637	2.6	N/A
2007 Chrysler 300	1,684	41,257	2.5	41,257	2.5	N/A
2005 Buick Lacrosse	1,588	37,196	2.4	37,196	2.4	123
2006 Honda Ridgeline	2,036	47,334	2.4	47,334	2.4	172
2007 Ford F–150*	2,413	54,829	2.3	54,829	2.3	N/A
2007 Buick Lucerne	1,690	38,268	2.3	38,268	2.3	N/A
2004 Chevrolet 2500 HD*	2,450	55,934	2.3	56,294	2.3	171
2007 Pontiac G6	1,497	33,393	2.3	33,393	2.3	124
2007 Chevrolet Express*	2,471	55,038	2.3	55,038	2.3	N/A
2007 Jeep Grand Cherokee	1,941	41,582	2.2	41,582	2.2	117
2007 Chevrolet Tahoe*	2,462	49,878	2.1	49,878	2.1	N/A
2006 Dodge Ram*	2,287	37,596	1.7	42,578	1.9	158
2003 Ford F–250*	2,658	44,776	1.7	44,776	1.7	205

*GVWR greater than 6,000 pounds

We observed from this recent testing that the range of SWRs for vehicles with a GVWR of 6,000 pounds (2722 kilograms) or less tended to be higher than the range of SWRs for vehicles with a GVWR greater than 6,000 pounds (2722 kilograms). The SWR of many late model vehicles with a GVWR of 6,000 pounds (2722 kilograms) or less was substantially higher than the 2.5 value the agency focused on in the NPRM. Conversely, only two vehicles we tested with a GVWR greater than 6,000 pounds (2722 kilograms) exceeded the 2.5 value.

We note that the data presented in these tables do not factor in the full spectrum of weight ranges for the models tested. The SWR for each model was calculated using the unloaded vehicle weight (UVW) of the tested vehicle rather than the maximum vehicle weight. In comments on the NPRM, manufacturers said that vehicles would have to be designed to comply in their maximum weight configuration. NHTSA agrees with this comment and will reflect maximum weight configurations in the final rule analysis.

We request comments on any other steps the agency should take in factoring these new test data into its decisions for the final rule.

B. Two-Sided Tests

In the NPRM, the agency summarized the testing it had conducted to evaluate the strength of the second side of the roof of vehicles whose first side had already been tested. In this testing, after the force was applied to one side of the roof over the front seat area of a vehicle, the vehicle was repositioned and force was then applied on the opposite side of the roof over the front seat area. In performing these tests on both sides of a vehicle, the agency used the platen angle currently specified in FMVSS No. 216 (5° × 25°). We concluded that the strength of the roof on the second side of some vehicles may have been increased or decreased as a result of the deformation of the first side of the roof. The agency indicated that it planned to conduct further research before proposing rulemaking in this area.

The agency has expanded the series of two-sided roof crush tests discussed in the NPRM. The agency has now conducted a total of 26 sequential two-sided tests, as part of its evaluation, and is also releasing these data to the public in conjunction with this document.

A summary of the test results is presented in the following Table 3.

TABLE 3.—RESULTS OF 2-SIDED TESTING (5° × 25° PLATEN ANGLE)

Vehicle	Peak SWR prior to 127 mm of platen travel or head contact		Peak force change (percent)
	1st side	2nd side	
2007 Chevrolet Express [4]	2.3	1.7	−27.3
2007 Jeep Grand Cherokee	2.2	1.6	−27.1
2007 Pontiac G6	2.3	1.7	−23.8
2005 Lincoln LS *	2.6	2.0	−21.3
2007 Saturn Outlook	2.7	2.2	−20.8
2003 Ford Crown Victoria *	2.0	1.7	−19.5
2007 Ford F–150	2.3	1.9	−19.0
2007 Chevrolet Tahoe	2.1	1.7	−16.4
2007 Toyota Yaris	4.0	3.4	−15.8
2005 Buick LaCrosse	2.6	2.2	−13.5
2007 Toyota Tacoma	4.4	3.9	−12.2
2007 Buick Lucerne	2.3	2.1	−10.8
2003 Chevrolet Impala *	2.9	2.5	−9.9
2004 Lincoln LS *	2.5	2.2	−8.7
2006 Subaru Tribeca	3.9	3.5	−8.3
2007 Scion tC	4.6	4.3	−6.7
2006 Chrysler Crossfire	2.9	2.7	−5.6
2007 Dodge Caravan	3.0	2.9	−5.3
2007 Honda CRV	2.6	2.5	−4.9
2005 Buick LaCrosse	2.4	2.3	−3.4
2004 Nissan Quest *	2.8	2.7	−3.0
2001 GMC Sierra *	1.9	1.9	−1.3
2007 Chrysler 300	2.5	2.5	1.6
2004 Chrysler Pacifica *	2.2	2.4	7.0
2007 Toyota Camry	4.3	4.7	9.0
2004 Land Rover Freelander *	1.7	2.0	19.2

* Crush of first side stopped at windshield cracking.

[4] Between the first and second side tests, the front door on the tested side was opened. Because of damage to the vehicle during the first side test, the door would not properly close. The door was clamped until the latch engaged, locking the door in place. This may have compromised the structural integrity of the roof and reduced the measured peak load on the second side.

For the first eight tests (those with asterisks in the table), testing of the first side of the vehicle was conducted until the windshield cracked. This occurred between 90 and 100 mm (3.54 and 3.94 inches) of platen travel for all vehicles except the Nissan Quest which required 135 mm (5.31 inches) of platen travel before the windshield cracked. The second side was then tested for 254 mm (10 inches) of platen travel. For all other tests, the first side was conducted to 127 mm (5 inches) of platen travel unless head contact occurred first. The second side was then tested for 254 mm (10 inches) of platen travel. We note that in all 26 tests, the windshield cracked before completion of the first side test. In the first eight tests, the peak SWR was recorded at the time the windshield cracked on the first side. For all other testing, the SWR was recorded prior to 127 mm (5 inches) of platen travel or prior to head contact, whichever occurred first.

The two-sided test results show that the first side test generally produces a weakening of the structure. This is

shown by the fact that the recorded SWR for the second side is generally lower than for the first side. On average, the peak strength for the second side was reduced by 8.7 percent. However, for several of the vehicles, we observed considerably higher reductions in peak strength. Of the 25 vehicles tested, excluding the Chevrolet Express, six experienced reductions in strength of 19 percent or greater.

With respect to two-sided vehicle testing, we believe that the post-NPRM tests provide the agency with sufficient additional information for the agency to now consider a two-sided test requirement for the final rule. However, as discussed in the following sections, the agency seeks comment on the relative trade offs between the single-sided and two-sided test procedures.

III. Discussion

Based upon the results of the testing described above, the agency is contemplating various alternatives for a final rule. Each of the alternatives will directly affect the current fleet failure rate estimates, vehicle design changes and vehicle content necessary to meet those alternatives, and consequent benefits and costs. The agency has not completed cost/benefit analyses for these various alternatives, however, the agency will ensure that its decisions about these alternatives result in a final rule that is cost beneficial, as contemplated by Executive Order 12866.

Public comments submitted in response to the NPRM and research conducted by NHTSA indicate some general conclusions that can be drawn regarding the directional impact of these alternatives, as well as subsequent changes in vehicle content and other factors that may influence the final rule.

The August 2005 PRIA examined the proposed SWR of 2.5 and the alternative SWR of 3.0 times the unloaded vehicle weight. Estimated costs ranged from $88 to 95 million for the 2.5 SWR alternative and $1.2 to $1.3 billion for the 3.0 SWR alternative. Benefits were estimated to be 13 to 44 fatalities and 498 to 793 nonfatal injuries prevented for the 2.5 alternative, and 49 to 135 fatalities and 1540 to 2151 nonfatal injuries prevented for the 3.0 alternative. The estimated impacts of the final rule will be changed by a number of factors. These include:

A. Pass/Fail Rate of the Vehicle Fleet

In response to the NPRM, manufacturers commented that NHTSA's estimates underestimated the portion of the vehicle fleet that would require changes. The manufacturers noted that NHTSA's estimates were based on individual vehicles' actual weights, but that manufacturers would have to design roof structures to meet the maximum weight that each body design would be required to carry. Thus, for example, test results from a vehicle with a four-cylinder engine and manual transmission might not be indicative of the same vehicle with a six-cylinder engine and automatic transmission option, even though they share the same body design and roof structure. The agency agrees with this comment and will make appropriate adjustments in its revised analysis for the final rule. In the NPRM, the agency estimated that 32 percent of the vehicle fleet would have to be changed to meet the 2.5 proposal, whereas manufacturers commented that the portion was over 80 percent. Based on the agency's testing, more recent vehicle designs tested appear to have stronger roofs. Therefore, it is not yet clear what the actual failure rate will be. However, at this time, it appears likely that the impact of this adjustment will be to increase both the costs and benefits of the rule.

B. Impact of Electronic Stability Control Safety Standard on Potential Benefits

The PRIA for the August 2005 NPRM to amend FMVSS No. 216 examined the model year (MY) 2005 fleet. During MY 2005, Electronic Stability Control (ESC) was voluntarily installed on roughly 18% of the new light vehicle fleet, and the PRIA took this into account.

However, NHTSA published a proposal in September 2006 and a final rule [5] in April 2007 requiring ESC on 100% of passenger cars and of light trucks, multipurpose passenger vehicles, and vans (LTVs), effective September 1, 2011. Therefore, the FRIA for the final rule upgrading FMVSS No. 216 will adjust the target population for this rulemaking to reflect the ESC mandate. Since ESC is a highly effective countermeasure, preventing roughly half of all rollovers in passenger cars and LTVs, this adjustment will significantly reduce both the target population and the safety benefits associated with FMVSS No. 216.

C. Revised Cost and Weight Estimates

In the PRIA, NHTSA based its cost estimates on 4 vehicles: The 1997 Plymouth Neon, the 1999 Ford E–150 Van, the 1997 Dodge Caravan, and the 1998 Chevrolet S–10 pickup. These vehicles were used because they were the only vehicles for which the agency had finite element models which could be used to simulate the impact of roof design changes on roof strength. The agency used these vehicles to impute costs for the overall fleet based on the relative roof strength of a sample of tested vehicles. A similar procedure was used for vehicle weight changes. The PRIA estimated that the average cost per affected vehicle would be approximately $11 to meet the 2.5 SWR alternative and $51 for the 3.0 SWR alternative, with individual model costs as high as $16 for the 2.5 alternative and $84 for the 3.0 alternative. The PRIA also estimated average weight increases ranging from 2 to 14 kilograms (4 to 30 pounds). Weight is a factor in the analysis because it influences both fuel economy, and the vehicle's center of gravity which can influence the vehicle's tendency to roll over.

In response, the Alliance of Automobile Manufacturers (Alliance) submitted an analysis of costs and weights for 2 vehicle types—a large SUV and a large pickup truck.[6] The Alliance estimates were based on engineering studies from a variety of manufacturers and represented a range of results for each vehicle type. The Alliance estimated that variable unit costs for a large SUV would range from $38 to $58 to meet a 2.5 SWR alternative, $60 to $90 to meet a 3.0 SWR alternative and $110 to $130 to meet a 3.5 SWR alternative. Based on NHTSA cost studies, total costs including overhead, markup and profit could be 50 percent higher than these variable costs. The Alliance estimated the corresponding weight increases for these scenarios to be 27 to 30 kilograms (60 to 67 pounds) for the 2.5 SWR, 68 to 122 kilograms (150 to 270 pounds) for the 3.0 SWR, and 113 to 245 kilograms (250 to 540 pounds) for the 3.5 SWR. For the large pickup truck the Alliance estimated that variable unit costs would range from $55 to $185 to meet a 2.5 SWR alternative, $100 to $200 to meet a 3.0 SWR alternative and $165 to $525 to meet a 3.5 SWR alternative. The Alliance estimate for corresponding weight increases for these scenarios were 17 to 31 kilograms (38 to 68 pound) for the 2.5 SWR, 39 to 118 kilograms (85 to 260 pounds) for the 3.0 SWR, and 54 to 236 kilograms (120 to 520 pound) for the 3.5 SWR.

The Alliance also contracted an independent study by Magna Steyr on the feasibility of modifying a crew cab pickup for compliance with the NPRM proposal (2.5 SWR). The study concluded that meeting the proposal in a 3-year lead time was feasible, but would add 33 kilograms (73 pounds) and $76 to $98 in variable costs. It also found that if enough leadtime were

[5] 66 FR 17236.

[6] *See* Docket No. NHTSA–2005–22143–249.

provided to allow implementation during a new production cycle, higher strength materials were feasible in conjunction with new tooling and this could result in a 5 kilogram (11 pound) savings in weight relative to the base vehicle. The Alliance data represent industry estimates of costs and weight impacts for the two types of vehicles—large SUVs and large pickup trucks—for which higher SWRs are likely to pose the most difficult challenges and result in the largest cost and weight penalties. However, these types of vehicles represent only a small portion of new vehicle sales (approximately 9 percent) and their design challenges are unlikely to be representative of the bulk of the vehicle fleet. The Alliance did not provide estimates for other vehicle types—passenger cars, light pickups, crossover SUVs, etc. The agency believes that meeting a higher SWR may be significantly easier for the vehicle types not submitted by the Alliance based upon our fleet results. The agency will consider the Alliance estimates and results from its own research when developing the Final Regulatory Impact Analysis, but at this time it is unclear whether unit costs will change significantly for vehicles other than large pickups and large SUVs.

The agency has also conducted additional tear down studies. A study [7] conducted by The Ohio State University examined the Volvo XC90 and the Ford Explorer. The study found that the XC–90 roof had roughly ⅓ more structural parts than the Explorer, and that implementing some of the XC–90 design concepts in the Ford Explorer would increase material and tooling costs by $81 and weight by 15 kilograms (33 pounds). Additional work based on finite element models and cost teardown studies conducted by Ludtke Associates and the National Crash Analysis Center [8] found that strengthening the 2003 Ford Explorer to 3.0 SWR would raise the vehicle's price by $33 to $35 and increase its weight by 5 to 10 kilograms (10 to 23 pounds). They also examined a 2000 Ford Taurus. The study indicated that raising the Taurus to a 3.0 SWR would increase its price by $175 to $204, and increase its weight by 7 to 12 kilograms (15 to 27 pounds).

D. Two-Sided Testing Implications

The two-sided testing conducted by NHTSA thus far indicate an average difference of approximately 8 percent lower peak force for the second side in vehicles under 2,722 kilograms (6,000 pounds) GVWR [9] and 17 percent lower peak force for the second side in vehicles over 2,722 kilograms (6,000 pounds) GVWR.[10] Thus, the adoption of a two-sided alternative would result in some increase in the portion of the fleet that would fail the roof crush requirements beyond the portion estimated in the NPRM. This would increase the benefits as well as the costs of this rulemaking.

We have conducted an analysis to examine the relative impact of one-sided testing vs. two-sided testing, based primarily on the results of the agency's own FMVSS No. 216 testing program. Since the publication of the October 2001 request for comment (66 FR 53376), the agency has conducted roof strength testing on 69 vehicles. Although these tests were conducted on specific vehicles, for this exercise, the results were adjusted to reflect the maximum unloaded vehicle weight configuration for each make/model. The agency tested 21 vehicles with GVWRs less than 2,722 kilograms (6,000 pounds) under a two-sided test regime. Eleven of these vehicles passed a 2.5 SWR on both the first and second side tested. Only five vehicles passed a 3.0 SWR on both sides and only four passed a 3.5 SWR. The agency also conducted two-sided tests on five vehicles with GVWRs over 2,722 kilograms (6,000 pounds). None of these vehicles passed a 2.5 or greater SWR. The agency also has single-sided testing data on 32 vehicles with GVWRs less than 2,722 kilograms (6,000 pounds) and 11 vehicles with GVWRs over 2,722 kilograms (6,000 pounds).

The roof strength results for this sample of 69 vehicles were then sales weighted to estimate the relative pass-fail rates that might result for single-sided and two-sided test procedure alternatives. The estimates show nearly 100 percent of vehicles over 2,722 kilograms (6,000 pounds) GVWR failed under all scenarios. The vehicles with GVWR under 2,722 kilograms (6,000 pounds) had higher failure rates for the two-sided tests when compared to the single-sided procedure. At a SWR of 2.5, the lighter vehicles are estimated to have a failure rate of 45 percent for single-sided and 67 percent for two-sided tests. The failure rate increases with higher SWR scenarios. A summary of the results is presented in the following Table 4.

TABLE 4.—ESTIMATED FLEET FAILURE RATES BASED ON GVWR

GVWR	2.5 SWR	3.0 SWR	3.5 SWR
Two-Sided Testing			
< 2,722 kg GVWR	67.2%	78.6%	85.0%
> 2,722 kg GVWR	100.0%	100.0%	100.0%
Total	75.1%	83.7%	88.6%
Single-Sided Testing			
< 2,722 kg GVWR	44.5%	76.9%	80.9%
> 2,722 kg GVWR	98.9%	100.0%	100.0%
Total	57.6%	82.5%	85.5%

[7] Available in the docket of this notice: Hutter, Erin E., ''Improving Roof Crush Performance of a Sport Utility Vehicle,'' The Ohio State University, 2007.

[8] Available in the docket of this notice: ''Cost, Weight, and Lead Time Analysis Roof Crush Upgrade,'' Task Order No. 007.

[9] Refers to vehicles with a GVWR equal to or less than 2,722 kilograms (6,000 pounds).

[10] Refers to vehicles with a GVWR greater than 2,722 kilograms (6,000 pounds).

E. Other Factors

In the NPRM, the agency estimated benefits based on post-crash headroom, the only basis for which a statistical relationship with injury reduction had been established. In that analysis, the agency estimated that the proposed 2.5 SWR requirement would prevent 13 to 44 fatalities.[11]

More recently, the agency has estimated benefits based on the relationship between intrusion and the probability of injury. This relationship was not established when the NPRM was published, but with the additional years of data available, a statistically significant relationship between intrusion and injury for belted occupants has since been established. A study regarding this relationship has undergone peer review and is available in the docket.[12] This broader relationship, together with other factors, including the higher failure rates resulting from adjustments for maximum vehicle weight and the higher effective SWRs that result from this same issue will likely lead to slightly higher benefits than was estimated in the NPRM.

In the NPRM, NHTSA estimated the cost of meeting the proposed 2.5 SWR single-sided test requirement at $16–$17[13] for vehicles that do not already meet the standard, consisting of roughly $11 for design changes and $5–$6 for added lifetime fuel consumption.

The agency believes that these cost estimates may increase for several reasons. The first is that manufacturers stated that vehicle body platforms must be designed to their heaviest possible design configuration. This means that a body platform that supports several different engine, transmission, and suspension options must be strong enough to pass the test requirements under the maximum weighted combination of these options. This could increase the effective SWR of the entire body platform and this would increase the average cost and weight impact of the required design changes. This would primarily be an issue for large trucks and SUVs, which are designed with a wide range of optional performance packages. It would be much less of a factor for passenger cars.

A second reason costs might rise is that predicted gasoline prices may be higher than prices predicted in the NPRM. The NPRM fuel cost estimates were based on forecasts from the Energy Information Administration (EIA), which predicted an average pump price of roughly $1.46/gallon (2002 dollars) in 2007. The final rule will be based on EIA's latest predictions. It is expected that EIA's predictions will be higher than its earlier ones.

A third reason costs may rise is that the cost estimates NHTSA used for the NPRM assumed single-sided tests. For the two-sided testing program alternative, the agency found an average difference of approximately 8–17 percent lower peak force for the second side (depending on vehicle weight class). Thus, some vehicle designs may need added strengthening to meet a two-sided test relative to a single-sided test.

Regardless of which alternative is adopted in the final rule, the agency will ensure that the final rule is cost beneficial, as contemplated by Executive Order 12866.

IV. Comments Sought

The agency requests comments on the costs of meeting the single-sided and two-sided testing alternative requirements for different types of vehicles for the proposed SWR of 2.5, as well as the alternatives of 3.0 and 3.5.

1. In the single-sided test results, the agency observed that vehicles under 6,000 pounds achieved higher SWR levels than did those vehicles over 6,000 pounds. Should the agency consider different stringency requirements for vehicles according to their weight class? Will different design strategies be necessary to meet the requirements for vehicles under or over 6,000 pounds? What are the cost implications associated with different stringency requirements and different design strategies?

2. In the agency's two-sided testing, an average reduction of about 8% was observed in the second side SWR compared to the first side for vehicles under 6,000 pounds, compared to an average 17% reduction for those over 6,000 pounds. Table 4 also indicates a much higher failure rate for two-sided testing compared to a single-sided requirement, and appears to indicate that fleet failure rates (and consequently benefits) for a two-sided test at a 2.5 SWR would be comparable to a single-sided test at a higher SWR. What are the relative costs associated with, for example, a two-sided requirement at 2.5 SWR versus a single-sided test at 3.0 SWR? If comparable benefits can be achieved with a single-sided test at a higher SWR requirement compared to a two-sided test at a lower SWR level, are there other considerations the agency should include in the FRIA?

3. If a two-sided alternative is pursued in the final rule, will different design strategies be required to meet the requirements for vehicles under or over 6,000 pounds? What are the cost implications associated with these strategies?

V. Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[14] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

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

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[15]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://*

[11] This range reflects two different methodologies that were examined.

[12] Available in the docket of the notice: Strashny, Alexander, ''The Role of Vertical Roof Intrusion and Post-Crash Headroom in Predicting Roof Contact Injuries to the Head, Neck, or Face during FMVSS 216 Rollovers.''

[13] Under a 7% and 3% discount rate, respectively.

[14] *See* 49 CFR 553.21.

[15] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

dmses.dot.gov/submit/DataQualityGuidelines.pdf.

How Can I Be Sure That My Comments Were Received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[16]

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES.** The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

[16] *See* 49 CFR 512.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. The Office of Management and Budget reviewed this rulemaking document under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking action has been determined to be significant under Executive Order 12866 and the DOT Policies and Procedures because of Congressional and public interest.

Our current understanding of the benefits and costs of this rulemaking is set forth on the pages above.

NHTSA will prepare a Final Regulatory Impact Analysis (FRIA) describing the costs and benefits of this rulemaking action for the final rule. The FRIA will analyze alternatives considered by the agency and the final rule as issued, and will reflect consideration of comments addressing costs and benefits. The agency invites comments concerning how the alternatives to the proposal discussed in today's document could affect costs and benefits.

B. 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://docketsinfo.dot.gov/.*

Rulemaking Analyses and Notices

In the August 2005 NPRM, the agency discussed relevant requirements related to the Regulatory Flexibility Act, the National Environmental Policy Act, Executive Order 13132 (Federalism), the Unfunded Mandates Act, Civil Justice Reform, the National Technology Transfer and Advancement Act, and the Paperwork Reduction Act. The variations in the proposal discussed in this document do not affect the agency's analyses in those areas. NHTSA will address comments in these areas in connection with the final rule.

VII. Proposed Regulatory Text

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation of Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Alternative 1 (Two-Sided Test)

2. Amend § 571.216 by:

a. Revising S3 to read as set forth below;

b. Adding to S4, in alphabetical order, new definitions of ''Convertible'' and ''Roof component;''

c. Revising S5 to read as set forth below;

d. Removing S5.1;

e. Revising S7.1 through S7.6 to read as set forth below;

f. Adding S7.7 to read as set forth below; and

g. Removing S8 through S8.4.

The revisions and additions read as follows:

§ 571.216 Standard No. 216; Roof crush resistance.

* * * * *

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to—

(a) School buses;

(b) Vehicles that conform to the rollover test requirements (S5.3) of Standard No. 208 (§ 571.208) by means that require no action by vehicle occupants;

(c) Convertibles, except for optional compliance with the standard as an alternative to the rollover test requirement (S5.3) of Standard No. 208; or

(d) Vehicles manufactured in two or more stages, other than chassis cabs, that conform to the roof crush requirements (S4) of Standard No. 220 (§ 571.220).

S4. *Definitions.*

* * * * *

Convertible means a vehicle whose A-pillars are not joined with the B-pillars (or rearmost pillars) by a fixed, rigid structural member.

* * * * *

Roof component means the A-pillar, B-pillar, roof side rail, front header, rear

header, roof, and all interior trim in contact with these components.

* * * * *

S5. *Requirements.* When the test device described in S6 is used to apply a force to a vehicle's roof in accordance with S7, first to one side of the roof and then to the other side of the roof, no roof component or portion of the test device may contact the head or the neck of the seated Hybrid III 50th percentile male dummy specified in 49 CFR Part 572, Subpart E. The maximum applied force in Newtons is any value up to and including 2.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8.

* * * * *

S7.1 Secure the vehicle in accordance with S7.1(a) through (d).

(a) Support the vehicle off its suspension at a longitudinal vehicle attitude of 0 degrees ± 0.5 degrees. Measure the longitudinal vehicle attitude along both the driver and passenger sill. Determine the lateral vehicle attitude by measuring the vertical distance between a level surface and a standard reference point on the bottom of the driver and passenger side sills. The difference between the vertical distance measured on the driver side and the passenger side sills shall not exceed ± 1 cm.

(b) Secure the vehicle with four stands. The locations for supporting the vehicle are defined in S7.1(c) or (d). Welding is permissible. The vehicle overhangs are not supported. Chains and wire rope are not used to secure the vehicle. Fix all non-rigid body mounts to prevent motion of the body relative to the frame. Close all windows, close and lock all doors, and secure any moveable or removable roof structure in place over the occupant compartment. Remove roof racks or other non-structural components.

(c) For vehicles with manufacturer's designated jacking locations, locate the stands at or near the specified location.

(d) For vehicles with undefined jacking locations, generalized jacking areas, or jacking areas that are not part of the vehicle body or frame, such as axles or suspension members, locate two stands in the region forward of the rearmost axle and two stands rearward of the forwardmost axle. All four stands shall be located between the axles on either the vehicle body or vehicle frame.

S7.2 (a) Adjust the seats and steering controls in accordance with S8.1.2 and S.8.1.4 of 49 CFR 571.208.

(b) Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place any adjustable anchorages at the manufacturer's nominal design position for a 50th percentile adult male occupant. Place each adjustable head restraint in its lowest adjustment position. Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

S7.3 Position the Hybrid III 50th percentile male dummy specified in 49 CFR Part 572, Subpart E in accordance with S10.1 through S10.6.2.2 of 49 CFR 571.208, in the front outboard designated seating position on the side of the vehicle being tested.

S7.4 Orient the test device as shown in Figure 1 of this section, so that—

(a) Its longitudinal axis is at a forward angle (in side view) of 5 degrees below the horizontal, and is parallel to the vertical plane through the vehicle's longitudinal centerline;

(b) Its transverse axis is at an outboard angle, in the front view projection, of 25 degrees below the horizontal.

S7.5 Maintaining the orientation specified in S7.4—

(a) Lower the test device until it initially makes contact with the roof of the vehicle.

(b) Position the test device so that—

(1) The longitudinal centerline on its lower surface is within 10 mm of the initial point of contact, or on the center of the initial contact area, with the roof; and

(2) The midpoint of the forward edge of the lower surface of the test device is within 10 mm of the transverse vertical plane 254 mm forward of the forwardmost point on the exterior surface of the roof, including windshield trim, that lies in the longitudinal vertical plane passing through the vehicle's longitudinal centerline.

S7.6 Apply force so that the test device moves in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching the force level specified in S5. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S7.4(a) and S7.4(b). Complete the test within 120 seconds.

S7.7 Repeat the test on the other side of the vehicle.

* * * * *

Alternative 2 (Single-Sided Test)

3. Amend § 571.216 by:

a. Revising S3 to read as set forth below;

b. Adding to S4, in alphabetical order, new definitions of ''Convertible'' and ''Roof component;''

c. Revising S5 to read as set forth below;

d. Removing S5.1;

e. Revising S7.1 through S7.6 to read as set forth below; and

f. Removing S8 through S8.4.

The revisions and additions read as follows:

§ 571.216 Standard No. 216; Roof crush resistance.

* * * * *

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to—

(a) School buses;

(b) Vehicles that conform to the rollover test requirements (S5.3) of Standard No. 208 (§ 571.208) by means that require no action by vehicle occupants;

(c) *Convertibles*, except for optional compliance with the standard as an alternative to the rollover test requirement (S5.3) of Standard No. 208; or

(d) Vehicles manufactured in two or more stages, other than chassis cabs, that conform to the roof crush requirements (S4) of Standard No. 220 (§ 571.220).

S4. *Definitions.*

* * * * *

Convertible means a vehicle whose A-pillars are not joined with the B-pillars (or rearmost pillars) by a fixed, rigid structural member.

* * * * *

Roof component means the A-pillar, B-pillar, roof side rail, front header, rear header, roof, and all interior trim in contact with these components.

* * * * *

S5. *Requirements.* When the test device described in S6 is used to apply a force to a vehicle's roof in accordance with S7, no roof component or portion of the test device may contact the head or the neck of the seated Hybrid III 50th percentile male dummy specified in 49 CFR Part 572, Subpart E. The maximum applied force in Newtons is any value up to and including 2.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8. A particular vehicle need not meet the requirements on the second side of the vehicle, after being tested at one location.

* * * * *

S7.1 Secure the vehicle in accordance with S7.1(a) through (d).

(a) Support the vehicle off its suspension at a longitudinal vehicle attitude of 0 degrees ± 0.5 degrees.

Measure the longitudinal vehicle attitude along both the driver and passenger sill. Determine the lateral vehicle attitude by measuring the vertical distance between a level surface and a standard reference point on the bottom of the driver and passenger side sills. The difference between the vertical distance measured on the driver side and the passenger side sills shall not exceed ± 1 cm.

(b) Secure the vehicle with four stands. The locations for supporting the vehicle are defined in S7.1(c) or (d). Welding is permissible. The vehicle overhangs are not supported. Chains and wire rope are not used to secure the vehicle. Fix all non-rigid body mounts to prevent motion of the body relative to the frame. Close all windows, close and lock all doors, and secure any moveable or removable roof structure in place over the occupant compartment. Remove roof racks or other non-structural components.

(c) For vehicles with manufacturer's designated jacking locations, locate the stands at or near the specified location.

(d) For vehicles with undefined jacking locations, generalized jacking areas, or jacking areas that are not part of the vehicle body or frame, such as axles or suspension members, locate two stands in the region forward of the rearmost axle and two stands rearward of the forwardmost axle. All four stands shall be located between the axles on either the vehicle body or vehicle frame.

S7.2 (a) Adjust the seats and steering controls in accordance with S8.1.2 and S.8.1.4 of 49 CFR 571.208.

(b) Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place any adjustable anchorages at the manufacturer's nominal design position for a 50th percentile adult male occupant. Place each adjustable head restraint in its lowest adjustment position. Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

S7.3 Position the Hybrid III 50th percentile male dummy specified in 49 CFR Part 572, Subpart E in accordance with S10.1 through S10.6.2.2 of 49 CFR 571.208, in the front outboard designated seating position on the side of the vehicle being tested.

S7.4 Orient the test device as shown in Figure 1 of this section, so that—

(a) Its longitudinal axis is at a forward angle (in side view) of 5 degrees below the horizontal, and is parallel to the vertical plane through the vehicle's longitudinal centerline;

(b) Its transverse axis is at an outboard angle, in the front view projection, of 25 degrees below the horizontal.

S7.5 Maintaining the orientation specified in S7.4—

(a) Lower the test device until it initially makes contact with the roof of the vehicle.

(b) Position the test device so that—

(1) The longitudinal centerline on its lower surface is within 10 mm of the initial point of contact, or on the center of the initial contact area, with the roof; and

(2) The midpoint of the forward edge of the lower surface of the test device is within 10 mm of the transverse vertical plane 254 mm forward of the forwardmost point on the exterior surface of the roof, including windshield trim, that lies in the longitudinal vertical plane passing through the vehicle's longitudinal centerline.

S7.6 Apply force so that the test device moves in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching the force level specified in S5. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S7.4(a) and S7.4(b). Complete the test within 120 seconds.

* * * * *

Issued: January 24, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 08–392 Filed 1–25–08; 12:22 pm]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 73, No. 20

Wednesday, January 30, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–CN–08–0003; CN–07–009]

Cotton Research and Promotion Program: Determination of Whether To Conduct a Referendum Regarding the 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the U.S. Department of Agriculture's (USDA) determination not to conduct a continuance referendum regarding the 1991 amendments to the Cotton Research and Promotion Order (Order) provided for in the Cotton Research and Promotion Act (Act) amendments of 1990. This determination is based on the results of a sign-up period conducted September 3 through November 30, 2007, during which eligible cotton producers and importers were provided an opportunity to request a continuance referendum.

FOR FURTHER INFORMATION CONTACT: Shethir Riva, Chief, Cotton Research and Promotion Staff, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224, Telephone (202) 720–2259, Facsimile (202) 690–1718 or e-mail *Shethir.Riva@usda.gov.*

SUPPLEMENTARY INFORMATION: During the period of September 3 through November 30, 2007, pursuant to section 8(c)(1) of the Act, USDA provided an opportunity for eligible cotton producers and importers to request a continuance referendum regarding the 1991 amendments to the Order provided for in the Act. Sign-up period results showed that USDA received 107 valid requests from eligible producers and importers. The following table depicts the number of requests for a continuance referendum.

FSA State office	Sign-up request
Alabama	8
Arizona	0
Arkansas	11
California	0
Florida	1
Georgia	0
Illinois	0
Kansas	0
Kentucky	0
Louisiana	0
Maryland	0
Mississippi	2
Missouri	0
Nevada	0
New Mexico	0
North Carolina	3
Oklahoma	0
South Carolina	0
Tennessee	55
Texas	8
Virginia	0
Importers	19
Total	107

Section 8(c)(2) of the Act, provides that following a sign-up period, USDA shall conduct a referendum upon the request of 10 percent or more of the number of cotton producers and importers voting in the most recent referendum (1991). This would require 10 percent or 4,622 (46,220X.10 = 4,622) of the 46,220 valid ballots cast by cotton producers and importers in the July 1991 referendum. It is further provided that, in counting such request not more than 20 percent or 924 may be from producers from any one state or importers of cotton.

USDA finds that the results of the sign-up period did not meet the criteria requiring a continuance referendum by the Act. USDA bases this determination on the fact that the 107 requests received during the sign-up period is less than the 4,622 required.

Background

The 1991 amendments to the Order (7 CFR part 1205 *et seq.*) were implemented following the July 1991 referendum. The 1990 amendments were provided for in the Act (7 U.S.C. 2101–2118). These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products into the U.S. and whom USDA selects from nominations submitted by importer organization certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On July 9, 1991, (56 FR 31289) AMS issued a proposal to amend the Order to determine if a majority, 50 percent or more, of producers and importers favored implementation of the proposed amendments to the Order. USDA conducted a referendum (July 1991) among persons who had been cotton producers or cotton importers during a representative period. Results of the July 1991 referendum showed that of the 46,220 valid ballots received; 27,879 or 60 percent of the persons voting favored the amendments to the Order and 18,341 or 40 percent opposed the amendments.

Following the July 1991 referendum, AMS implemented the amendments. In addition to the previously discussed amendments to the Act and Order, USDA is required by section 8(c)(1) to: (1) Conduct a review once every 5 years after the anniversary date of the referendum implementing the 1990 Act amendments to determine whether a referendum is necessary and (2) make public the results of such a review within 60 days after each fifth anniversary date of the 1991 implementing referendum. Should the review indicate that a referendum is needed USDA is directed to conduct the referendum within 12 months after a public announcement of review results.

Should the review indicate that a referendum is not warranted, section 8(c)(2) includes provisions for producers and importers to request a continuance referendum through a sign-up period.

In 1996 and 2001, pursuant to the Act, USDA issued the results of its 5-year reviews of the Cotton Research and Promotion Program. In both reviews, the Department prepared reports that described the impact of the Cotton Research and Promotion Program on the cotton industry and the views of those

receiving its benefits, and in both instances, USDA announced its view not to conduct a referendum regarding the 1991 amendments to the Order (61 FR 52772 & 67 FR 1714) and subsequently held sign-up periods for all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of both respective sign-up periods did not meet the criteria as established by the Act for a continuance referendum and, therefore, referenda were not conducted.

In 2006, the Department again prepared a 5-year report that described the impact of the Cotton Research and Promotion Program on the cotton industry. The review report is available upon written request to the Chief of the Cotton Research and Promotion Staff at the address provided above. Comments were solicited from all interested parties including from persons who pay the assessments as well as from organizations representing cotton producers and importers (71 FR 13808; March 17, 2006). Economic data was also reviewed in order to report on the general climate of the cotton industry. Finally, a number of independent sources of information were reviewed to help identify perspectives from outside the program including the results of independent program evaluations assessing the effects of the Cotton Research and Promotion Program activities on demand for Upland cotton, return-on-investment to cotton producers, the benefit-cost ratio to companies who import cotton products and raw cotton, and the overall rate-of-return and qualitative benefits and returns associated with the Cotton Research and Promotion Program. The review report cited that the 1990 amendments to the Act were successfully implemented and are operating as intended. The report also noted that there is a consensus within the cotton industry that the Cotton Research and Promotion Program and the 1990 amendments to the Act are operating as intended. Written comments, economic data, and results from independent evaluations support this conclusion. Industry comments cited examples of how the additional funding has yielded benefits by increasing the demand and consumption for cotton. Of the 15 comments received, only one commenter, who represents cotton importers, argued for a referendum on the 1990 Act amendments.

USDA found no compelling reason to conduct a referendum regarding the 1990 Act amendments to the Cotton Research and Promotion Order although some program participants support a referendum. Therefore, USDA allowed all eligible persons to request the conduct of a continuance referendum on the 1990 amendments through a sign-up period.

With this announcement of the results of the sign-up period, USDA has completed all requirements set forth in section 8(c) (1) and (2) of the Act regarding the review of the Cotton Research and Promotion Program to determine if a continuance referendum is warranted. A referendum will not be conducted, and no further actions are planned in connection with this review.

Authority: 7 U.S.C. 2101–2118.

Dated: January 24, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–1660 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0128]

Notice of Decision to Issue Permits for the Importation of Sweet Cherries From Australia Into the Continental United States and Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States and Hawaii of sweet cherries from Australia. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of sweet cherries from Australia.

EFFECTIVE DATE: January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on October 12, 2007 (72 FR 58047–58048, Docket No. APHIS–2007–0128), in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the importation into the continental United States and Hawaii of sweet cherries from Australia. We solicited comments on the notice for 60 days ending on December 11, 2007. We received one comment by that date, from a representative of Australia's Department of Agriculture, Fisheries and Forestry.

The commenter supported the findings of the pest risk analysis, but noted that her agency has concerns regarding the commercial viability of one of the treatment options we spelled out for Australian cherries. The commenter stated that the methyl bromide fumigation followed by cold treatment is considered by the Australian industry to damage the fruit and could thus reduce its commercial appeal. Based on those concerns, the

[1] To view the notice, the pest risk analysis, and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0128.*

commenter urged APHIS to complete its review of the data supporting a cold treatment-only option for treating cherries. The commenter did not, however, question the efficacy of the combination treatment or otherwise suggest that the overall conclusions of the analysis and the Administrator's determination of risk should be changed.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States and Hawaii of sweet cherries from Australia subject to the following conditions:

- The fruit must be part of a commercial consignment as defined in 7 CFR 319.56–2.
- The fruit must either originate from an APHIS-approved fruit fly free area or be treated in accordance with the phytosanitary treatments regulations in 7 CFR part 305. This may entail treatment with T108-a-1/2/3 [fumigation with methyl bromide followed by cold treatment as provided in 7 CFR 305.10(a)] or irradiation using 150 Gy as the minimum absorbed dose and meeting all other relevant requirements in 7 CFR 305.31.
- Each consignment must be accompanied by a phytosanitary certificate issued by the Australian National Plant Protection Organization (NPPO) certifying that the fruit either received the required treatment or originated from a fruit fly free area. The NPPO must also include an additional declaration in the phytosanitary certificate that states: ''The fruit in this shipment was inspected and found free of *Epiphyas postvittana*.''
- The fruit will also be subject to inspection at the port of entry should inspectors determine that such inspection is necessary.

These conditions will be listed in the fruits and vegetables manual (available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf)*. In addition to these specific measures, the sweet cherries will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Done in Washington, DC, this 25th day of January 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–1682 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 2008

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii, as authorized by the William F. Goodling Child Nutrition Reauthorization Act of 1998.

EFFECTIVE DATE: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302, (703) 305–2590.

SUPPLEMENTARY INFORMATION:

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

Background

In accordance with Section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761), section 12 of the NSLA (42 U.S.C. 1760(f)), and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP in 2008. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 2006 through November 2007.

The 2008 reimbursement rates, in dollars, for all States excluding Alaska and Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALL STATES (NOT AK OR HI)

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.57	$.1575	$.1225
Lunch or Supper	2.75	.2875	.2375
Snacks	.64	.0775	.0625

The 2008 reimbursement rates, in dollars, for Alaska:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$2.55	$.2525	$.2000
Lunch or Supper	4.45	.4650	.3875
Snacks	1.04	.1275	.1000

The 2008 reimbursement rates, in dollars, for Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR HAWAII ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.84	$.1825	$.1450
Lunch or Supper	3.22	.3375	.2800
Snacks	.75	.0925	.0725

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served.

The above reimbursement rates, for both operating and administrative reimbursement rates, represent a 4.1 percent increase during 2007 (from 201.6 in November 2006 to 209.854 in November 2007) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department would like to point out that the SFSP administrative reimbursement rates continue to be adjusted up or down to the nearest quarter-cent, as has previously been the case. Additionally, operating reimbursement rates have been rounded down to the nearest whole cent, as required by Section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759 (a)(3)(B)).

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

Dated: January 25, 2008.

Roberto Salazar,

Administrator.

[FR Doc. E8–1656 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha National Forest; Michigan; Niagara EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The East Administrative Unit of the Hiawatha National Forest intends to prepare an environmental impact statement (EIS) to disclose the environmental consequences of a vegetation and transportation management project. See the **SUPPLEMENTARY INFORMATION** section for the purpose of and need for the action.

DATES: Comments concerning the scope of the analysis must be received by February 17, 2008. The draft environmental impact statement is expected October 2008 and the final environmental impact statement is expected March 2009.

ADDRESSES: Send written comments to Lyn Hyslop, Niagara Team Leader; St. Ignace Ranger District; W1900 W US–2; St. Ignace, Michigan 49781. Send electronic comments to *comments-eastern-hiawatha-st-ignace@fs.fed.us.*

For further information, mail correspondence to Lyn Hyslop, Niagara Team Leader; St. Ignace Ranger District; W1900 W US–2; St. Ignace, Michigan 49781. See the **SUPPLEMENTARY INFORMATION** section for information on how to send electronic comments.

FOR FURTHER INFORMATION CONTACT: Lyn Hyslop, Niagara Team Leader; St. Ignace Ranger District; (906) 643–7900. See address above under **ADDRESSES**. Copies of documents may be requested at the same address. Another means of obtaining information is to visit the Hiawatha National Forest webpage at *http://www.fs.fed.us/r9/hiawatha/planning.htm.*

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

The purpose of and need for the project is to:

- Ensure fully stocked stands of desired forest cover types identified in the vegetation composition and size goals for management areas 2.3 and 8.3, and provide commercial wood products (Forest Plan, pp. 3–10 and 3–42).
- Provide a safe and efficient transportation system for managing the National Forest and providing appropriate access to non-federal land.
- Provide within-stand diversity by increasing white pine and hemlock in stands missing this component.
- Reduce the susceptibility of the Niagara area to insect and disease outbreaks.

Proposed Action

To move the project area toward the desired conditions shown in the Hiawatha National Forest Land and Resource Management Plan, the Hiawatha National Forest would during this decade: (1) Clearcut on 189 acres, (2) clearcut—salvage mortality on 416 acres, (3) shelterwood cut with reserves on 650 acres, (4) seed-tree cut with reserves on 62 acres, (5) overstory removal cut with reserves on 219 acres, (6) single-tree selection cut on 4,154 acres, (7) commercial thin on 879 acres, (8) site preparation for natural regeneration on 4,487 acres, (9) mechanical site preparation for natural regeneration on 409 acres, (10) full planting on 219 acres, (11) construct 4 miles of new system roads, (12) construct 6 miles of temporary roads, (13) add 2 miles of unclassified roads to the National Forest System, (14) close 2

miles of existing roads, (15) decommission 18 miles of roads, (16) construct 19 permanent log landings, and (17) construct 20 temporary log landings. The total treatment area is 6,569 acres.

Responsible Official

Stevan J. Christiansen, District Ranger; St. Ignace Ranger District; W1900 W US–2; St. Ignace, Michigan 49781.

Nature of Decision To Be Made

The decision to be made is whether or not to manage the vegetation on any or all of the 6,569 acres by harvesting, and; whether or not to manage the transportation system through construction of temporary and permanent roads and log landings, addition of unclassified roads, and road closures and decommissioning.

Scoping Process

The St. Ignace Ranger District proposes to scope for information by contacting persons and organizations on the Hiawatha's mailing list and landowners within or adjacent to the project area. In addition a legal notice will be posted in the local newspapers. An open house is also scheduled for January 30, 2008 at the St. Ignace District office at the address listed above, from 5–8 p.m. This present solicitation is for comments on this Notice of Intent and the scoping materials available elsewhere, such as on the Hiawatha National Forest webpage.

Preliminary Issues

Preliminary or potential issues have been identified from experience with similar projects.

(1) Timber harvesting may adversely impact wildlife species requiring early succession habitat.

(2) Timber harvesting may adversely impact wildlife species requiring late succession habitat.

(3) Closing and decommissioning roads could reduce the amount of legal motorized vehicle activity and could increase the amount of illegal motorized vehicle activity.

(4) Closing and decommissioning roads could result in adverse effects to soils, riparian areas and wetlands, wildlife, and plants.

(5) Timber harvesting and road building may adversely impact Canada lynx or Hart's tongue fern.

(6) The karst topography and its dependent above-ground and below-ground resources may be impacted by the area's ability to produce valuable timber products.

Addresses

Information is available electronically on the Hiawatha National Forest webpage: *http://www.fs.fed.us/r9/hiawatha/planning.htm*—click on ''Niagara''. Send electronic comments to: *comments-eastern-hiawatha-st-ignace@fs.fed.us.* When submitting electronic comments, please reference the Niagara Project on the subject line. In addition, include your name, mailing address, and whether you would like a CD or paper copy of the draft EIS.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments are most valuable if they are within the scope of the proposed action, specific to the proposed action, have a direct relationship to the proposed action, and include supporting reasons for consideration in the environmental impact statement and any subsequent decisions. Comments will be used to identify relevant issues, display environmental effects, or develop a range of reasonable alternatives to the proposed action. Any referenced scientific literature should be accompanied by a complete copy of the literature, and rationale as to its pertinence to the Niagara Project.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. 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 alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 23, 2008.

Stevan J. Christiansen,

District Ranger.

[FR Doc. E8–1607 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108-447)

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Eastern Region Recreation Resource Advisory Committee will hold its third meeting via teleconference. The purpose of the meeting is to receive recommendations concerning recreation fee proposals on areas managed by the Forest Service in Michigan and to discuss other items of interest related to the Federal Lands Recreation Enhancement Act of 2004.

A final detailed agenda, with any additions/corrections to agenda topics and meeting time, will be sent to regional media sources at least 14 days before the meeting, and hard copies can also be mailed or sent via FAX.

Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of the agenda, should contact Marcia Heymen at 626 E. Wisconsin Ave., Milwaukee, WI 53202 no later than 10 days prior to the meeting.

DATES: The meeting will be held February 26, 2008.

Send written comments to Cheryl Chatham, Designated Federal Official for the Eastern Recreation RAC, US Forest Service, PO Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Cheryl Chatham, Designated Federal Official US Forest Service, PO Box 1270, Hot Springs, AR 71902.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by February 20, 2008, will have the opportunity to address the Committee at the meeting.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: January 23, 2008.

Cheryl G. Chatham,

Designated Federal Officer.

[FR Doc. 08–389 Filed 1–29–08; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee (RAC) will meet February 15, 2008 in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees, (4) Discussion—items of interest, (5) Discussion/approval of projects, (6) next agenda items and meeting date.

DATES: The meeting will be held on February 15, 2008, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by February 10, 2008. Public will have the opportunity to address the committee at the meeting.

Dated: January 23, 2008.

Lee Johnson,

Designated Federal Official.

[FR Doc. 08–381 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Southern Region Recreation Resource Advisory Committee will hold its third meeting at Staybridge Suites—Atlanta Perimeter Center East, 4601 Ridgeview Road in Atlanta, Georgia. The purpose of the meeting is to receive recommendations concerning recreation fee proposals on areas managed by the Forest Service in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and the territory of Puerto Rico; and to discuss other items of interest related to the Federal Lands Recreation Enhancement Act of 2004.

A final detailed agenda, with any additions/corrections to agenda topics, location, field trips and meeting times, will be sent to regional media sources at least 14 days before the meeting, and hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Caroline Mitchell at PO Box 1270, Hot Springs, AR 71902 (501–321–5318) no later than 10 days prior to the meeting.

DATES: The meeting will be held February 20–21, 2008.

ADDRESSES: The meeting will be held at Staybridge Suites—Atlanta Perimeter Center East, 4601 Ridgeview Road in Atlanta, Georgia. Send written comments to Cheryl Chantham Designated Federal Official for the Southern Recreation RAC, US Forest Service, PO Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Cheryl Chatham, Designated Federal Official, US Forest Service, PO Box 1270, Hot Springs, AR 71902.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by February 14, 2008, will have the opportunity to address the Committee at the meeting. The Recreation RAC is authorized by the Federal land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: January 23, 2008.

Cheryl G. Chatham,

Designated Federal Officer, Southern Region.

[FR Doc. 08–390 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces Rural Development's intention to request a revision for a currently approved information collection in support of loan programs administered by the Rural Housing Service, Business-Cooperative Service, and Rural Utilities Service.

DATES: Comments on this notice must be received by April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Ronald Gianella, Accountant, Office of the Deputy Chief Financial Officer, Policy and Internal Review Division, U.S. Department of Agriculture, STOP 33, P.O. Box 200011, St. Louis, MO 63120, *Telephone:* (314) 457–4298.

SUPPLEMENTARY INFORMATION:

Title: Form RD 1951–65, Customer Initiated Payments (CIP) Enrollment Form; Form RD 1951–66, FedWire Worksheet, and Form RD 3550–28, Authorization Agreement for Preauthorized Payments.

OMB Number: 0575–0184.

Expiration Date of Approval: June 30, 2008.

Type of Request: Revision of a currently approved information collection.

Abstract: Rural Development uses electronic methods (Customer Initiated Payments [CIP], FedWire, and Preauthorized Debits [PAD]) for receiving and processing loan payments and collections. These electronic collection methods provide a means for Rural Development borrowers to transmit loan payments from their financial institution (FI) accounts to Rural Development's Treasury Account and receive credit for their payments.

To administer these electronic loan collection methods, Rural Development collects the borrower's FI routing information (routing information includes the FI routing number and the borrower's account number). Rural Development uses Agency approved forms for collecting bank routing information for CIP, FedWire, and PAD.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response. Each Rural Development borrower who elects to participate in electronic loan payments will only prepare one response for the life of their loan unless they change financial institutions or accounts.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, local, or tribal Government.

Estimated Number of Respondents: 23,520.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 23,520.

Estimated Total Annual Burden on Respondents: 11,760 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents.

Comments should be submitted to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized, included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

Dated: January 24, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8–1577 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–914]

Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that light-walled rectangular pipe and tube (LWR) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated dumping margins are shown in the ''Preliminary Determination'' section of this notice.

EFFECTIVE DATE: January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2769 or 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2007, the Department received petitions concerning imports of LWR from the PRC, Mexico, Turkey, and the Republic of Korea (Korea) filed in proper form by Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (collectively, the petitioners). The Department initiated antidumping duty investigations of LWR from the above-mentioned countries on July 17, 2007. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China,* 72 FR 40274 (July 24, 2007) (*Initiation Notice*). On August 22, 2007, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of LWR from the PRC, Mexico, Turkey, and Korea. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey, Investigation Nos. 701-TA–449 and 731-TA–1118–1121 (Preliminary),* 72 FR 49310 (August 28, 2007).

On July 18, 2007, the Department requested quantity and value (Q&V) information from the 53 companies that were identified in the petition as potential producers or exporters of LWR from the PRC. *See* Exhibit 10, Volume I, of the June 27, 2007, Petition for the Imposition of Antidumping and Countervailing Duties (the petition). The Department received timely responses to its Q&V questionnaire from the following 10 companies (three of which were identified in the petition): Zhangjiagang Zhongyuan Pipe-Making Co., Ltd. (ZZPC), Suns International Trading Limited (Suns), Liaoning Cold Forming Sectional Company Limited (Liaoning), Kunshan Lets Win Steel Machinery Co., Ltd. (Lets Win), Wuxi Baishun Steel Pipe Co., Ltd. (Baishun), Guangdong Walsall Steel Pipe Industrial Co., Ltd. (Walsall), Wuxi Worldunion Trading Co., Ltd. (Worldunion), Weifang East Steel Pipe Co., Ltd. (Weifang), Jiangyin Jianye Metal Products Co., Ltd. (Jiangyin), and Dalian Brollo Steel Tubes Ltd. (Dalian).

On August 16, 2007, the Department selected ZZPC and Lets Win as mandatory respondents. *See* memorandum regarding ''Selection of Respondents in the Antidumping

Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China,'' dated August 16, 2007 (Respondent Selection Memorandum).

The Department received separate-rate applications from ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, Jiangyin, and Dalian. The Department did not receive separate-rate applications from Suns and Liaoning.

On August 17, 2007, the Department issued its antidumping questionnaire to the mandatory respondents. ZZPC and Lets Win submitted timely responses to the Department's questionnaire during September and October 2007. The Department issued supplemental questionnaires to, and received responses from, ZZPC and Lets Win in October, November, and December 2007 and January 2008. The petitioners submitted comments to the Department regarding ZZPC's and Lets Wins' questionnaire and supplemental questionnaire responses, and the separate rates response of Dalian in October and December 2007.

On September 21, 2007, the Department released to interested parties a memorandum which listed potential surrogate countries and invited interested parties to comment on surrogate country and factor value selection. No party responded to the Department's invitation to comment on surrogate country selection. However, in October, November, and December 2007 and January 2008, both the petitioners and the respondents submitted surrogate values, including surrogate financial statements, for use in this investigation. All of the submitted surrogate data are from India.

In August and September 2007, the petitioners and respondents submitted comments to the Department regarding the appropriate model matching criteria.

On November 1, 2007, the petitioners alleged targeted dumping by ZZPC and Lets Win. On December 10, 2007, the Department sent a letter to the petitioners requesting more information regarding both targeted dumping allegations. *See* Letter from Howard Smith, Program Manager, Office 4, to Petitioners, concerning, ''Targeted Dumping Allegation,'' dated December 10, 2007. On December 17, 2007, the petitioners responded to the Department's December 10th request for additional information. See the ''Targeted Dumping'' section of this notice for additional information regarding these allegations.

On December 13, 2007, the petitioners requested that the Department make a finding that critical circumstances exist with respect to imports of LWR from the PRC. The Department issued questionnaires regarding critical circumstances to Lets Win and ZZPC on December 18, 2007. Lets Win and ZZPC submitted their responses to those questionnaires on December 28, 2007, and January 2, 2008. See the ''Critical Circumstances'' section of this notice for additional information.

Period of Investigation

The period of investigation (POI) is October 1, 2006, through March 31, 2007. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, June 2007). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise that is the subject of this investigation is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323, (May 19, 1997) and *Initiation Notice.* The Department received no comments concerning the scope of the LWR antidumping and countervailing duty investigations. Accordingly, we have not made changes to the scope of this investigation.

Critical Circumstances

The Department preliminarily finds that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from the PRC-wide entity because, in accordance with section 733(e)(1)(A)(ii) of the Act, importers of LWR produced by the PRC-wide entity knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales. See Memorandum from Abdelali Elouaradia, Director, Office 4, ''Preliminary Affirmative Determination of Critical Circumstances, in Part,'' dated concurrently with this memorandum. In addition, the Department also preliminarily finds that imports from the PRC-wide entity satisfy section 733(e)(1)(B) of Act because these imports were massive during a relatively short period. *See id.*

However, with respect to Lets Win, ZZPC, and the separate-rate companies, the Department does not preliminarily find that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from these companies because the record indicates that imports from these companies were not massive during a relatively short period. See section 733(e)(1)(B) of the Act; see also Memorandum from Abdelali Elouaradia, Director, Office 4, ''Preliminary Affirmative Determination of Critical Circumstances, in Part,'' dated concurrently with this memorandum. Accordingly, for Lets Win, ZZPC, and the separate-rate companies, the statutory requirement imposed by section 733(e)(1)(B) of Act has not been satisfied and, therefore, we preliminarily determine that critical circumstances do not exist for these entities.

Targeted Dumping

Pursuant to section 777A(d)(1) of the Act, in calculating dumping margins in investigations the Department normally will compare U.S. prices and normal values using a weighted average-to-average or transaction-to-transaction comparison methodology. However, section 777A(d)(1)(B) of the Act allows the Department to compare transaction-specific export or constructed export prices to weighted-average normal

values if there is a pattern of export or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time and the Department explains why such differences cannot be taken into account using the weighted average-to-average or transaction-to-transaction methods. *See* sections 777A(d)(1)(B)(i) and 777A(d)(1)(B)(ii) of the Act. Further, 19 CFR 351.414(f)(1)(i) requires that a determination of targeted dumping be made ''through the use of, among other things, standard and appropriate statistical techniques.'' The regulations further elaborate that targeted dumping allegations ''must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.'' *See* 19 CFR 351.414(f)(3).

On November 1, 2007, the petitioners alleged that Lets Win and ZZPC targeted certain sales of LWR for dumping. Specifically, the petitioners alleged that targeted dumping occurred where the average net price of all of the subject merchandise sold to a particular customer, entered into a particular port, or sold during a specific month, differed by more than two percent from the overall average net price of all of the subject merchandise sold by the respondent during the POI. The petitioners believe the two-percent price difference supports a finding of targeted dumping because: (1) This approach is consistent with the methodology used in the antidumping duty investigation of coated free sheet (CFS) paper from the Republic of South Korea; and (2) LWR is a commodity product sold in a competitive market and, thus, any price difference is critical. *See Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea,* 72 FR 60630 (October 25, 2007) (*CFS from Korea*) and accompanying Issues and Decision Memorandum at Comment 3; *see also Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey,* Investigation Nos. 701–TA–449 and 731–TA–1118–1121 (Preliminary) USITC Pub. 3941 at 10 (August 2007) (noting that the parties generally agree that LWR is a commodity-like product). Based on the price comparisons described above, the petitioners argue that Lets Win engaged in targeted dumping during a certain time period whereas ZZPC engaged in targeted dumping with respect to certain customers, regions, and time periods.

After reviewing the petitioners' targeted dumping allegations, the Department determined that the allegations lacked basic information and support, and informed the petitioners that they failed to: (1) Establish that the two-percent price variation is significant for the LWR market; (2) establish that the price differences are based on purchasers, regions, or time periods rather than other factors (*e.g.*, general price fluctuations in the market, product differences, differences in channels of distribution or quantities purchased); and (3) explain why the average-to-average or transaction-to-transaction comparison methodology cannot take into account the observed price differences. *See* the Department's December 10, 2007, letter to the petitioners.

In response to the Department's December 10, 2007, letter, the petitioners asserted that the ITC has already analyzed the LWR market and found the subject merchandise to be a commodity product. *See* the petitioners' December 17, 2007, submission to the Department. The petitioners noted that the only stated reason for accepting a two-percent price variation as evidence of targeted dumping in the CFS paper investigation was the ITC's finding that CFS paper is a commodity product. According to the petitioners, additional market analysis related to targeted dumping (beyond the ITC's finding) was not engaged in by the petitioner in CFS paper, nor is such extensive market analysis required by the statute. Thus, the petitioners maintained that the ITC's findings are more than adequate support for their proposed two-percent benchmark. Moreover, the petitioners argued that price differences in commodity-like products sold to different purchasers or regions or in different time periods can only be captured through an average-to-transaction comparison. Specifically, the petitioners stated that if the Department were to average prices to targeted and non-targeted groups the lower prices in the targeted groups would be offset by the prices in the non-targeted groups.

We have determined that in this case using an average-to-transaction comparison methodology results in the same overall antidumping margin for each of the respondents as using an average-to-average comparison methodology. *See* memoranda to the File from Jeff Pedersen for each respondent regarding ''Dumping Margins Based on an Average-to-Transaction Comparison Methodology.'' Thus, the petitioners' claim that the observed price differences can only be taken into account using an average-to-transaction comparison is not supported by the facts in this case. *See id.* Therefore, the requirement of section 777A(d)(1)(B)(ii) of the Act that the average-to-average or transaction-to-transaction methodology cannot account for the price differences is not met. *See also ''Statement of Administrative Action,''* accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, (1994) at 843 (*SAA*) (''{b}efore relying on {the average-to-transaction comparison} methodology, however, Commerce must establish and provide an explanation why it cannot account for such differences through the use of an average-to-average or transaction-to-transaction comparison.'').

Finally, the Department notes that the petitioners failed to adequately respond to the Department's concerns regarding their targeted dumping allegations. Specifically, the petitioners failed to describe how the LWR market functions and did not adequately explain why a two-percent price difference should be considered to be significant for the ''commodity-like product,'' LWR, given the characteristics of the LWR market.[1] As provided in the SAA ''the Administration intends that in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.'' *See* SAA at 843. Moreover, the petitioners failed to address or take into consideration other possible reasons for the observed price differences (*e.g.*, general price fluctuations in the market, product differences (the petitioners did not compare prices of identical merchandise in their analysis), differences in channels of distribution or quantities purchased, *etc.*). Thus, the petitioners did not adequately establish price patterns based on purchasers, regions, or periods of time. We note that in the CFS paper investigation, a number of these other possible reasons for the observed price differences were taken into account by comparing prices for identical merchandise sold at the same level of trade on a month-to-month basis.

Given the foregoing, we find that the petitioners' allegations do not contain sufficient information to conduct a targeted dumping analysis.

[1] Additionally, it is important to note that in the investigation of CFS paper from the Republic of Korea, rather than adopting a two-percent benchmark in analyzing targeted dumping the Department specifically noted that it ''has not adopted any specific percentages suggested by both parties in their contentions regarding the definition of significance.'' *See CFS from Korea* and accompanying ''Issues and Decision Memorandum'' at Comment 3.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy (NME) country. In accordance with section 771(18)(c)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, From the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 70488 (December 18, 2003). Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base normal value (NV) on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries that are at a level of economic development comparable to that of the PRC. *See* memorandum regarding ''Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube (Pipe) from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated August 22, 2007 (Policy Memorandum). From among these economically comparable countries, the Department has preliminarily selected India as the surrogate country for this investigation because it determined that: (1) India is a significant producer of merchandise comparable to the subject merchandise and (2) reliable Indian data for valuing the factors of production are readily available. *See* memorandum regarding ''Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Selection of a Surrogate Country'' dated November 13, 2007.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, Jiangyin, and Dalian provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore are entitled to a separate rate. Suns and Liaoning did not submit separate-rate applications. Accordingly, Suns and Liaoning have not provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control.

The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine,* 62 FR 61754, 61758 (November 19, 1997), and *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. Information submitted by ZZPC, Lets Win, Baishun, Worldunion, Weifang, and Jiangyin indicates that there are no restrictive stipulations associated with their exporter and/or business licenses; and there are legislative enactments decentralizing control of the companies. Therefore, the Department has preliminarily found a *de jure* absence of government control over these companies' export activities.

Walsall reported that it is wholly foreign-owned by China Pacific Limited (CPL), which is incorporated in the Cayman Islands. CPL is in turn wholly owned by a Hong Kong citizen. Since there is no PRC ownership of Walsall, and we have no evidence indicating that this company is under the control of the PRC, a separate rates analysis is not necessary to determine whether Walsall is independent from government control. *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 1303, 1306 (January 8, 2001) (finding that no separate rates analysis for Hongfa was necessary because the company was wholly foreign owned), unchanged in the final determination; *see also Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104 (December 20, 1999).

The Department determined that Dalian did not make a sale to the United States during the POI and thus should not be considered for a separate rate. See memorandum regarding ''Dalian Brollo Steel Tubes Ltd.'s Eligibility for a Separate Rate'' dated concurrently with this notice.

Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or are subject to the approval of, a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department considers an analysis of *de facto* control to be critical in determining whether a respondent is, in fact, subject to a degree of governmental control that would preclude the Department from assigning the respondent a separate rate.

ZZPC, Lets Win, Baishun, Worldunion, Weifang, and Jiangyin have each provided information indicating that they: (1) Set export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) have autonomy from the government regarding the selection of management; and (4) retain proceeds from sales and make independent decisions regarding the disposition of profits or financing of losses. Therefore, the Department has preliminarily found a *de facto* absence of government control over these companies' export activities.

Based on the foregoing, the Department has preliminarily granted ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, and Jiangyin, separate, company-specific dumping margins. The Department calculated company-specific dumping margins for ZZPC and Lets Win and assigned Baishun, Walsall, Worldunion, Weifang, and Jiangyin a dumping margin equal to the weighted-average of the dumping margins calculated for ZZPC and Lets Win. As noted above, Suns and Liaoning did not submit separate-rate applications. Accordingly, Suns and Liaoning have not provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control. Therefore, the Department has not preliminarily granted Suns and Liaoning a separate rate.

The PRC-Wide Entity

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.[2] Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

As noted above, the PRC-wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC-wide dumping margin on facts available. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000); *see also* SAA at 870. Because the PRC-wide entity did not respond to the Department's request for information, the Department has concluded that the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (AFA), information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China,* 65 FR 34660 (May 21, 2000) at the ''Facts Available'' section. Here, we assigned the PRC-wide entity the dumping margin calculated for ZZPC, which exceeds the highest margin alleged in the petition and is the highest rate calculated in this investigation. We do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information.[3] The PRC-wide dumping margin applies to all entries of the merchandise under investigation except for entries of subject merchandise from ZZPC, Lets Win, Baishun, Walsall, Worldunion, Weifang, and Jiangyin.

[2] The Department received only 10 timely responses to the requests for Q&V information that it sent to the 53 potential exporters identified in the petition, and there is no indication that any of these Q&V questionnaires were rejected or undeliverable.

[3] Section 776(c) of the Act requires the Department to corroborate secondary information which the SAA describes as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See also SAA* at 870.

Fair Value Comparisons

To determine whether ZZPC or Lets Win sold LWR to the United States at LTFV, we compared the weighted-average export price (EP) of the LWR to the NV of the LWR, as described in the ''U.S. Price,'' and ''NV'' sections of this notice.

U.S. Price

EP

In accordance with section 772(a) of the Act, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price was not otherwise warranted. During the POI, Lets Win made certain sales of subject merchandise to the United States through an unaffiliated trading company located in the PRC. Lets Win claims that it established all of the essential terms of such U.S. sales through its negotiations with the first unaffiliated U.S. customers.[4] Based on Lets Win's claims, the Department has determined that Lets Win's reportable sales should include the PRC trading company's sales of subject merchandise that were arranged and negotiated by Lets Win (using the price charged to the U.S. customer as the starting gross price for calculating EP). *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (*Diamond Sawblades*), and accompanying Issues and Decision Memorandum at Comment 17 (the Department concluded that the seller was the party that negotiated and executed all of the essential terms of sale). ZZPC reported that it made sales of subject merchandise to an unaffiliated PRC trading company with knowledge that the merchandise was destined for the United States. However, unlike Lets Win, ZZPC reported that the unaffiliated trading company directly and independently negotiated the terms of the sales with U.S. customers.[5] In light of ZZPC's claims, and the fact that the Department ignores transactions between companies in an NME country, we have not considered these sales through the unaffiliated PRC trading company in our analysis because they are not ZZPC's reportable sales. This approach is consistent with that taken in the investigation of diamond sawblades from the PRC. *See Diamond Saw Blades; see also Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 2 noting that '' * * * the knowledge test applies only to exporters that have dealings with entities outside of the NME country. In an NME situation, the Department ignores transactions between producers and exporters that are both in-country, since we will not base export price on internal transactions between two companies located in the NME country'').

In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses, marine insurance, international freight, and foreign brokerage and handling expenses.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi (RMB). If market economy service providers, who were paid in a market economy currency, provided movement services for over 33 percent of subject merchandise shipments, by volume, we based the movement expenses on the actual price charged by the service provider. If market economy service providers, who were paid in a market economy currency, provided movement services for less than 33 percent of subject merchandise shipments, by volume, we calculated the movement expenses by weight-averaging surrogate values with the actual price charged by the service provider. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006). For details regarding our EP calculation, see analysis memoranda for ZZPC and Lets Win dated concurrently with this notice.

NV

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by the respondents to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs. We valued the factors of production using prices and financial statements from the surrogate country, India. In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non-export average values, contemporaneous with, or closest in time to, the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. We derived the average unit value of the factor from Indian import statistics. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1407 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Indian Wholesale Price Index (WPI) as published in the International Financial Statistics of the International Monetary Fund.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002); *see also Notice of Final Determination of Sales at Less Than Fair Value and*

[4] *See* Lets Win's November 6, 2007, supplemental response at C–1 through C–8 and SA–8.

[5] *See* ZZPC's December 17, 2007, supplemental response at 5 through 8.

Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004).[6] Thus, we have not used prices from these countries in calculating the Indian import-based surrogate values.

We valued raw materials and packing materials using Indian import statistics, except as noted below.

We valued electricity using rates from *Key World Energy Statistics 2003*, published by the International Energy Agency. Because these data were not contemporaneous with the POI, we inflated the values using the WPI. *See* the memoranda regarding ''Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Surrogate Values Selected'' for ZZPC and Lets Win dated concurrently with this notice (Factor Value Memoranda).

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression-based wage rate, which relies on 2004 data. This wage rate can currently be found on the Department's Web site on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, *http://ia.ita.doc.gov/wages/index.html*. The source of these wage-rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by ZZPC and Lets Win. *See* Factor Value Memoranda.

We valued water using data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the ''inside industrial areas'' usage category and 193 for the ''outside industrial areas'' usage category. Because the value was not contemporaneous with the POI, we inflated the rate using the WPI. *See* Factor Value Memoranda.

We valued truck freight expenses using a per-unit average rate from data obtained from the Web site of an Indian transportation company, InFreight Technologies India Limited. *See http://www.infreight.com/*. This average rate was used by the Department in the antidumping duty administrative review of *Saccharin from the People's Republic of China; Preliminary Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 25247 (May 4, 2007). Because this value is not contemporaneous with the POI, we inflated the rate using the WPI. *See* Factor Value Memoranda.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in two antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India and those reported by Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006).

Because the resulting value is not contemporaneous with the POI, we inflated the rate using the WPI. *See* Factor Value Memoranda.

ZZPC reported that all of its U.S. sales had international freight arranged by an NME freight forwarder. We valued international freight expenses using U.S. dollar freight quotes that the Department obtained from Maersk Sealand (Maersk), a market-economy shipper. We obtained quotes from Maersk for shipments from the PRC port of export and the U.S. port of import reported by ZZPC for its U.S. sales. Because these data were not contemporaneous to the POI, we adjusted them for inflation using the U.S. WPI. *See* Factor Value Memoranda.

We valued factory overhead, selling, general, and administrative (SG&A) expenses, and profit, using the 2006–2007 audited financial statements of Zenith Birla (India) Limited and Bihar Tubes Limited. Record evidence indicates that these are Indian companies that produce subject merchandise. We did not rely upon a third company's financial statement that was placed on the record, namely the financial statement of Bhawani Industries Limited (Bhawani), because Bhawani's financial statement lists a ''DEPB Premium'' in ''Other Income.'' India's DEPB Scheme has been found by the Department to provide a countervailable subsidy. *See, e.g., Certain Iron-Metal Castings From India: Preliminary Results and Partial Recision of Countervailing Duty Administrative Review,* 64 FR 61592 (November 12, 1999) (unchanged in final results); *see also http://ia.ita.doc.gov/esel/eselframes.html*. In *Crawfish from the PRC,* the Department noted that where it has reason to believe or suspect that a company may have received subsidies, financial ratios derived from that company's financial statements do not constitute the best available information with which to value financial ratios. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1. Given the record information regarding Bhawani's use of the DEPB program, and the fact that we have other acceptable financial statements to use as surrogates, consistent with the Department's decision in *Crawfish from the PRC*, we have not used Bhawani's financial data in our surrogate ratio calculations. *See* Factor Value Memoranda.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would

[6] In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*, available at *http://ia.ita.doc.gov/*. *Policy Bulletin 05.1*, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1, ''Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries.''

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter & producer	Weighted-average Margin (percent)
Zhangjiagang Zhongyuan Pipe-Making Co., Ltd..	264.64
Kunshan Lets Win Steel Machinery Co., Ltd..	223.52
Wuxi Baishun Steel Pipe Co., Ltd..	247.75
Guangdong Walsall Steel Pipe Industrial Co., Ltd..	247.75
Wuxi Worldunion Trading Co., Ltd..	247.75
Weifang East Steel Pipe Co., Ltd..	247.75
Jiangyin Jianye Metal Products Co., Ltd..	247.75
PRC-Wide Rate	264.64

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

As noted above, the Department has found that critical circumstances exist with respect to imports of subject merchandise from the PRC-Wide entity. Therefore, in accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LWR from the PRC-Wide entity as described in the ''Scope of the Investigation'' section of this notice, entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. For the mandatory respondents, Lets Win and ZZPC, and the separate rate applicants, Wuxi Baishun Steel Pipe Co., Ltd., Guangdong Walsall Steel Pipe Industrial Co., Ltd., Wuxi Worldunion Trading Co., Ltd., Weifang East Steel Pipe Co., Ltd., Jiangyin Jianye Metal Products Co., Ltd., we will instruct CBP to suspend liquidation of all entries of LWR from these companies as described in the ''Scope of the Investigation'' section of this notice, entered, or withdrawn from warehouse, for consumption upon the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of LWR, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 27, 2007, and December 10, 2007, Lets Win and ZZPC, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Lets Win and ZZPC requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 23, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–1664 Filed 1–29–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that light-walled rectangular pipe and tube from Turkey is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Tariff Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination. Accordingly, we will make our final determination not later than 75 days after the signature date of the preliminary determination, in accordance with 19 CFR 351.210.

EFFECTIVE DATE: January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Tyler Weinhold, 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) 482–0408, (202) 482–1121, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 2007, the Department initiated the antidumping duty investigation of light-walled rectangular pipe and tube from Turkey. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China,* 72 FR 40274 (July 24, 2007) (*Initiation Notice*). The petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments. *See Initiation Notice,* 72 FR 40274, (July 24, 2007). No party submitted comments on the scope.

On August 28, 2007, the United States International Trade Commission (the Commission) preliminarily determined there is a reasonable indication that imports of light-walled rectangular pipe and tube from the People's Republic of China, Korea, Mexico and Turkey are materially injuring the U.S. industry and notified the Department of its findings. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey Case Numbers. 701–TA–449 (Preliminary) and 731–TA–1118–1121 (Preliminary),* 72 FR 49310, (August 28, 2007).

On October 19, 2007, the petitioners requested the Department postpone the preliminary determination by 50 days. The Department published an extension notice on November 14, 2007, which set the new deadline for the preliminary determination at January 23, 2008. *See Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, and the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 72 FR 64044, (November 14, 2007).

Section 777A(c)(1) of the Tariff Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of light-walled rectangular pipe and tube from Turkey and determined it was not practicable to examine each known producer or exporter of the subject merchandise, as provided in section 777A(c)(1) of the Tariff Act. On July 31, 2007, we sent quantity and value (Q&V) questionnaires to the following seventeen companies identified in the petition or through our own research: Anadolu Boru, Ayata Metal Industry, Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Goktas Tube, Guven Boru Profil Sanayii ve Ticaret Limited Sirketi, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret, Noksel Steel Pipe Co., MMZ Onur Boru Profil Uretim San. ve Tic. A.S., Ozborsan Boru San. ve Tic. A.S., Ozgur Boru, Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Seamless Steel Tube and Pipe Co. (Celbor), Toscelik Profil ve Sac End. A.S, Umran Steel Pipe Inc., Yusan Industries, Ltd., and Yucel Boru ve Profil Endustrisi A.S.

The Department did not receive a response to the Q&V questionnaire from the following six companies: Anadolu Boru, Ayata Metal Industry, Goktas Tube, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., and Yusan Industries, Ltd. Furthermore, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru [1] submitted untimely, improperly filed, or incomplete responses. These nine companies that failed to respond, or provided an improperly filed and/or incomplete response, were given a second opportunity to file, but none of them did so in a timely manner.[2]

Nine other exporters/producers submitted proper responses to the Department's Q&V questionnaire: Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Guven Boru Profil Sanayii ve Ticaret Limited Sirketi, Noksel Steel Pipe Co., MMZ Onur Boru Profil Uretim San. Ve Tic. A.S, Ozborsan Boru San. Ve Tic. A.S., Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Toscelik Profil Ve Sac End. A.S, and Yucel Boru ve Profil Endustrisi A.S. Two respondents—Guven Boru Profil Sanayii ve Ticaret Limited Sirketi (Guven Boru) and MMZ Onur Boru Profil Uretim San. Ve Tic. A.S (MMZ)—accounted for the majority by volume of exports of subject merchandise to the United States during the period of investigation (POI) among those companies that responded to our quantity and value questionnaire. These two respondents accounted for 54 percent of the total exports reported by the responding companies. Pursuant to section 777A(c)(2)(1)(B) of the Tariff Act, we selected these two firms as mandatory respondents. *See* the September 7, 2007, Memorandum to Deputy Assistant Secretary Stephen J. Claeys, entitled ''Antidumping Duty Investigation on Light-Walled Rectangular Pipe and Tube from Turkey(A–489–815), Respondent Selection'' (Respondent Selection Memorandum).

We issued the antidumping questionnaires to Guven Boru and MMZ on September 7, 2007. The Department received a section A response from MMZ on October 4, 2007. The Department received a section A response from Guven Boru on October 5, 2007. However, the public versions of the Guven Boru response were not properly filed or served upon parties and the business proprietary version was not served to parties in a timely

[1] Ozmak Makina ve Elektrik Sanayi, which has been identified as another name for Ozgur Boru (*see* Memorandum to the File, ''Communication from Ozgur Boru,'' dated August 22, 2007), submitted a response on behalf of Ozgur Boru. However, it was not filed properly, and has not been made part of the record.

[2] Kerim Celik Mamulleri Imalat ve Ticaret submitted an untimely second response on September 17, 2007, which was not made part of the record.

manner. Furthermore, the sales data Guven Boru submitted with its November 7, 2007, sections B and C responses were not in a useable format. For a complete discussion of these and other deficiencies in Guven Boru's submissions, see ''Use of Facts Otherwise Available,'' *infra.*

Petitioners provided comments on MMZ's section A response on October 16, 2007. On October 23, 2007, the Department issued a supplemental questionnaire to MMZ regarding its section A response. On October 25, 2007, MMZ informed the Department that it was no longer participating in the antidumping proceeding.

Period of Investigation

The POI is April 1, 2006, to March 31, 2007.

Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Model Match

In accordance with section 771(16) of the Tariff Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Turkey during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

On August 16, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of light-walled rectangular pipe and tube from Korea, Mexico, and the People's Republic of China, for comments on the appropriate product characteristics for defining individual products. Parties in this investigation and in the concurrent antidumping duty investigations of light-walled rectangular pipe and tube from Korea and Mexico were also invited to comment on the appropriate model matching methodology. *See* Letter from Richard Weible, Office Director, AD/CVD Enforcement 7, dated August 16, 2007. The Department received comments from the Mexican company Perfiles y Herrajes LM on August 23, 2007; from the Mexican companies Productos Laminados de Monterrey S.A. de C.V. and Prolamsa USA, Inc. on August 24, 2007, August 27, 2007, and September 4, 2007; from the Turkish company Noksel Celik Boru Sanayi A.S. on August 24, 2007; from the Chinese producer/exporter Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; and from the petitioners on August 24, 2007. The Department has not made any changes to its proposed characteristics and model matching methodology as a result of the comments submitted by parties.

We would have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: steel input type, whether metallic coated or not, whether painted or not, perimeter, wall thickness and shape. However, because we are basing the margins for the mandatory respondents upon adverse facts available, there was no need to match sales of respondents.

Use of Facts Otherwise Available

For the reasons discussed below, we determine the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to all companies that failed to respond (or to respond adequately) to the Q&V Questionnaire, and for both mandatory respondents (MMZ and Guven Boru). As noted in the Supplementary Information section above, the former failed to provide adequate responses to the Department's Q&V questionnaire and to the Department's follow-up letter of August 16, 2007, while the mandatory respondents failed to cooperate in this investigation.

Section 776(a)(2) of the Tariff Act provides that if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Tariff Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Tariff Act provides that if the administering authority determines a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Tariff Act states further the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, the nine non-responding or improperly responding companies all failed to provide such information by the deadlines for submission of the information and/or in the form or manner requested. Thus, for these companies in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin on facts otherwise available.

MMZ

MMZ, one of the mandatory respondents, did not provide the information we requested necessary to calculate an antidumping margin for the preliminary determination. Specifically, MMZ failed to provide a complete response to our questionnaire, thereby withholding, among other things, home-market and U.S. sales information that is necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Tariff Act. On October 25, 2007, MMZ informed the Department that it was no longer participating in the antidumping proceeding. *See* Letter from MMZ, ''Request for Withdrawl of MMZ Onur Boru Profil Uretim San. Tic. A.S. (''MMZ'') in the Anti-Dumping Investigation of Light Walled Rectangular Pipes from Turkey,'' dated

October 25, 2007. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin for MMZ on facts otherwise available.

Guven Boru

Guven Boru, the other mandatory respondent, failed to provide complete, timely, and properly filed responses to several of the Department's questionnaires. The Department received the initial section A response from Guven Boru on October 5, 2007. However, the public versions of the Guven Boru response were not properly filed or served upon parties and the business proprietary version was not served to parties in a timely manner. The public version submitted was not labeled ''public version,'' as required by 19 CFR 351.303. Also, Guven Boru served on the petitioners a public version which differed from the public version submitted to the Department, where the bracketed proprietary information was not redacted on the Department's versions. Further, petitioners indicated, and Guven Boru later confirmed, that the company did not serve a copy of the business proprietary version of this response to the petitioners under administrative protective order (APO), as required. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown,'' dated December 27, 2007. *See also* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru,'' dated October 23, 2007, at Exhibit 1, page 3. Finally, Guven Boru filed a certificate of service with its business proprietary submissions which was inaccurate, because it indicated that copies of the business proprietary version of the response were served on the parties on the public service list. Because of improper labeling of proprietary information, the Department had petitioners return the October 5, 2007, submission on October, 15, 2007.

On October 15, 2007, the Department contacted Mr. Kemal Tureyen of Guven Boru by electronic mail asking that Guven Boru re-submit the public version of its response and serve the business proprietary and public versions of the response on the petitioners and pointing out Guven Boru's filing and service obligations, specifically Guven Boru's obligation to serve business proprietary versions of documents to those parties who have access to such information under APO, including counsel for petitioners. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru,'' dated October 23, 2007, at Exhibit 1, page 2. On October 18, 2007, the Department received Guven Boru's corrected public version of its section A response. In its response, Guven Boru reported it had no sales of the foreign like product in the home market, and would be reporting sales to its three largest third-country export markets instead.

On October 19, 2007, Mr. Tureyen sent an e-mail to the case analyst claiming Guven Boru had sent both a business proprietary and public version of its section A response to the petitioners. *Id.* at page 4. In an October 23, 2007, e-mail, Mr. Tureyen explained the company had sent both a public and proprietary version of its section A response ''by post'' on October 16, 2007, or eleven days after the initial filing with the Department. *Id.* at page 5. However, because petitioners indicated they still had not received the response (*see* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Michael Brown,'' dated December 27, 2007), on October 23, 2007, the case analyst sent an e-mail to Mr. Tureyen suggesting Guven Boru re-send the business proprietary and public versions of its section A response to petitioners as quickly as possible. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru,'' dated October 23, 2007, at page 5. On October 26, 2007, counsel for the petitioners indicated he had received the corrected public version of Guven Boru's section A response, but had not received the business proprietary version. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Michael Brown,'' dated December 27, 2007. On October 30, 2007, counsel for petitioners informed the case analyst by telephone that petitioners had received the business proprietary version of Guven Boru's section A response, which was originally due to the Department October 5, 2007. *Id.*

We received sections B and C responses from Guven Boru on November 7, 2007. However, Guven Boru's sales databases were not submitted in a useable format. On November 9, 2007, the case analyst sent Mr. Tureyen an e-mail asking him to confirm what versions of Guven Boru's section B and C questionnaire response had been served on the petitioners. *See* Memorandum from Tyler Weinhold to the File, dated November 9, 2007, at Exhibit 1, page 6. On November 12, 2007, in response to an e-mail from the case analyst, Guven Boru explained that it had sent a public version of the sections B and C response to petitioners.

On November 13, 2007, the Department issued its first supplemental questionnaire regarding Guven Boru's section A response and its section B and C sales database. On November 19, 2007, in response to our first sections A, B, and C supplemental questionnaire, we received revised sections B and C databases from Guven Boru. On November 19, 2007, petitioners informed the Department by telephone that they had received a public version of Guven Boru's section B and C response, but no business proprietary version. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown,'' dated December 27, 2007.

On November 26, 2007, petitioners again informed the Department by telephone that they had received one public version of Guven Boru's November 8, 2007 section B and C response, no business proprietary version, and no public or proprietary copies of the corrected section B and C databases submitted November 19, 2007. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown,'' dated December 27, 2007. On November 26, 2007, we set a letter to Guven Boru reminding the company of its obligation to comply with the Department's filing and service regulations. On November 27, 2007, Mr. Tureyen sent an e-mail to the case analyst explaining that Guven Boru had not sent business proprietary versions of the company's section B and C responses to the petitioners, and stated it was unable to serve the petitioners the original section B and C sales databases because company officials had deleted

them. *See* Memorandum from Tyler Weinhold to the file, dated December 19, 2007, at exhibit 1, page 1. In doing so, Guven Boru had denied petitioners the opportunity to comment on the data contained in its original sales database. On November 28, 2007, we issued our second supplemental questionnaire to Guven Boru, which included questions regarding certain possible affiliations (our second section A supplemental questionnaire).

On November 29, 2007, we set a letter to Guven Boru giving the company a deadline by which to bring itself into compliance with the Department's filing and service regulations and warning it that further untimely or improperly filed submissions would not be accepted. On December 3, 2007, we issued our third supplemental questionnaire to Guven Boru (our second sections B and C supplemental questionnaire). Also, on December 3, 2007, Guven Boru failed to respond in a timely fashion to the our first section A supplemental questionnaire. Guven Boru's response was received the next day, on December 4, 2007.

In a telephone conversation on December 6, 2007, counsel for petitioners explained that petitioners had received a copy of the narrative portion of Guven Boru's business proprietary section B and C response and a copy of the November 19, 2007, section B and C sales database submission. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes From Turkey, Telephone Conversations with Mr. Mike Brown,'' dated December 27, 2007. Therefore, Guven Boru had denied petitioners the opportunity to comment on the proprietary version of its section B and C response until nearly one month after those documents were due to the Department. On December 12, 2007, we issued our fourth supplemental questionnaire to Guven Boru, regarding certain possible sales in the home market (our third section A supplemental questionnaire). Guven Boru failed to provide a timely response to our second section A supplemental questionnaire, which was due December 13, 2007. On December 13, 2007, Guven Boru also submitted a request for an extension for its response to our second section B and C supplemental questionnaire, which was due December 13, 2007. We denied this request for additional time. *See* letter to Guven Boru, dated December 21, 2007.

On December 17, 2007, the petitioners submitted a sales-below cost allegation for Guven Boru. *See* Letter from Schagrin Associates, dated December 17, 2007. Also, on December 17, 2007, Guven Boru attempted to submit an untimely-filed response to our second section A supplemental questionnaire, which was due December 13, 2007. In addition, Guven Boru failed to file its response to the our second sections B and C supplemental questionnaire, which was due on December 17, 2007. On December 19, 2007, we received an untimely request for an extension for our second sections B and C supplemental questionnaire. Finally, on December 20, 2007, Guven Boru failed to respond to the December 12, 2007 section A supplemental questionnaire.

On December 21, 2007, we sent a letter to Guven Boru, rejecting its response to the second section A supplemental questionnaire, which was due December 13, 2007, and its request for an extension for the our second sections B and C supplemental questionnaire because these documents were untimely filed. In that letter, we also informed Guven Boru that we would not accept any further submissions and would use facts otherwise available in making our preliminary determination.

Guven Boru failed to respond in a timely manner to the our November 13, 2007, section A supplemental questionnaire and our second section A supplemental questionnaire and failed to respond entirely to the our December 3, 2007, sections B and C supplemental questionnaire and our December 12, 2007, section A supplemental questionnaire. Further, Guven Boru's untimely filings represented a continuance of a pattern of untimely and improperly filed submissions. Moreover, Guven Boru's failure on two occasions to timely serve petitioners with proprietary versions of its responses until weeks after those responses were due prevented the petitioners from meaningfully participating in this proceeding. Also, by its own admission, it destroyed its original sales databases prior to serving them on petitioners. Finally, Guven Boru's untimely responses prevented us from conducting a proper analysis within the statutorily imposed time limits of this investigation. For these reasons, in reaching our preliminary determination we have based the dumping margin for Guven Boru on facts otherwise available pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act.

Non-Responding Companies

As explained above, the Department did not receive a response to the Q&V questionnaire from Anadolu Boru, Ayata Metal Industry, Goktas Tube, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., or Yusan Industries, Ltd., and Kalibre Boru Sanayi ve Ticaret A.S., and Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru submitted untimely, improperly-filed, or incomplete responses. Although the Department provided all respondents, including those that did not respond (or did not respond adequately) to the Q&V questionnaire, with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Tariff Act, these companies did not respond as requested. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin for Anadolu Boru, Ayata Metal Industry, Goktas Tube, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., or Yusan Industries, Ltd., and Kalibre Boru Sanayi ve Ticaret A.S., and Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru on facts otherwise available.

Application of Adverse Inferences for Facts Available

According to section 776(b) of the Tariff Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See, e.g., Certain Polyester Staple Fiber From Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review,* 72 FR 69663, December 10, 2007. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon). *See also, Certain Polyester Staple Fiber from Korea: Final Results of*

the 2005–2006 Antidumping Duty Administrative Review, 72 FR 69663 (December 10, 2007).

Although the Department provided all respondents, including those that did not respond (or did not respond adequately) to the Q&V questionnaire, with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Tariff Act, these companies did not respond as requested. With respect to MMZ and Guven Boru, the former stated it would not continue to participate in the proceeding, and the latter failed to serve petitioners with proprietary versions of its questionnaire responses in a timely fashion, destroyed one sales database before providing it to petitioners, and failed to respond in a timely fashion to four of the Department's supplemental questionnaires. This constitutes a failure on the part of these companies to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Tariff Act. Because these companies did not provide the information requested, section 782(e) of the Tariff Act is not applicable.

Based on the above, the Department has preliminarily determined that the companies that failed to respond adequately to the Q&V questionnaire and the two mandatory respondents (MMZ and Guven Boru) failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Tariff Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland,* 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland,* 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to each uncooperative respondent the highest margin alleged in the petition, as referenced in the *Initiation Notice,* of 41.71 percent. *See Initiation Notice* at 40278.

When using facts otherwise available, section 776(c) of the Tariff Act provides that when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination. *See Initiation Checklist* at pages 9 and 10. *See also Initiation Notice* at 40277. We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the export-price and normal-value calculations used in the Petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the Petition or in supplements to the Petition that corroborates key elements of the export-price and normal-value calculations used in the Petition to derive estimated margins. *Id.*

The petitioners calculated export price (EP) in two ways: by use of a price quote from a U.S. dealer and by use of the average unit values (AUVs) for import data from the Bureau of the Census IM145 import statistics.

When based on the price quote, the petitioners deducted an amount for international freight, and also a value of three percent of the U.S. price to cover inland freight from the U.S. port to the U. S. dealer, as well as the U.S. dealer's expenses and profit. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 4. The three percent figure is based on an affidavit from a U.S. producer of light-walled rectangular tubing, who stated that three percent is the standard mark-up in the industry. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 1. We then compared the U.S. price quote to the AUVs for this period and confirmed that the value of the U.S. price quote was consistent with the AUVs.

The petitioners also calculated EP based on AUVs. In the Petition of June 27, 2007, the petitioners included figures from January—March of 2006 in their calculation of AUV. *See* Volume II of the Petition at Exhibit I–3. The Department requested that Petitioner recalculate AUVs to exclude the January—March 2006 import figures. Additionally, the Department requested that the Petitioner exclude HTSUS number 7306.69.50.00 from the calculation of AUVs, as this number does not include LWR merchandise that would be subject to the investigation. The petitioners corrected the calculation as requested by the Department. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at pages 5–

6, and at Exhibit 3. The petitioners did not make an adjustment for international freight because they calculated the AUV prices on the FAS value of the merchandise. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 3.

U.S. official import statistics (*e.g.*, AUVs from the Bureau of the Census IM145 import statistics) are sources that we consider reliable. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan,* 70 FR 48538, 48540 (August 18, 2005), (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan,* 70 FR 65886 (November 1, 2005)). Further, we obtained no other information that would make us question the reliability of the pricing information provided in the petition. Therefore, based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices corroborated.

The petitioners based normal value on two price quotes from each of two Turkish producers of light-walled rectangular pipe and tube. *See* Volume II of the Petition at page II–11 and Exhibit II–27 and Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 2. The petitioners obtained these prices by engaging a consultant, who hired a research firm with an agent in Turkey. *See* Volume II of the Petition at II–12, Volume II of the Supplement to the Petition, and Memorandum to the File, ''Telephone Call to Market Research Firm,'' dated July 17, 2007. In one case, this research firm obtained price quotations directly from the manufacturer. *See* Memorandum to the File, ''Telephone Call to Market Research Firm,'' dated July 17, 2007. In another case, they were referred by the manufacturer to a distributor. *Id.* These price quotations identified specific products, terms of sales and payment terms. *See* Volume II of the Petition at II–12, Volume II of the Supplement to the Petition, and Memorandum to the File, ''Telephone Call to Market Research Firm,'' dated July 17, 2007. Where appropriate, the petitioners made a deduction for freight, selling expenses, discount, and profit.

Based on our examination of the aforementioned, we consider the petitioner's calculation of normal value, based on price quotations, corroborated. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the Petition by examining source documents as well as publicly available information, we preliminarily determine the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as ''best information available'' (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *American Silicon Technologies* v. *United States,* 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found the adverse facts-available rate bore a ''rational relationship'' to the respondent's ''commercial practices,'' and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed the calculation of margins in the Petition (*e.g., prices, expenses, adjustments, etc.*) reflects the commercial practices of the particular industry during the period of investigation. *See* Memorandum to the File, ''Telephone Call to Market Research Firm,'' dated July 17, 2007. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine the highest margin in the Petition, which we determined during our pre-initiation analysis, was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination. Therefore, it is relevant as the adverse facts-available rate for the uncooperative respondents in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review,* 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving these companies, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondents in this investigation, we have corroborated the adverse facts-available rate ''to the extent practicable.'' *See* section 776(c) of the Tariff Act, 19 CFR 351.308(d), and *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, ''pursuant to the 'to the extent practicable' language * * * the corroboration requirement itself is not mandatory when not feasible''). Therefore, we find that the estimated margin of 41.71 percent in the *Initiation Notice* has probative value. Consequently, with respect to MMZ, Guven Boru, and the other uncooperative respondents (Anadolu Boru, Ayata Metal Industry, Goktas Tube, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret, Ozgur Boru, Ozmak Makina ve Elektrik Sanayi, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., and Yusan Industries, Ltd.), we have applied the margin rate of 41.71 percent, the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice* at 40278.

All-Others Rate

Section 735(c)(5)(B) of the Tariff Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Tariff Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the all-others rate the simple average of the margins in the petition. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan,* 72 FR 67271, 67272 (November 28, 2007). *See also Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia,* 69 FR 34128, 34129 (June 18, 2004). Consistent with our practice we used the rates in the Petition that were considered in the Department's initiation to calculate a simple average to be assigned as the all-others rate. That simple average, 27.04 percent, is derived from the following petition rates: 36.43 percent, 29.08 percent, 19.67 percent, 15.28 percent, 41.71 percent, 30.08 percent, 24.31 percent, and 19.75 percent. *See* Volume II of the

Supplement to the Petition dated July 6, 2007, at Exhibit 4.

This 27.04 percent rate will be applied to the following seven responsive firms that were not selected as mandatory respondents: Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Noksel Steel Pipe Co., Ozborsan Boru San. Ve Tic. A.S., Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Toscelik Profil Ve Sac End. A.S, and Yucel Boru ve Profil Endustrisi A.S.

Preliminary Determination

We preliminarily determine the following weighted-average dumping margins exist for the period April 1, 2006 through March 31, 2007:

Producer/Exporter	Weighted-average margin (percentage)
Guven Boru Profil Sanayii ve Ticaret Limited Sirketi	41.71
MMZ Onur Boru Profil Uretim San. ve Tic. A.S	41.71
Anadolu Boru	41.71
Ayata Metal Industry	41.71
Goktas Tube	41.71
Kalibre Boru Sanayi ve Ticaret A.S	41.71
Kerim Celik Mamulleri Imalat ve Ticaret	41.71
Ozgur Boru	41.71
Ozmak Makina ve Elektrik Sanayi	41.71
Seamless Steel Tube and Pipe Co. (Celbor)	41.71
Umran Steel Pipe Inc.	41.71
Yusan Industries, Ltd.	41.71
Borusan Mannesmann Boru	27.04
Erbosan Erciyas Boru Sanayii ve Ticaret A.S	27.04
Noksel Steel Pipe Co	27.04
Ozborsan Boru San. ve Tic. A.S	27.04
Ozdemir Boru Sanayi ve Ticaret Ltd. Sti	27.04
Toscelik Profil ve Sac End. A.S	27.04
Yucel Boru ve Profil Endustrisi A.S	27.04
All Others	27.04

Suspension of Liquidation

In accordance with section 733(d)(2) of the Tariff Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of light-walled rectangular pipe and tube from Turkey that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated in the chart above, as follows: (1) The rate for the firms listed above will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 27.04 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

Comission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of light-walled rectangular Pipe and tube from Turkey are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than fifty days after the date of publication of this notice. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Tariff Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will be scheduled two days after the deadline for submitting rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: January 23, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–1665 Filed 1–29–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 18, 2008, the United States Court of International Trade (''CIT'') sustained the remand redetermination issued by the Department of Commerce (''the Department'') pursuant to the CIT's remand order in the final results of the thirteenth administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Ames True Temper* v. *United States,* Slip Op. 08–8 (CIT 2008) (''*Ames II*''). This case arises out of the Department's final results in the administrative review covering the period February 1, 2003, through January 31, 2004. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews,* 70 FR 54897 (September 19, 2005) (''*Final Results*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public that *Ames II* is not

in harmony with the Department's *Final Results.*

EFFECTIVE DATE: January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION: On August 31, 2007, the CIT directed the Department to reopen the record and obtain additional evidence regarding Shandong Huarong Machinery Co., Ltd.'s (''Huarong'') production of metal pallets. *See Ames True Temper* v. *United States,* 2007 Ct. Int'l Trade LEXIS 131, Slip Op. 2007–133 (CIT, 2007) (''*Ames I*''). Pursuant to the Court's remand instructions, we issued supplemental questionnaires on September 19, 2007, and October 19, 2007. Huarong responded to the questionnaires on October 17, 2007, and October 26, 2007, respectively. In the supplemental questionnaires the Department requested: (a) Consumption ratios for all factors of production (''FOPs'') associated with the production of pallets used in packing and shipping heavy forged hand tools; (b) information to select surrogate values for any unreported pallet making FOPs; and, (c) supplier distances for any unreported pallet making FOPs.

The Department released the *Draft Results of Redetermination Pursuant to Court Remand* (''*Draft Redetermination*'') to the petitioner, Ames True Temper (''Ames''), and Huarong for comment on November 16, 2007. No party submitted comments. On November 28, 2007, the Department filed its final results of redetermination pursuant to *Ames I* with the CIT. *See Final Results of Redetermination Pursuant to Court Remand,* Court No. 05–00581, (November 28, 2007) (''*Final Redetermination*''), found at *http://ia.ita.doc.gov/remands/07–133.pdf.* In the remand redetermination, the Department determined that welding wire was consumed in Huarong's pallet making process and that welding wire should have been reported by Huarong as a FOP during the thirteenth review. The Department valued welding wire using publicly available Indian import statistics for February 2003–January 2004 from the *World Trade Atlas* (''*WTA*'').[1] Thus, the Department included the cost of welding wire in Huarong's NV, including freight costs associated with Huarong's purchases of the welding wire. On January 18, 2008, the CIT sustained all aspects of the remand redetermination made by the Department pursuant to the CIT's remand of the *Final Results.*

In its decision in *Timken,* 893 F.2d at 341, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. As a result of the Department's addition of the welding wire consumed in making steel pallets in the remand redetermination, the CIT's decision in this case on January 18, 2008, constitutes a final decision of the court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection to revise the cash deposit rates covering the subject merchandise.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: January 24, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. 08–404 Filed 1–29–08; 8:45 am]

BILLING CODE 3510–DS–P

[1] *WTA* is published by Global Trade Information Services, Inc., which is a secondary electronic source based upon the publication, *Monthly Statistics of the Foreign Trade of India, Volume II: Imports. See http://www.gtis.com/wta.htm.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2008.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that light-walled rectangular (LWR) pipe and tube from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza, Patrick Edwards (PROLAMSA), or Judy Lao (Maquilacero), 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) 482–3019, (202) 482–8029, or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 2007, the Department initiated the antidumping duty investigation of LWR pipe and tube pipe and tube from Mexico. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China, (Initiation Notice),* 72 FR 40274 (July 24, 2007). The petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (collectively, petitioners).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice,* 72 FR 40274 (July 24, 2007). No parties submitted comments on the scope.

On August 28, 2007, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of LWR pipe and tube from Korea, Mexico, Turkey and the People's Republic of China are materially injuring the U.S. industry and the ITC notified the Department of its findings. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey Case Numbers: 701–TA–449 (Preliminary) and 731–TA–1118–1121 (Preliminary),* 72 FR 49310, (August 28, 2007).

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known

exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of LWR pipe and tube from Mexico and determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(1) of the Act. The Department sent quantity and value questionnaires to the companies identified in the petition along with any other companies identified during our research. The following 14 companies were sent quantity and value (Q&V) questionnaires on July 31, 2007: Arco Metal S.A. de C.V., Hylsa S.A. de C.V., Industrias Monterrey S.A. de C.V., Internacional de Aceros, S.A. de C.V., Maquilacero S.A. de C.V., Nacional de Acero S.A. de C.V., PEASA-Productos Especializados de Acero, Perfiles y Herrajes LM, S.A. de C.V., Productos Laminados de Monterrey S.A. de C.V., Regiomontana de Perfiles y Tubos, Talleres Acero Rey S.A. de C.V., Tuberias Aspe, Tuberia Laguna, S.A. de C.V., and Tuberias y Derivados S.A. de C.V.

The Department did not receive a response to the Q&V questionnaire (or received an improperly filed and/or incomplete response) from the following five companies: Industrias Monterrey S.A. de C.V., PEASA—Productos Especializados de Acero, Tuberias Aspe, Tuberias y Derivados S.A. de C.V., and Nacional de Acero S.A. de C.V. (Q&V Non-Responding Companies). These five companies that failed to respond, or provided an improperly filed and/or incomplete response, were given a second opportunity to file a response on August 16, 2007. We received no response from these companies.

The remaining nine exporters/producers responded to the Department's Q&V questionnaire: Arco Metal S.A. de C.V., Hylsa S.A. de C.V., Internacional de Aceros, S.A. de C.V., Maquilacero S.A. de C.V., Perfiles y Herrajes LM, S.A. de C.V., Productos Laminados de Monterrey S.A. de C.V., Regiomontana de Perfiles y Tubos, Talleres Acero Rey S.A. de C.V., and Tuberia Laguna S.A. de C.V. (Q&V Responding Companies). Two Q&V Responding Companies—Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey S.A. de C.V. (PROLAMSA)—accounted for the largest volume of subject merchandise exported to the United States during the POI. These two companies were selected as mandatory respondents pursuant to section 777A(c)(2)(1)(B) of the Act. *See* the September 6, 2007, Memorandum to Deputy Assistant Secretary Stephen J. Claeys, titled ''Antidumping Duty Investigation on Light-Walled Rectangular Pipe and Tube from Mexico (A–201–836); Respondent Selection'' (Respondent Selection Memorandum). We issued antidumping duty questionnaires to Maquilacero and PROLAMSA on September 7, 2007.

Maquilacero

The Department received the Section A response from Maquilacero on October 9, 2007. Petitioners filed comments on Maquilacero's Section A response on October 16, 2007, and the Department subsequently issued a supplemental questionnaire regarding Maquilacero's Section A Response on October 23, 2007. We received the Sections B and C responses from Maquilacero on October 30, 2007. Petitioners filed comments on Maquilacero's Sections B and C responses on November 8, 2007. On November 19, 2007, Maquilacero filed its response to the Department's supplemental questionnaire regarding Section A. The Department issued a supplemental questionnaire to Maquilacero concerning the company's Sections B and C responses on November 20, 2007. Maquilacero replied to this supplemental questionnaire on December 4, 2007.

On December 5, 2007, based on an allegation timely filed by petitioners, the Department initiated a sales-below-cost investigation for Maquilacero, finding reasonable grounds to believe that Maquilacero made comparison market sales of LWR pipe and tube at prices below its cost of production. *See* ''Cost of Production Analysis'' section below for further information.

Consequently, the Department requested in a letter dated December 6, 2007, that Maquilacero respond to section D of the Department's antidumping duty questionnaire. We received Maquilacero's section D response on December 27, 2007. On January 4, 2008, the Department issued a supplemental questionnaire to Maquilacero regarding its section A through C supplemental responses. Maquilacero filed its response to the supplemental questionnaire on January 22, 2008. We were unable to analyze Maquilacero's response prior to the January 23, 2008, preliminary determination deadline. We will address any deficiencies in its responses for the final determination.

PROLAMSA

The Department received the section A response from PROLAMSA on October 9, 2007. Petitioners filed comments on PROLAMSA's section A response on October 11, 2007, and the Department subsequently issued a supplemental questionnaire regarding PROLAMSA's section A Response on October 23, 2007. We received the sections B and C responses from PROLAMSA on October 29, 2007. On November 6, 2007, PROLAMSA filed its response to the Department's supplemental questionnaire regarding section A. Petitioners filed comments on PROLAMSA's sections B and C responses on November 8, 2007. The Department issued a supplemental questionnaire to PROLAMSA concerning the company's sections B and C responses on November 16, 2007. PROLAMSA replied to this supplemental questionnaire on December 7, 2007. The Department issued a second supplemental questionnaire with regard to PROLAMSA's supplemental responses for sections A, B and C of the questionnaire on December 20, 2007. PROLAMSA submitted its second supplemental response on January 7, 2008.

On December 4, 2007, based on an allegation timely filed by petitioners, the Department initiated a sales-below-cost investigation for PROLAMSA, finding reasonable grounds to believe that PROLAMSA made comparison market sales of LWR pipe and tube at prices below its cost of production. *See* ''Cost of Production Analysis'' Section below for further information. Consequently, the Department requested in a letter dated December 6, 2007, that PROLAMSA respond to Section D of the Department's antidumping duty questionnaire. We received PROLAMSA's Section D response on December 27, 2007.

Maquilacero and PROLAMSA

On December 26, 2007, petitioners timely filed with the Department separate allegations of targeted dumping for both Maquilacero and PROLAMSA. Maquilacero filed comments regarding petitioners' allegation of targeted dumping on January 7, 2008. Upon review of petitioners' allegations, the Department determined that further information was needed in order to adequately analyze petitioners' allegations. The Department issued a supplemental questionnaire to petitioners on January 11, 2008, requesting they address deficiencies identified by the Department. *See* Letter from Richard O. Weible, Office Director, to Petitioners, dated January 11, 2008. On January 15, 2008, PROLAMSA filed comments regarding petitioners' allegation of targeted dumping. Because there was a need for supplemental

information regarding these allegations, we do not have sufficient bases for making a finding of targeted dumping prior to the January 23, 2008, deadline for issuance of the preliminary determination. We intend to address these allegations in full upon receipt of a satisfactory response by petitioners to our request for additional information.

On January 18, 2008, two business days prior to the signature date for this preliminary determination, petitioners filed comments regarding the responses and data of Maquilacero and PROLAMSA for the Department's consideration for the preliminary determination. Petitioners' comments were specific to both companies' reported post-sale adjustments, and also, that the Department should not deduct negative margins from positive margins for the preliminary determination. Accordingly, the Department does not have sufficient time to address these comments for the preliminary determination.

Postponement of Preliminary Determination

On October 19, 2007, petitioners requested that the Department postpone the preliminary determination by 50 days. The Department published an extension notice on November 14, 2007, which set the new deadline for the preliminary determination at January 23, 2008. *See Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, and the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 72 FR 64044 (November 14, 2007).

Period of Investigation

The period of investigation (POI) is April 1, 2006, to March 31, 2007.

Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated:

1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Model Match

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the ''Scope of Investigation'' section above, and sold in Mexico during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

On August 16, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of LWR pipe and tube from the Republic of Korea, Turkey, and the People's Republic of China, for comments on the appropriate product characteristics for defining individual products. In addition, the Department requested that all parties in this investigation and in the concurrent antidumping duty investigations of LWR pipe and tube from the Republic of Korea and Turkey submit comments on the appropriate model matching methodology. *See* Letter from Richard Weible, Office Director, AD/CVD Enforcement 7, dated August 16, 2007. The Department received comments from the Mexican company Perfiles y Herrajes LM, S.A. de C.V. on August 23, 2007; from the Mexican companies PROLAMSA and Prolamsa USA, Inc. (PROLAMSA's U.S. sales affiliate) on August 27, 2007, and September 4, 2007; from the Turkish company Noksel Celik Boru Sanayi A.S. on August 24, 2007; from the Chinese producer/exporter Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; and from the petitioners on August 24, 2007. However, the Department has not made any changes to its proposed characteristics and model matching methodology as a result of the comments submitted by parties.

We have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: steel input type, whether metallic coated or not, whether painted or not, perimeter, wall thickness, and shape. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above. For both PROLAMSA and Maquilacero, it was necessary to rely on facts available in order to properly match U.S. sales of subject merchandise to comparison market sales of the foreign like product as discussed below.

Maquilacero's home market sales included sales of non-prime merchandise. As noted in Maquilacero's original and supplemental questionnaire responses, Maquilacero does not record certain product characteristics for its sales of non-prime merchandise. Specifically, Maquilacero does not document the perimeter, thickness, or shape of its non-prime sales on the documents produced in its ordinary course of trade. As such, these product characteristics for non-prime merchandise were not specifically identified in Maquilacero's home market database (in neither their respective field and nor in the control number (CONNUM) string). Section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the necessary product characteristic information needed to properly perform our margin calculations with respect to these sales is not on the record of this investigation, we must rely on facts otherwise available. In order for the Department to accurately compare Maquilacero's comparison market sales to its U.S. sales and its cost of production data, the Department applied, as neutral facts available, the product characteristics of the most common type of LWR pipe and tube (CONNUM) sold in the comparison market to the missing product characteristics of non-prime merchandise (*i.e.*, perimeter, thickness, and shape). For more details regarding the application of neutral facts available to Maquilacero's sales of non-prime LWR pipe and tube, *see* Memorandum to the File titled ''Analysis of Data Submitted by Maquilacero S.A. de C.V. (Maquilacero) in the Preliminary Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico,'' dated January 23, 2008 (Maquilacero Preliminary Analysis Memo).

With respect to PROLAMSA's reported steel input type (INPUTH/U), we note that the model matching criteria designated by the Department in its antidumping duty questionnaire requested that respondent report steel input type as either: hot-rolled steel or cold-rolled steel. In its initial and supplemental questionnaire responses, PROLAMSA reported a third designation in its fields for INPUTH/U as it claims to not know whether these coils were of hot-rolled or cold-rolled steel. As noted above, section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the necessary product characteristic information needed to properly perform our margin calculations with respect to these sales is not on the record of this investigation, we must rely on facts otherwise available. Therefore, for purposes of this preliminary determination, we have revised PROLAMSA's reported steel input type for those sales that PROLAMSA could not identify as hot-rolled or cold-rolled steel in both PROLAMSA's comparison market and U.S. sales databases. Specifically, based on neutral facts available, we re-coded the reported CONNUMH/U and INPUTH/U as either hot-rolled or cold-rolled steel depending upon the reported thickness (THICKH/U) for these products. Due to the proprietary nature of this issue, *see* Memorandum to the File titled ''Analysis of Data Submitted by Productos Laminados de Monterrey S.A. de C.V. (PROLAMSA) in the Preliminary Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico,'' dated January 23, 2008 (PROLAMSA Preliminary Analysis Memo) for further details.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to the Q&V Non-Responding Companies. As noted in the ''Supplementary Information'' section above, the Q&V Non-Responding Companies failed to respond (or to respond in a timely fashion) to the Department's Q&V questionnaire and to the Department's follow up letter dated August 16, 2007.

Section 776(a)(2) of the Act provides that, (1) if an interested party withholds information requested by the administering authority, (2) fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, (3) significantly impedes a proceeding under this title, or (4) provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, the Q&V Non-Responding Companies all failed to provide the information requested by the deadlines for submission of the information and/or in the form or manner requested. Specifically, the Q&V Non-Responding Companies did not respond to our Q&V questionnaires and, as such, they failed to provide pertinent information that we requested for our consideration and selection of mandatory respondents, thereby significantly impeding this proceeding. Thus, for these companies, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based their dumping margin on facts otherwise available.

Application of Adverse Inferences for Facts Available

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–54026 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–55796 (August 30, 2002). The SAA explains that the Department may apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–4199. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon); and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

Although the Department provided the Q&V Non-Responding Companies with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Act, these companies did not respond as requested. This constitutes a failure on the part of these companies to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Because these companies did not provide the information requested, section 782(e) of the Act is not applicable. Based on the above, the Department has preliminarily determined that the Q&V Non-Responding Companies failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See*, *e.g.*, *Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other

information placed on the record. *See also*, 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information. *See*, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland,* 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to the Q&V Non-Responding Companies the highest margin alleged in the petition, as referenced in the *Initiation Notice*, of 11.50 percent. (*See Initiation Notice* at 40278.)

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The SAA clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination. *See Initiation Checklist.* We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the Petition to derive margins. During our pre-initiation analysis, we also examined information from various independent sources provided either voluntarily in the Petition or, based on our requests, in supplements to the Petition, that corroborates key elements of the export-price and normal-value calculations used in the Petition to derive estimated margins.

Specifically, the petitioners calculated a single export price using the average monthly Customs Unit Values (AUVs) ((Free Alongside Ship) (FAS)) of LWR pipe and tube from Mexico for consumption in the United States, classified under HTSUS numbers 7306.60.50.00 and 7306.61.50.00. As the IM145 data is considered direct import data from CBP, we consider petitioners' AUVs based on this data to be reliable. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the Petition.

The petitioners adjusted export prices for inland freight from the plant to the port of importation, specifically, Laredo, Texas. The petitioners used inland freight charges obtained from inland freight price quotes from certain Mexican producers of LWR pipe and tube. *See* Petition at page II–10 and July 6, 2007 Supplement to the Petition at 7. This is a source of information that we consider reliable. *See*, *e.g.*, *Notice of Preliminary Determination of Sales at Less than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). Further, we obtained no other information that would make us question the reliability of the adjusted information provided in the Petition, nor the July 6, 2007, deficiency response.

Based on our examination of the aforementioned information, we consider the petitioners' calculation of net U.S. prices corroborated.

With respect to normal value, petitioners derived Mexican comparison market prices by obtaining price quotations from certain Mexican manufacturers of LWR pipe and tube through an economic consultant, which identified specific terms of sale and payment terms. Petitioners made no adjustments to the quoted prices, as the terms of delivery for the quotations were ''free on board'' (FOB) at the respective manufacturing facilities. *See* Volume II of the Petition at 6–7, Exhibits II–14 and II–15, and Volume II of the Supplement to the Petition, dated July 6, 2007, at 1, 3–5 and Exhibits 4 and 5.

Based on our examination of the aforementioned information, we consider the petitioners' calculation of net comparison market prices corroborated.

We also examined information obtained from interested parties during this particular investigation to corroborate the home market and U.S. prices. Certain transaction-specific margin percentages calculated for Maquilacero and PROLAMSA exceeded those from the Petition.

Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the Petition by examining source documents, publically available information and primary information submitted by respondents Maquilacero and PROLAMSA, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as ''best information available'' (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs.* v. *United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the adverse

facts-available rate bore a ''rational relationship'' to the respondent's ''commercial practices,'' and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed that the calculation of margins in the Petition reflects commercial practices of the particular industry during the period of investigation. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine that the highest margin in the Petition, which we determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the adverse facts-available rate for the Q&V Non-Responding Companies in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first segment of this proceeding involving these companies, there are no probative alternatives. Accordingly, by using information that was corroborated for the initiation stage of this investigation and preliminarily determined to be relevant to the Q&V Non-Responding Companies in this investigation, we have corroborated the adverse facts-available rate ''to the extent practicable.'' *See* section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd.* v. *United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, ''pursuant to the 'to the extent practicable' language, the corroboration requirement itself is not mandatory when not feasible''). Therefore, we find that the estimated margin of 11.50 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to the Q&V Non-Responding Companies, we have applied the margin rate of 11.50 percent, the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice* at 40278.

Date of Sale

Section 351.401(i) of the Department's regulations states the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i). Maquilacero reported the sales invoice date as the date of sale for all sales in the U.S. and in the comparison market. *See* Maquilacero's Section B and C Response at B–23 and C–19, respectively. PROLAMSA reported the sales invoice date as the date of sale for all sales in the comparison and U.S. markets. *See* PROLAMSA's Section B and C Response at B–18 and C–15, respectively. However, with regard to PROLAMSA, the company reported two invoice dates as all of its sales are back-to-back CEP sales. The first invoice date (which is identical to the date of shipment) is the date on which PROLAMSA invoices its U.S. affiliate, Prolamsa, Inc. The second reported invoice date is the date on which Prolamsa, Inc. invoices the unaffiliated U.S. customer. We have preliminarily determined that the date of PROLAMSA's invoice to Prolamsa, Inc. is the appropriate date to use as PROLAMSA's date of sale as it is the date that the material terms of sale are set.

Based on the responses of both companies, and having no record evidence that would indicate otherwise, we preliminarily determine that the sales invoice date is the appropriate date of sale in both markets for Maquilacero and PROLAMSA. For a further discussion of this issue, *see* Maquilacero Preliminary Analysis Memo; *see also*, PROLAMSA Preliminary Analysis Memo.

Fair Value Comparisons

To determine whether sales of LWR pipe and tube from Mexico were made in the United States at less than normal value (NV), we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections below. In accordance with section 777A(d)(1) of the Act, we calculated the weighted-average prices for NV and compared these to the weighted-average of EP (and CEP), when appropriate.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. *See* section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

Maquilacero

Maquilacero classified its sales to the United States solely as EP sales, *i.e.*, sales to unaffiliated direct end user customers. Maquilacero's U.S. sales were made directly to unaffiliated customers in the United States prior to importation, and CEP is not otherwise warranted based on Maquilacero's questionnaire response. Therefore, for purposes of this preliminary determination, we have accepted Maquilacero's classification of its sales to the United States as EP sales.

Accordingly, we calculated EP based on prices charged to the first unaffiliated U.S. customer. We based EP on the packed and delivered (to port and/or to customer) prices to the first unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, and foreign brokerage and handling. When appropriate, we adjusted prices to reflect deductions and/or increases to prices due to billing adjustments, early payment discounts and rebates. *See* Maquilacero Preliminary Analysis Memo.

PROLAMSA

PROLAMSA's U.S. sales were made by its U.S. affiliate, Prolamsa, Inc. We therefore based all of PROLAMSA's prices to the United States on CEP. When appropriate, we adjusted prices to reflect deductions and/or increases to price due to billing adjustments, early payment discounts and rebates. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, brokerage and handling in the country of manufacture, international freight, and U.S. brokerage and handling.

In its supplemental questionnaire responses, PROLAMSA explained that it was never invoiced for foreign inland freight services provided on certain U.S. sales. As such, PROLAMSA reported no

inland freight expense for these observations. *See* PROLAMSA's Second Supplemental Response at 9. As a general matter, our calculations include the value of foreign inland freight services because these services are not provided on a gratuitous basis. Although PROLAMSA claims that it was never invoiced for these services on certain U.S. sales, the suppliers of said services still could invoice PROLAMSA for these services provided in connection with certain POI sales. There is no record evidence that the suppliers wrote off the value of these services from their accounts receivable. Section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the expenses needed to properly calculate net CEP for these sales are not on the record of this investigation, we must rely on facts otherwise available. Accordingly, based on neutral facts available, we revised PROLAMSA's reported foreign inland freight to account for missing values for certain U.S. sales. Specifically, we used a weighted average of all observations where a positive value was reported under the inland freight field (DINLFTPU), and where those observations had an identical destination and customer code in PROLAMSA's dataset, for the sales in question. For further details, *see* PROLAMSA's Preliminary Analysis Memo dated January 23, 2008.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*i.e.*, commissions and imputed credit expenses). We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. *See* PROLAMSA Preliminary Analysis Memo.

Normal Value

A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market (*i.e.*, Mexico) to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(I) of the Act, because each respondent had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the respondents' sales of LWR pipe and tube in Mexico were sufficient to find the home market as viable for comparison purposes. Accordingly, we calculated NV for Maquilacero and PROLAMSA based on sales prices to Mexican customers.

B. Arm's-Length Test

Maquilacero and PROLAMSA reported sales of the foreign like product to affiliated and unaffiliated customers in the comparison market. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at ''arm's-length.'' *See* 19 CFR 351.403(c). To test whether these sales were made at arm's-length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices and included such sales in the calculation of NV. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party were excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002); *see also,* Maquilacero Preliminary Analysis Memo and PROLAMSA Preliminary Analysis Memo.

C. Cost of Production Analysis

Based on our analysis of petitioners' allegation, we found that there were reasonable grounds to believe or suspect that Maquilacero's and PROLAMSA's sales of LWR pipe and tube in the comparison market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether these companies had sales that were made at prices below their respective COPs. *See* Memorandum to Richard O. Weible, Director, Office 7, titled ''Petitioners' Allegation of Sales Below the Cost of Production for Maquilacero S.A. de C.V.,'' dated December 5, 2007 (Maquilacero Cost Initiation Memo); *see also,* Memorandum to Richard O. Weible, Director, Office 7, titled ''Petitioners' Allegation of Sales Below the Cost of Production for Productos Laminados de Monterrey S.A. de C.V.,'' dated December 4, 2007 (PROLAMSA Cost Initiation Memo).

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COP based on the sum of their costs of materials and conversion for the foreign like product, plus an amount for home market selling expenses, general and administrative (G&A) expenses, interest expenses and packing costs. *See* the ''Test of Comparison Market Sales Prices'' section below for the treatment of comparison market selling expenses.

The Department relied on the COP data submitted by Maquilacero and PROLAMSA, in their respective section D questionnaire responses for the COP calculation, except for the following instances:

Maquilacero: We adjusted Maquilacero's reported total cost of manufacturing (TOTCOM) to include certain rebates which Maquilacero received from its supplier of hot-rolled coils; rebates which Maquilacero had previously included as an adjustment to price. We adjusted Maquilacero's data to apply this ratio to the reported TOTCOM of each CONNUM.

PROLAMSA: We adjusted PROLAMSA's G&A expense ratio to include 2006 profit-sharing costs included in PROLAMSA's 2006 audited financial statements and applied the adjusted G&A ratio to the revised TOTCOM of each CONNUM.

For a complete discussion of the changes made to the cost information submitted by Maquilacero and PROLAMSA, *see* Memorandum to Neal M. Halper, Director, Office of Accounting, titled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Maquilacero, S.A. de C.V.,'' dated January 23, 2008 (Maquilacero COP Memo); *see also,* Memorandum to Neal M. Halper, Director, Office of Accounting, titled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Productos Laminados de Monterrey, S.A. de C.V. (Prolamsa),'' dated January 23, 2008 (PROLAMSA COP Memo).

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-

average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's 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 POI were at prices less than COP, we determined that such sales have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. Further, the 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 POI. In such cases, because we compared prices to POI-average costs, we also determined that such 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.

We found that, for certain specific products, more than 20 percent of Maquilacero's and PROLAMSA's sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

Maquilacero: We calculated NV based on prices to unaffiliated customers (as well as those affiliated customers which passed the arm's length test) and matched U.S. sales to NV. We made deductions, where appropriate, for billing adjustments, discounts, rebates, movement expenses, and packing pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) as appropriate (*i.e.*, commissions and credit), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

PROLAMSA: We based comparison market prices on packed prices to unaffiliated customers (as well as those affiliated customers which passed the arm's length test) in Mexico. Starting with gross prices, we added or subtracted billing adjustments and rebates, where appropriate, and deducted early payment discounts. We adjusted the starting price for inland freight and insurance, where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, as PROLAMSA's sales were all CEP sales, for comparisons made to those CEP sales, we only deducted Mexican credit expenses and commissions from comparison market prices, because U.S. credit expenses and commissions were deducted from U.S. price, as noted above and in accordance with section 772(c)(2) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. *See* section 351.412(c)(i) of the Department's regulations. For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer. *See* section 351.412(c)(ii) of the Department's regulations. *See also Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales.

See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review,* 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

Maquilacero: Maquilacero reported two channels of distribution in the comparison market (*i.e.*, Mexico): (1) Distributors and end-users. Maquilacero reported its selling functions to both distributors and end-users in the home market as: sales forecasting, strategic/economic planning, advertising, sales

promotion, packing, inventory maintenance, order input/processing, direct sales personnel, market research, providing cash and early payment discounts, providing warranty services, providing freight and delivery, travel to customer location, collections, and paying commissions. We examined the selling activities reported for each channel of distribution and organized the reported selling activities into the following four selling functions: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. We found that Maquilacero's level of selling functions to its home market customers for each of the four selling function categories did not vary significantly by channel of distribution. *See* Maquilacero's Supplemental Section A Response at Exhibit 16. Therefore, we preliminarily conclude that the selling functions for the reported channels of distribution constitute one LOT in the comparison market.

Maquilacero reported that all of its sales to the United States were EP sales made through two channels of distribution, *i.e.*, distributors and end-users. For EP sales, we examined the selling activities related to each of the selling functions between Maquilacero and its U.S. customers. Maquilacero reported its selling functions to both distributors and end-users in the United States as: sales forecasting, strategic/economic planning, engineering services, advertising, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, market research, providing cash and early payment discounts, providing warranty services, providing freight and delivery, travel to customer location, collections, and paying commissions. We examined the four selling function categories and found that Maquilacero's selling functions for its U.S. sales did not vary significantly by channel of distribution. Therefore, we preliminary determine that Maquilacero's U.S. sales constitute a single LOT.

We then compared the selling functions Maquilacero provided in the comparison market LOT with the selling functions provided to the U.S. LOT. On this basis, we determined that the comparison market LOT is similar to Maquilacero's U.S. LOT. We made this determination based upon the minor differences that exist between Maquilacero's comparison and U.S. markets in terms of the selling functions that are provided to Maquilacero's customers in each market. Moreover, we find that the degree to which Maquilacero provides these identical selling functions for its customers in both markets to be similar (*i.e.*, sales forecasting, strategic/economic planning, advertising and promotion, packing, order input/processing, market research, cash and early payment discounts, warranty service, sales and marketing support, technical assistance, and after-sales services). Therefore, we preliminarily determine that Maquilacero is not entitled to a LOT adjustment.

PROLAMSA: In the present investigation, PROLAMSA did not request a LOT adjustment. See PROLAMSA's Section B Response at B–27. In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

PROLAMSA reported one LOT in the comparison market, Mexico, with two channels of distribution to five classes of customers: (1) Direct sales to distributors, builders (construction), and industrial end-users (collectively, Channel 1), and (2) direct sales to automotive and original equipment manufacturers (OEMs) and furniture producers (collectively, Channel 2). PROLAMSA further identified its customer categories by those that typically order stock subject merchandise (*i.e.*, Channel 1 customers), and those that typically order non-stock (or ''made to order'') subject merchandise (*i.e.*, Channel 2 customers). *See* PROLAMSA's Section A Response at A–11 through A–12; *see also,* PROLAMSA's Section A Response at Exhibit A–5 and PROLAMSA's Supplemental A Response at Exhibit A–18.

Based on our review of the record evidence, we find that comparison market sales to both customer categories and through both channels of distribution were substantially similar with respect to selling functions and stages of marketing. *See* PROLAMSA's Supplemental A Response at Exhibit A–18 (*i.e.*, the revised selling functions chart). Specifically, PROLAMSA performed the same selling functions at a similar level of performance for sales in both comparison market channels of distribution (*e.g.*, packing, order input/processing, direct sales personnel and marketing support, technical assistance, rebates, cash discounts, commissions, freight and delivery). *Id.* We find that the only meaningful difference between the two channels in terms of the services provided in the stages of marketing (and the degree of performance of those services) is that PROLAMSA provides inventory maintenance services at a higher degree for its Channel 1 customers. We do not find this difference alone to be sufficient for finding more than one LOT. Accordingly, we preliminarily find that PROLAMSA had only one LOT for its comparison market sales.

PROLAMSA reported one LOT with regard to its CEP sales through Prolamsa, Inc., with two channels of distribution in the United States, and with four classes of customers for those CEP sales: (1) Sales through U.S. affiliate (CEP sales) to other producers of LWR pipe and tube, distributors and service centers, and metal building and component manufacturers (collectively, Channel (1) and (2) sales through U.S. affiliates (CEP sales) to OEMs (Channel 2). Similar to its comparison market customers, PROLAMSA further identified its U.S. customer categories by those that typically order stock subject merchandise (*i.e.*, Channel 1 customers), and those that typically order non-stock (or ''made to order'') subject merchandise (*i.e.*, Channel 2 customers). *See* PROLAMSA's section A Response at A–11 through A–12; *see also*, PROLAMSA's Supplemental A Response at Exhibit A–18.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by PROLAMSA on CEP sales for both channels of distribution relating to the CEP LOT, as described by PROLAMSA in its questionnaire responses, after these deductions. We have determined that the selling functions performed by PROLAMSA on its U.S. sales (all of which are CEP sales) are similar because for all U.S. sales, PROLAMSA provides almost no selling functions to its U.S. affiliate, Prolamsa, Inc., in support of either channel of distribution. PROLAMSA reported that the only services it provided for its CEP sales were packing, freight and delivery direct to the U.S. customer (which included documentation preparation related to packing and shipment of the

[1] The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered PROLAMSA's narrative response to properly determine where in the chain of distribution the sale occurs.

merchandise to the U.S. port of importation)[2] and very limited sales/marketing support services through customer visits.

See PROLAMSA's Supplemental A Response at A–9 and Exhibit A–18. Accordingly, because the selling functions provided by PROLAMSA for CEP sales are comparably minimal, and the selling functions provided by Prolamsa, Inc. to unaffiliated customers in the United States in both channels of distribution are substantially similar and provided at the same degree of service (*i.e.*, order input/processing, direct sales personnel, provide cash discounts, commissions, warranty service, visits to customers, calls and correspondence to U.S. customers), we preliminarily determine that there is one CEP LOT in the U.S. market. As PROLAMSA made no direct sales to unaffiliated customers in the United States during the POI, there is no additional analysis required to compare LOTs in the U.S. market.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market is at a more advanced stage than the LOT of the CEP sales and there are no data available to determine the existence of a pattern of price difference. PROLAMSA reported that it provided minimal selling functions and services for the one (CEP) LOT in the United States and that, therefore, the comparison market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by PROLAMSA for sales in the comparison market and CEP sales in the U.S. market, we preliminarily find that the comparison market LOT is at a more advanced stage of distribution when compared to CEP sales because PROLAMSA provides many more selling functions in the comparison market at a higher level of service as compared to selling functions performed for its CEP sales (*i.e.*, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, technical assistance, provide rebates, rebates, cash discounts, pay commissions, provide warranty service, provide freight and delivery, visit customers, and call and correspond with customers). Thus, we find that PROLAMSA's comparison market sales are at a more advanced LOT than its CEP sales. There was only one LOT in the comparison market, and there are no data available to determine the existence of a pattern of price difference, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment. Therefore, consistent with section 773(a)(7)(B) of the Act, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted from NV the comparison market indirect selling expenses from NV for comparison market sales that were compared to U.S. CEP sales. As such, we limited the comparison market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Dow Jones Reuters Business Interactive LLC (trading as ''Factiva''). *See* Import Administration Web site at: *http://ia.ita.doc.gov/exchange/index.html*.

All-Others Rate

Pursuant to section 735(c)(5)(A) of the Act, the all-others rate is equal to the weighted average of the estimated weighted-average dumping margins of all respondents investigated, excluding zero or *de minimis* margins and any margins determined exclusively under section 776 of the Act. Maquilacero and PROLAMSA are the only respondents in this investigation for which the Department has calculated a company-specific rate. For PROLAMSA, we calculated a zero rate; however, for Maquilacero, we calculated a rate above *de minimis*. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the above *de minimis* rate calculated for Maquilacero as the all-others rate, as referenced in the ''Suspension of Liquidation'' section below.

Verification

As provided in section 782(i) of the Act, we intend to verify all information upon which we will rely in making our final determination.

Preliminary Determination

The weighted-average dumping margins are as follows:

Producer/exporter	Weighted-average margin (percentage)
Maquilacero S.A. de C.V	4.96
Productos Laminados S.A. de C.V (PROLAMSA)	0.00
Arco Metal S.A. de C.V	4.96
Hylsa S.A. de C.V	4.96
Industrias Monterrey S.A. de C.V	11.50
Internacional de Aceros, S.A. de C.V	4.96
Nacional de Acero S.A. de C.V	11.50
PEASA-Productos Especializados de Acero	11.50
Perfiles y Herrajes LM, S.A. de C.V	4.96
Regiomontana de Perfiles y Tubos	4.96
Talleres Acero Rey S.A. de C.V	4.96
Tuberias Aspe	11.50
Tuberia Laguna, S.A. de C.V	4.96
Tuberias y Derivados S.A. de C.V	11.50
All Others	4.96

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LWR pipe and tube from Mexico, with the exception of those produced and exported by PROLAMSA, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin, as indicated in the chart above, as follows: (1) The rate for the firms listed above (except for PROLAMSA, *see* below) will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.96 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

In accordance with 19 CFR 351.204(e)(2), because the weighted-average margin for PROLAMSA is zero, we will not instruct CBP to suspend liquidation of merchandise produced and exported by PROLAMSA.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC

[2] PROLAMSA explained in its quetionnaire responses that the U.S. affiliate, Prolamsa, Inc., does not take physical possession of the merchandise when it arrives in the United States. *See* PROLAMSA's Supplemental A Response at A–8 through A–9.

will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of LWR pipe and tube from Mexico are materially injuring, or threaten material injury to, the U.S. industry. We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined.

Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(I)(1) of the Act.

Dated: January 23, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–1654 Filed 1–29–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XF32

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public workshop.

SUMMARY: The South Atlantic Fishery Management Council (Council), in partnership with Duke University, Nicholas School of the Environment and Earth Sciences and the University of North Carolina at Chapel Hill, is conducting a South Atlantic Ecosystem Tools and Model Development Workshop in Beaufort, NC.

DATES: The Ecosystem Modeling Workshop will take place from 8:30 a.m. - 5 p.m. on February 21, 2008, and from 8:30 a.m. - 1 p.m. on February 22, 2008.

ADDRESSES: The workshop will be held at the Duke Repass Center, Duke Marine Laboratory, 135 Duke Marine Lab Road, Beaufort, NC 28516; telephone: (252) 504–7501.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Workshop is designed to provide an understanding of regional data availability, partner capabilities, tool and model development status and funding mechanisms to support multiple task-based Ecosystem model development efforts in the South Atlantic region. The Workshop is designed to build on previous coordination meetings and model development efforts to establish short-term development and long-term development strategies necessary to support ecosystem-based management, the South Atlantic Fishery Management Council's Fishery Ecosystem Plan and future Comprehensive Fishery Ecosystem Amendments.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: January 25, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–1601 Filed 1–29–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XF36

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting on Aquaculture Amendment.

DATES: The meeting will convene at 6 p.m. on Tuesday, February 19, 2008 and conclude no later than 9 p.m

ADDRESSES: This meeting will be held at The Islander, 82100 Overseas Highway, Islamorada, FL 33036; telephone: (305) 664–2031.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) is preparing an amendment which will require persons to obtain a permit from NMFS to participate in aquaculture by constructing an aquaculture facility in the exclusive economic zone (EEZ) of the Gulf of Mexico. Each application for a permit must comply with many permit conditions related to record keeping and operation of the facility. These permit

conditions will assure the facility has a minimal affect on the environment and on other fishery resources. Compliance with the conditions will be evaluated annually for the duration of the permit as the basis for renewal of the permit for the next year.

Copies of the Amendment a can be obtained by calling the Council office at (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: January 25, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–1602 Filed 1–29–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN; 0648–XE73

Pacific Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of rescheduling of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Trawl Rationalization Tracking and Monitoring Committee (TRTMC) is cancelling and rescheduling a previously announced working meeting. The meeting is open to the public.

DATES: The TRTMC meeting to be held Wednesday, January 23, 2008 was cancelled and is rescheduled as a telephone conference on Wednesday, February 13, 2008, from 10 a.m. until business for the day is completed.

ADDRESSES: A listening station for the public will be available at the Pacific Fishery Management Council, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on January 2, 2008 (73 FR 170).

The Council is considering a rationalization program to cover limited entry trawl landings in the West Coast groundfish fishery. The purpose of the TRTMC working meeting is to provide agency guidance and perspectives on design constraints and to scope likely impacts of alternative configurations of tracking and monitoring systems for trawl rationalization.

Although non-emergency issues not contained in the meeting agenda may come before the TRTMC for discussion, those issues may not be the subject of formal TRTMC action during this meeting. TRTMC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TRTMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 25, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–1600 Filed 1–29–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XF37

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Allocation Committee (GAC) will hold a working meeting, which is open to the public.

DATES: The GAC meeting will be held Wednesday, February 20, 2008, from 1 p.m. until business for the day is completed. The GAC will reconvene Thursday, February 21, 2008, and Friday, February 22, 2008 at 8:30 a.m. each day until their business is completed.

ADDRESSES: The GAC meeting will be held at the Sheraton Portland Airport Hotel, Cascade A and B Room, 8235 N.E. Airport Way, Portland, OR 97220; telephone: (503) 281–2500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GAC meeting is to consider draft alternatives and other material for rationalizing the Pacific Coast limited entry groundfish trawl industry (trawl rationalization); consider alternatives, preliminary analyses, and other material for allocating Pacific Coast groundfish stocks and stock complexes to the various Pacific Coast fishery sectors (intersector allocation); and consider draft alternatives and preliminary analyses associated with a contemplated limited entry licensing system for West Coast open access groundfish fisheries (open access license limitation). No management actions will be decided by the GAC. The GAC's role will be development of recommendations and refinement of draft alternatives for analysis in a contemplated environmental impact statement for trawl rationalization and two contemplated environmental assessments for intersector allocation and open access license limitation. The GAC recommendations will be provided for consideration by the Council at its March 2008 meeting in Sacramento, CA, and at its April 2008 meeting in Seattle, WA.

Although non-emergency issues not contained in the meeting agenda may come before the GAC for discussion, those issues may not be the subject of formal GAC action during this meeting. GAC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305a) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GAC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 25, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–1603 Filed 1–29–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on March 6, 2008 from 0800 hrs until 2030 and March 7, 2008 from 0900 hrs until 1330 at the Pentagon.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: January 24, 2008.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 08–394 Filed 1–29–08; 8:45 am]

BILLING CODE 5000–06–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education

AGENCY: Department of Education, Office of Indian Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the National Advisory Council on Indian Education (the Council). The notice also describes the functions of the Council. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend. This notice is appearing in the **Federal Register** less than 15 days before the date of the meeting due to scheduling difficulties within the agency and with the Council.

DATE: February 7, 2008.

TIME: 9 a.m. to 4 p.m., Eastern Standard Time.

ADDRESSES: 400 Maryland Avenue, SW., Room 5C100, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cathie Carothers, Director Office of Indian Education, National Advisory Council on Indian Education; 400 Maryland Avenue, SW., Washington, DC 20202; phone: (202) 260–7485; fax: (202) 260–4149; e-mail: *Cathie.Carothers@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339, Monday through Friday between the hours of 8 a.m. and 8 p.m., Eastern Standard Time.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act. The Committee is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The purpose of this meeting is to discuss reauthorization of the Elementary and Secondary Education Act; the President's fiscal year 2008 budget and the 2009 budget request; Executive Order 13336 activities; program updates; the Council's charter; and development of the Council's Annual Report to Congress.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Cathie Carothers at (202) 260–7485 no later than February 1, 2008. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Public Comment: 3:15 p.m. is scheduled on the Agenda for receipt of public comment.

Records are kept of all Committee proceedings and are available for public inspection at 400 Maryland Avenue, Room 5C132, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/federegister.*

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.*

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–1608 Filed 1–29–08; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of Public Meeting.

DATE AND TIME: Thursday, February 7, 2008 10 a.m.–1 p.m.

PLACE: Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001. (Metro Stop: Union Station).

AGENDA: Commissioners will receive an update on HAVA Funding Issues. Commissioners will consider and vote on the following studies: Study on Feasibility of Free Absentee Voting Postage; Study on use of Social Security Information of First Time Voters Who Register to Vote by Mail. Commissioners will consider and vote on an Interim

Policy for Changes to State Specific Instructions on National Mail Voter Registration Form. Commissioners will consider and vote on a Disclaimer proposal to State Instructions Portion of the NVRA Form. The Commission will consider other administrative matters.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 08–423 Filed 1–25–08; 4:13 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Office of Environmental Management; Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of renewal.

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board will be renewed for a two-year period beginning January 23, 2008.

The Board provides the Assistant Secretary for Environmental Management (EM) with information and strategic advice on a broad range of corporate issues affecting the EM program. These corporate issues include, but are not limited to, project management and oversight activities; cost/benefit analyses; program performance; contracts and acquisition strategies; human capital management; and site end-states activities. Recommendations to the Department of Energy (DOE) on the programmatic resolution of numerous difficult issues will help achieve DOE's objective of the safe and efficient cleanup of its contaminated sites.

Additionally, the renewal of the Environmental Management Advisory Board has been determined to be essential to conduct DOE's business and to be in the public interest in connection with the performance of duties imposed on DOE by law and agreement. The Board will operate in accordance with the provisions of FACA, and rules and regulations issued in implementation of that Act.

Further information regarding this Advisory Board may be obtained from Ms. Terri Lamb, Designated Federal Officer, at (202) 586–9007.

Issued in Washington, DC on January 23, 2008.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E8–1640 Filed 1–29–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–516A–000; FERC–516A]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

January 22, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due March 31, 2008.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC08–516A–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov,* choose the Documents & Filings tab, click on eFiling, then follow the instructions given. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–516A ''Small Generator Interconnection Agreements'' (OMB No. 1902–2003) is used by the Commission to enforce the statutory provisions of sections 205 and 206 of the Federal Power Act (FPA), as amended by Title II, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d). FPA sections 205 and 206 require the Commission to remedy undue discriminatory practices within interstate electric utility operations.

The Commission amended its regulations in 2005 with Order No. 2006 to require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to amend their Open Access Transmission Tariffs (OATTs) to include a Commission-approved *pro forma* interconnection procedures document and a standard interconnection agreement for the interconnection of generating facilities having a capacity of no more than 20 MW (Small Generators).[1]

Prior to Order No. 2006, the Commission's policy had been to address interconnection issues on a case-by-case basis. Although a number of transmission providers had filed interconnection procedures as part of their OATTs, many industry participants remained dissatisfied with existing interconnection policies and procedures. With an increasing number of interconnection-related disputes, it became apparent that the case-by-case approach was an inadequate and inefficient means to address interconnection issues. This prompted the Commission to adopt, in Order No. 2006, a single set of procedures for jurisdictional transmission providers and a single uniformly applicable

[1] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, 70 FR 34189 (May 12, 2005), FERC Stats. & Regs. ¶ 31,180 (2005).

interconnection agreement for transmission providers to use in interconnecting with Small Generators.

With the incorporation of these documents in their OATTs, there is no longer a need for transmitting utilities to file case-by-case interconnection agreements and procedures with the Commission. However, on occasion, circumstances warrant non-conforming agreements or a situation-specific set of procedures. These non-conforming documents must be filed in their entirety with the Commission for review and action.

The information collected is in response to a mandatory requirement. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 35, § 35.28(f).

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
238 (maintenance of documents)	1	1	238
40 (filing of conforming agreements)	1	25	1,000
Totals			1,238

There was a one-time start-up cost to comply with Order No. 2006 requirements that was included when the Commission first sought authorization for this information in 2005. The estimated burden of the continued requirement to maintain the procedures and agreement documents in transmission providers' OATTs is reflected herein as is the filing of non-conforming interconnection procedures and agreements that occur on occasion.

The estimated total cost to respondents is $75,222.78. [1,238 hours divided by 2080 hours [2] per year, times $126,384 [3] equals $75,222.78]. The average cost per respondent is $316.06.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1593 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

[2] Number of hours an employee works each year.

[3] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–600–000; FERC–600]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

January 22, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due March 31, 2008.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC08–600–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov*, choose the Documents & Filings tab, click on eFiling, then follow the instructions given. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet

through FERC's homepage using the eLibrary link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–600 ''Rules of Practice and Procedure: Complaint Procedures'' (OMB No. 1902–0180) is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA), 16 U.S.C. 791a–825r; the Natural Gas Act (NGA), 15 U.S.C. 717–717w; the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601–2645; the Interstate Commerce Act, 49 U.S.C. App. § 1, *et seq.*, the Outer Continental Shelf Lands Act, 43 U.S.C. 1301–1356 and the Energy Policy Act of 2005, (Pub. L. 109–58) 119 Stat. 594.

With respect to the natural gas industry, section 14(a) of the NGA provides: The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

For public utilities, section 205(e) of the FPA provides: Whenever any such new schedule is filed, the Commission shall have the authority, either upon complaint or upon its own initiative without complaint at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon hearing concerning the lawfulness of such rate, charge, classification, or service; and pending such hearing and decision of the Commission. * * *

Section 215(d)(5) of the FPA provides: The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section. * * *

Concerning hydropower projects, section 19 of the FPA provides: * * * it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control. * * *

For qualifying facilities, section 210(h)(2)(B) of PURPA provides: Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph.

Likewise for oil pipelines, Part 1 of the Interstate Commerce Act (ICA), sections 1, 6 and 15 (recodified by Pub. L. 95–473 and found as an appendix to Title 49 U.S.C.) the Commission is authorized to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If a proposed oil rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. Section 13 of the ICA provided that: Any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to the Commission by petition which shall briefly state the facts: whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. * * *

In Order No. 602, 64 FR 17087 (April 8, 1999), the Commission revised its regulations governing complaints filed with the Commission under the above statutes. Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner. In order to achieve the latter, the Commission revised Rule 206 of its Rules of Practice and Procedure (18 CFR 385.206) to require that a complaint satisfy certain informational requirements, that answers be filed in a shorter, 20-day time frame, and that parties may employ various types of alternative dispute resolution procedures to resolve complaints.

In Order No. 647, 69FR 32436 (June 10, 2004), the Commission revised its regulations to simplify the formats it requires for various types of notices. These revisions provide for a more uniform formatting and make it easier for the Commission to update the form of notice formatting without the necessity of initiating a rulemaking for every change. A new subsection 18 CFR 385.203(d) replaced the former format requirements. Among the provisions that were affected by these revisions was 18 CFR 385.206(b)(10).

On September 9, 2005, the Office of Management and Budget (OMB) approved the reporting requirements contained in FERC–600 for a term of three years, the maximum period permissible under the Paperwork Reduction Act [1] before an information collection must be resubmitted for approval. As noted above this notice seeks public comments in order for the Commission to submit a justification to OMB to approve and extend the current expiration date of the FERC–600 reporting requirements. The data in complaints filed by interested/affected parties regarding oil and natural gas pipeline operations, electric and hydropower facilities in their applications for rate changes, service, licensing or reliability are used by the Commission in establishing a basis for various investigations and to make an initial determination regarding the merits of the complaint.

Investigations may range from whether there is undue discrimination in rates or service to questions regarding market power of regulated entities to environmental concerns. In order to make a better determination, it is important to know the specifics of any oil, gas, electric, and hydropower complaint ''upfront'' in a timely manner and in sufficient detail to allow the Commission to act swiftly. In addition, such complaint data will help the Commission and interested parties to monitor the market for exercises of market power or undue discrimination. The information is voluntary but submitted with prescribed information. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 385, §§ 385.206, 385.203 and 385.213.

ACTION: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

[1] Paperwork Reduction Act of 1995, P.L. 104–13, October 1, 1995, 44 U.S.C. 3501–3520.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
81*#	1	14	1,134

* Represents three year averages (2005–2007) *#Rounded off.*

Estimated cost burden to respondents is $68,904. (1,134 hours/2080 hours per year times $126,384 per year average per employee = $68,904). The cost per respondent is $861. There is a significant decrease in the number of respondents and number of filings since the last renewal request. However, the cost per respondent has increased to reflect adjustments due to inflationary costs.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1594 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1199–002]

Airtricity Munnsville Wind Farm LLC; Notice of Filing

January 24, 2008.

Take notice that on January 17, 2008, Airtricity Munnsville Wind Farm, LLC tendered for filing its notice of non-material change in status related to a change in its upstream ownership.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1628 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13030–000]

Aberdeen Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–13030–000.

c. *Date Filed:* September 20, 2007.

d. *Applicant:* Aberdeen Hydro, LLC.

e. *Name of the Project:* Aberdeen Lock and Dam Hydroelectric Project.

f. *Location:* The project would be located on the Tombigbee River in Monroe County, Mississippi. The Aberdeen Lock and Dam is owned and maintained by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brent Smith, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, Phone (208) 745–0834.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13030–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Aberdeen Lock and Dam and would consist of: (1) A proposed powerhouse containing three generating units with a total installed capacity of 20-megawatts; (2) a switchyard; (3) a proposed 2-mile-long, 46-kV transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of 36-gigawatts and would be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1633 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13047–000]

Green Wave Energy Solutions, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 24, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13047–000.

c. *Date Filed:* October 1, 2007.

d. *Applicant:* Tillamook Intergovernmental Development Entity.

e. *Name of Project:* Oregon Coastal Wave Energy Project.

f. *Location:* The project would be located in the Pacific Ocean in Tillamook County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Patrick Ashby, Tillamook Intergovernmental Development Entity, C/O Tillamook People's Utility District, 1115 Pacific Avenue, Tillamook, OR 97141, phone: (503)–842–2535.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13047–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following six developments:

Nehalen Development

(1) 5 to 90 wave buoys generators having a total installed capacity of 20 to 180 megawatts, (2) a proposed 24.9 kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an average annual generation from 87.5 to 790 gigawatt-hours, which would be sold to a local utility.

Kockaway Development

(1) 5 to 90 wave buoys generators having a total installed capacity of 20 to 180 megawatts, (2) a proposed 24.9 kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an average annual generation from 87.5 to 790 gigawatt-hours, which would be sold to a local utility.

Garibaldi Development

(1) 5 to 90 wave buoys generators having a total installed capacity of 20 to 180 megawatts, (2) a proposed 24.9 kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an average annual generation from 87.5 to 790 gigawatt-hours, which would be sold to a local utility.

Netarts Development

(1) 5 to 90 wave buoys generators having a total installed capacity of 20 to 180 megawatts, (2) a proposed 24.9 kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an average annual generation from 87.5 to 790 gigawatt-hours, which would be sold to a local utility.

Nectucci Development

(1) 5 to 90 wave buoys generators having a total installed capacity of 20 to 180 megawatts, (2) a proposed 24.9 kilovolt transmission line; and (3) appurtenant facilities. The project is estimated to have an average annual generation from 87.5 to 790 gigawatt-hours, which would be sold to a local utility.

Neskowin Development

(1) 5 to 90 wave buoys generators having a total installed capacity of 20 to 180 megawatts, (2) a proposed 24.9 kilovolt transmission line; and (3) appurtenant facilities. The project is estimated to have an average annual generation from 87.5 to 790 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be

served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1634 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12972–000]

Little River Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12972–000.

c. *Date Filed:* August 31, 2007.

d. *Applicant:* Little River Hydro, LLC.

e. *Name of the Project:* Millwood Dam Hydroelectric.

f. *Location:* The project would be located on the Little River in Little River County, Arkansas. The Millwood Dam is owned and maintained by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Mr. Brent Smith, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, Phone (208) 745–0834.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12972–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Millwood Dam and would consist of: (1) Three proposed 300-foot-long, 144-inch-diameter steel penstocks; (2) a proposed powerhouse containing two generating units with a total installed capacity of 18-megawatts; (3) a proposed switchyard; (4) a proposed 0.1-mile-long, 25-kV transmission line; and (5) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 39-gigawatts and would be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the

particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1630 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12987–000]

Mississippi 5 Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12987–000.

c. *Date Filed:* August 30, 2007.

d. *Applicant:* Mississippi 5 Hydro, LLC.

e. *Name of the Project:* Lock and Dam #5 Hydroelectric Project.

f. *Location:* The project would be located on the Mississippi River in Winona County, Minnesota and Buffalo County, Wisconsin. The Lock and Dam #5 is owned and maintained by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brent Smith, Symbiotics, LLC, P. O. Box 535, Rigby, ID 83442, Phone (208) 745–0834.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12987–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Lock and Dam #5 and would consist of: (1) A proposed powerhouse containing four generating units with a total installed capacity of 30-megawatts; (2) a switchyard; (3) a proposed 0.1-mile-long, 69-kV transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of 135-gigawatts and would be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1632 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12965–000]

Wickiup Hydro Group, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 24, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12965–000.

c. *Date Filed:* August 20, 2007.

d. *Applicant:* Wickiup Hydro Group, LLC.

e. *Name of Project:* Wickiup Dam Hydroelectric Project.

f. *Location:* Deschutes River in Deschutes County, Oregon. It would use the U.S. Bureau of Reclamation's Wickiup Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12965–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Bureau of Reclamation's Wickiup Dam and

operated in a run-of-river mode would consist of: (1) One new 400-foot-long, 120-inch-diameter steel penstock; (2) a new powerhouse and switchyard; (3) two turbine/generator units with a combined installed capacity of 4 megawatts; and (4) appurtenant facilities. The proposed Wickiup Dam project would interconnect with Midstate Electrical Cooperative's existing distribution system at the project site, and would have an average annual generation of 16 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1629 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12974–000]

Wright Patman Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12974–000.

c. *Date Filed:* August 31, 2007.

d. *Applicant:* Wright Patman, LLC.

e. *Name of the Project:* Wright Patman Dam Hydroelectric.

f. *Location:* The project would be located on the Sulphur River in Bowie County, Texas. The Wright Patman Dam is owned and maintained by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brent Smith, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, Phone (208) 745–0834.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12974–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission

to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Wright Patman Dam and would consist of: (1) A proposed 339-foot-long, 144-inch-diameter steel penstock; (2) a proposed powerhouse containing one generating unit with an installed capacity of 5-megawatts; (3) a switchyard; (4) a proposed 2-mile-long, 25-kV transmission line; and (5) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 16-gigawatts and would be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1631 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–52–000]

Caledonia Energy Partners, L.L.C.; Notice of Application

January 24, 2008.

Take notice that on January 14, 2008, Caledonia Energy Partners, L.L.C. (Caledonia), 2001 Timber Creek Road, Flower Mound, TX 75028, filed in Docket No. CP08–52–000, an application under section 7(c) of the Natural Gas Act (NGA), to expand the Caledonia Storage Facility by developing a depleted production reservoir as an additional gas storage field; constructing a pipeline lateral to connect the new field with the existing storage facility; and installation of a total of 10,000 Hp of additional compression which will allow Caledonia to increase its maximum allowable operating pressure to 2,518 psia. The expanded facilities will increase Caledonia's maximum total storage capacity from 11.7 Bcf to 16.9 Bcf and its maximum daily withdrawal

rate from 330 MMcf/d to 477 MMcf/d, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Jim Goetz, Caledonia Energy Partners, L.L.C., 2001 Timber Creek Road, Flower Mound, Texas 75028, at (972) 691–3332, or by fax at (972) 874–8743, or Christopher A. Schindler, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW., Washington, DC 20004, at (202) 637–5723, or by fax at (202) 637–5910.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 14, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1623 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI08–1–000]

City of Aspen; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

January 24, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI08–1–000.

c. *Date Filed:* January 7, 2008.

d. *Applicant:* City of Aspen, CO.

e. *Name of Project:* Castle Creek Hydroelectric Project.

f. *Location:* The proposed Castle Creek Hydroelectric Project will be located on Castle Creek within the city of Aspen's existing water transmission system, in Pitkin County, in Aspen, Colorado.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Richard Smart, Community Hydropower Consulting, LLC, P. O. Box 1091, Fort Collins, CO 80522; telephone: (970) 221–4474; fax: (970) 221–0095; e-mail: *http://www.r_smart@communityhydro.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* February 25, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing link. Please include the docket number (DI08–1–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Castle Creek Hydroelectric Project will include: (1) A run-of-river

diversion from Castle and Maroon Creeks into a holding pond, with a capacity of approximately 15 acre-feet, currently used as part of the city's public water system; (2) a 36-inch-diameter, 4,000-foot-long buried penstock; (3) a powerhouse containing two Pelton turbines couple to a synchronous generator, with a total capacity of 1.05 MW; and (4) appurtenant facilities. The proposed project will not occupy any tribal or federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and/or ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1626 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

January 22, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–496–016; ER99–14–013; ER99–3658–003.

Applicants: Northeast Utilities Service Company; Select Energy, Inc.

Description: Northeast Utilities Service Co. on behalf of Northeast Utilities Companies et al. submits a request for renewed market-based rate authorization.

Filed Date: 01/14/2008

Accession Number: 20080116–0101.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER96–1361–013; ER99–2781–011; ER98–4138–009; ER00–1770–019; ER02–453–010; ER98–3096–015; ER07–903–002; ER05–1054–003; ER01–202–008; ER04–472–007.

Applicants: Atlantic City Electric Company; Delmarva Power & Light Company; Potomac Electric Power Company; Conectiv Energy Supply, Inc.; Conectiv Atlantic Generation, LLC; Conectiv Delmarva Generation LLC; Conectiv Bethlehem, LLC; Pepco Energy Services, Inc.; Bethlehem Renewable Energy, LLC; Eastern Landfill Gas, LLC; Potomac Power Resources, LLC; Fauquier Landfill Gas, LLC.

Description: PHI Entities submits updated market power study and revised market-based rate tariffs under Part 1 of 5.

Filed Date: 01/14/2008.

Accession Number: 20080116–0074.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER96–2495–030; ER97–4143–018; ER98–2075–024; ER98–542–020; ER07–26–001.

Applicants: AEP Power Marketing Inc; AEP Service Corporation; AEP Energy Partners, Inc.; CSW Energy Services, Inc.; Central and South West Services, Inc.

Description: Supplement to Attachment B of updated market power analysis of American Electric Power Service Corporation affiliates.

Filed Date: 01/15/2008

Accession Number: 20080115–5052.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER96–2585–007; ER99–2387–005; ER02–1470–005; ER02–1573–005; ER98–6–012; ER05–1249–005; EC06–125–000.

Applicants: Niagara Mohawk Power Corporation; New England Power Company; KeySpan-Ravenswood, Inc.; KeySpan-Glenwood Energy Center, LLC; KeySpan-Port Jefferson Energy Center, LLC; granite State Electric Company; Massachusetts Electric Company; The Narragansett Electric Company; National Grid plc and KeySpan Corporation.

Description: National Grid USA submits the Triennial Market Power Analysis Filing re Niagara Mohawk Power Corporation, et al.

Filed Date: 01/14/2008.

Accession Number: 20080117–0043.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER97–1481–011.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits revisions to Paragraph 1 of the Market Based Rates Tariff in compliance with Order 697.

Filed Date: 01/11/2008.

Accession Number: 20080116–0045.

Comment Date: 5 p.m. Eastern Time on Friday, February 1, 2008.

Docket Numbers: ER97–2872–005; ER97–4234–076.

Applicants: Central Hudson Gas & Electric Corp.

Description: Central Hudson Gas and Electric Corp. submits its updated market power analysis in compliance with Order 697.

Filed Date: 01/11/2008.

Accession Number: 20080116–0106.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER97–4314–011; ER01–2783–008; ER05–20–003.

Applicants: Old Dominion Electric Cooperative, Inc.; TEC Trading, Inc.; New Dominion Energy Cooperative.

Description: Old Dominion Electric Cooperative et al. submits an updated market power analyses in support of continued authorization to make wholesale sales of electric energy.

Filed Date: 01/14/2008.

Accession Number: 20080116–0073.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER98–1466–005; ER00–814–006; ER00–2924–006; ER02–1638–005.

Applicants: Allegheny Power; Allegheny Energy Supply Company, LLC; Green Valley Hydro, LLC; Buchanan Generation, LLC.

Description: Allegheny Power et al. submit a combined Triennial Market Power Analysis etc. in compliance with the Commission's Order 697.

Filed Date: 01/14/2008.

Accession Number: 20080117–0017.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER98–4159–011; ER04–268–008; ER06–398–005; ER06–399–005; ER07–157–003.

Applicants: Duquesne Light Company; Duquesne Power, LLC; Duquesne Keystone, LLC; Duquesne Conemaugh, LLC; Macquarie Cook Power Inc.

Description: Duquesne Light Company et al. submit their updated market power analysis pursuant to Order 697.

Filed Date: 01/11/2008.

Accession Number: 20080116–0111.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER99–1522–004; ER04–359–002; ER02–723–003; ER06–796–002; ER07–553–001; ER07–554–001; ER07–555–001; ER07–556–001; ER07–557–001.

Applicants: Bangor Hydro-Electric Company; Emera Energy Services, Inc.; Emera Energy U.S. Subsidiary No. 1, Inc; Emera Energy U.S. Subsidiary No. 2, Inc.; Emera Energy Services Subsidiary No. 1 LLC; Emera Energy Services Subsidiary No. 2 LLC; Emera Energy Services Subsidiary No. 3 LLC; Emera Energy Services Subsidiary No. 4 LLC; Emera Energy Services Subsidiary No. 5 LLC.

Description: Bangor Hydro-Electric Co et al. submit the Updated Market Power Analysis.

Filed Date: 01/14/2008.

Accession Number: 20080117–0047.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER99–2251–008; ER99–2252–009; ER98–2491–014; ER97–705–019; ER02–2080–008; ER02–2546–009; ER99–3248–011; ER99–1213–009; ER01–1526–009.

Applicants: Consolidated Edison Company of New York; Orange and Rockland Utilities, Inc.; Consolidated Edison Energy, Inc.; Ocean Peaking Power, L.L.C.; CED Rock Springs, Inc.; Consolidated Edison Energy of Massachusetts; Lakewood Cogeneration, L.P.; Newington Energy, L.L.C.

Description: Con Edison Companies submits their triennial Market Power Analysis.

Filed Date: 01/11/2008.

Accession Number: 20080117–0049.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008

Docket Numbers: ER99–2948–012; ER00–2918–011; ER00–2917–011; ER97–2261–022; ER01–556–010; ER01–1654–013; ER02–2567–011; ER02–699–005; ER04–485–008; ER07–247–003; ER07–244–003; ER07–245–003.

Applicants: Baltimore Gas and Electric Company; Constellation Power Source Generation, Inc.; Calvert Cliffs Nuclear Power Plant, Inc.; Constellation Energy Commodities Group; Handsome Lake Energy, LLC; Nine Mile Point Nuclear Station, LLC; Constellation NewEnergy, Inc.; Constellation Energy Commodities Group Maine, LLC; R.E. Ginna Nuclear Power Plant, LLC; Raven One, LLC; Raven Two, LLC; Raven Three, LLC.

Description: Baltimore Gas and Electric Company et al. submits its triennial market power update.

Filed Date: 01/14/2008.

Accession Number: 20080116–0096.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER00–1712–008; ER02–2408–003; ER00–744–006; ER02–1327–005; ER00–1703–003; ER02–1749–003; ER02–1747–003; ER99–4503–005; ER00–2186–003; ER01–1559–004

Applicants: PPL Electric Utilities Corporation; Lower Mount Bethel Energy, LLC; PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Susquehanna, LLC; PPL University Park, LLC; PPL EnergyPlus, LLC; PPL Edgewood Energy, LLC; PPL Shoreham Energy, LLC; PPL Great Works, LLC; PPL Maine, LLC; PPL Wallingford Energy LLC.

Description: PPL Companies submits a Triennial Market Power Update that supports the continued allowance of market-based rates.

Filed Date: 01/14/2008.

Accession Number: 20080116–0103.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER00–3251–015; ER99–754–016; ER98–1734–014; ER01–1919–011; ER01–1147–006; ER01–513–021; ER99–2404–011;

Applicants: Exelon Generating Company, LLC; AmerGen Energy Company, LLC; Commonwealth Edison Company; Exelon Energy Company; PECO Energy Company; Exelon West Medway, LLC; Exelon Wyman LLC; Exelon New Boston LLC; Exelon Framingham LLC; Exelon New England Power Marketing, L.P.

Description: The MBR Companies submits updated market power analysis and revised tariff sheets in compliance with Order 697.

Filed Date: 01/14/2008.

Accession Number: 20080116–0104.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER01–468–008; ER00–3621–009; ER00–3746–009; ER04–318–004; ER05–36–005; ER05–37–005; ER05–34–005; ER05–35–005; ER04–249–005; ER99–1695–010; ER02–23–011; ER97–30–006; ER96–2869–013; ER97–3561–005; ER00–1737–011.

Applicants: Dominion Energy Marketing, Inc.; Dominion Nuclear Connecticut, Inc.; Dominion Nuclear Marketing III, LLC; Dominion Energy Kewaunee, Inc.; Dominion Energy Brayton Point, LLC; Dominion Energy Manchester Street, Inc. Dominion Energy New England, Inc.; Dominion Energy Salem; Dominion Retail, Inc.; Elwood Energy, LLC; Fairless Energy, LLC; Kincaid Generation, LLC; State Line Energy, L.L.C.; Virginia Electric and Power Company;

Description: Virginia Electric and Power Company *et al.* submits market power analyses for the two markets and two Commission-designated submarkets in which the Dominion Companies operate.

Filed Date: 01/14/2008.

Accession Number: 20080116–0092.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER01–1403–006; ER06–1443–002; ER04–366–005; ER01–2968–007; ER01–845–006; ER05–1122–004; ER08–107–001.

Applicants: FirstEnergy Operating Companies; Pennsylvania Power Company; Jersey Central Power & Light Co.; FirstEnergy Solutions Corp.; FirstEnergy Generation Corp.; FirstEnergy Nuclear Generation Corp.; FirstEnergy Generation Mansfield Unit 1.

Description: FirstEnergy Operating Companies submit the updated market power analyses in compliance with Order 697.

Filed Date: 01/14/2008.

Accession Number: 20080116–0086.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER05–320–005; ER02–999–007; ER97–2460–010; ER97–2463–007.

Applicants: Unitil Energy Systems, Inc.; Unitil Power Corporation; Fitchburg Gas and Electric Light Company.

Description: Unitil Energy Systems, Inc. *et al.* submit its updated market power analysis for market-based rate authority in compliance with Order 697.

Filed Date: 01/14/2008.

Accession Number: 20080116–0108.

Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

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 email 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. E8–1584 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

January 22, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–24–001.

Applicants: Sempra Energy Power I, El Dorado Energy, LLC, San Diego Gas & Electric Company.

Description: Sempra Energy Power I *et al.* submit a corrected page 10 of their application and a revised Exhibit M to the application.

Filed Date: 01/15/2008.

Accession Number: 20080118–0058.

Comment Date: 5 p.m. Eastern Time on Friday, February 1, 2008.

Docket Numbers: EC08–37–000.

Applicants: Mountain View Power Partners, LLC, Centennial Power, LLC, AES Western Wind MV Acquisition, LLC.

Description: Application for order under Section 203 of the Federal Power Act and request for waivers, expedited action and confidential treatment of Mountain View Power Partners, LLC *et al.*

Filed Date: 01/15/2008.

Accession Number: 20080118–0098.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 5, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–989–005.

Applicants: Green Mountain Power Corporation.

Description: Green Mountain Power Corporation submits an updated market power analysis for the twelve months ending November 30, 2006, and revisions to its market-based rate power sales tariff.

Filed Date: 01/14/2008.

Accession Number: 20080117–0052.

Comment Date: 5 p.m. Eastern Time on Monday, February 4, 2008.

Docket Numbers: ER06–738–008; ER06–739–008; ER03–983–007; ER07–501–004; ER02–537–011; ER07–758–003.

Applicants: East Coast Power Linden Holding, LLC; Cogen Technologies Linden Ventures, L.P.; Fox Energy Co. LLC; Birchwood Power Partners, L.P.; Shady Hills Power Company, L.L.C.; Inland Empire Energy Center L.L.C.

Description: East Coast Power Linden Holding, LLC *et al.* submit notice of change in status resulting from the completion of the transaction authorized by FERC.

Filed Date: 01/16/2008.

Accession Number: 20080122–0224.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 6, 2008.

Docket Numbers: ER07–1136–001.

Applicants: Camp Grove Wind Farm LLC.

Description: Camp Grove Wind Farm LLC submits a notice of change in status for its wind powered electric generating facility located in Marshall and Stark Counties, IL.

Filed Date: 01/16/2008.

Accession Number: 20080122–0225.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 6, 2008.

Docket Numbers: ER08–80–001.

Applicants: The Detroit Edison Company.

Description: The Detroit Edison Company submits its wholesale distribution service agreement with the header and footer information required by Order 614.

Filed Date: 01/16/2008.

Accession Number: 20080117–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 6, 2008.

Docket Numbers: ER08–443–000.

Applicants: Helios Energy LLC.

Description: Helios Energy LLC submits an Application for Market-Based Rate Authority.

Filed Date: 01/14/2008.

Accession Number: 20080118–0056.

Comment Date: 5 p.m. Eastern Time on Monday, February 4, 2008.

Docket Numbers: ER08–444–000.

Applicants: NSTAR Electric Company.

Description: NSTAR Electric Co. submits a notice of succession and revised market-based rate tariff.

Filed Date: 01/14/2008.

Accession Number: 20080118–0055.

Comment Date: 5 p.m. Eastern Time on Monday, February 4, 2008.

Docket Numbers: ER08–449–000.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies submits an executed transmission service agreement with South Mississippi Electric Power Association.

Filed Date: 01/16/2008.

Accession Number: 20080118–0046.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 6, 2008.

Docket Numbers: ER08–450–000.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits an executed transmission service agreement with NRG Power Marketing, Inc. for long-term firm point-to point transmission service.
Filed Date: 01/16/2008.
Accession Number: 20080118–0047.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 6, 2008.

Docket Numbers: ER08–451–000.
Applicants: Plum Point Energy Associates, LLC.
Description: Application for market-based rate authorization under section 205 of the Federal Power Act and request for waivers and blanket approvals of Plum Point Energy Associates LLC.
Filed Date: 01/17/2008.
Accession Number: 20080118–0043.
Comment Date: 5:00 pm Eastern Time on Thursday, February 7, 2008.

Docket Numbers: ER08–452–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits its Small Generator Interconnection Agreement and the Service Agreement for Wholesale Distribution Services with Ameresco Chiquita Energy LLC.
Filed Date: 01/17/2008.
Accession Number: 20080122–0227.
Comment Date: 5 p.m. Eastern Time on Thursday, February 7, 2008.

Docket Numbers: ER08–453–000.
Applicants: Ocean State Power.
Description: Ocean State Power and Ocean State Power II submits Notices of Termination to cancel Ocean State's unit power agreement with each of its' power purchase customers.
Filed Date: 01/17/2008.
Accession Number: 20080122–0228.
Comment Date: 5 p.m. Eastern Time on Thursday, February 7, 2008.

Docket Numbers: ER94–1188–044; ER98–4540–013; ER99–1623–013; ER98–1279–015; ER06–1046–004.
Applicants: LG&E Energy Marketing Inc.; Louisville Gas & Electric Company; Kentucky Utilities Company; Western Kentucky Energy Corporation; LG&E Energy Marketing Inc.
Description: Change in Status Filing of LG&E Energy Marketing Inc., *et al.*
Filed Date: 01/17/2008.
Accession Number: 20080117–5026.
Comment Date: 5 p.m. Eastern Time on Thursday, February 7, 2008.

Docket Numbers: ER99–2541–009; ER05–731–003; ER97–3556–017; ER04–582–007; ER99–221–012; ER99–220–014; ER01–1764–006; ER97–3553–005.
Applicants: Carthage Energy, LLC; Central Maine Power Company; Energetix, Inc.; Hartford Steam Company; New York State Electric & Gas Corporation; NYSEG Solutions, Inc.; PEI Power II, LLC; Rochester Gas and Electric Corporation.
Description: Carthage Energy, LLC *et al.* submits the triennial market power analysis.
Filed Date: 01/14/2008.
Accession Number: 20080117–0045.
Comment Date: 5 p.m. Eastern Time on Monday, February 4, 2008.

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 email 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. E8–1583 Filed 1–29–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 659–014]

Crisp County Power Commission—Georgia Lake Blackshear Hydroelectric Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

January 24, 2007.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Georgia State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, as amended (16 U.S.C. section 470f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Lake Blackshear Hydroelectric Project No. 659 (SHPO Reference Number HP021003–004 and Seminole Tribe of Florida Reference Number THPO–000454).

The programmatic agreement, when executed by the Commission and the SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Lake Blackshear Project would

[1] 18 CFR 385.2010.

be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Crisp County Power Commission, as licensee for Lake Blackshear Hydroelectric Project No. 659, the Alabama-Quassarte Tribal Town, and the Seminole Tribe of Florida have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.	Tim Bachelder, Devine Tarbell & Associates, 970 Baxter Boulevard, Portland, ME 04103.
Steve Rentfrow, Manager or Representative, Crisp County Power Commission, 202 7th Street South, P.O. Box 1218, Cordele, GA 31010.	Elizabeth Shirk or Representative, Georgia Department of Natural Resources, Historic Preservation Division, 34 Peachtree Street, NW., Suite 1600, Atlanta, GA 30303–2316.
Willard Steele, Seminole Tribe of Florida, Ah-Tah-Thi-Ki Museum, HC 61, Box 21 A, Clewiston, FL 33440.	Augustine Asbury, Alabama-Quassarte Tribal Town, P.O. Box 187, Wetumka, OK 74883.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it **NON-PUBLIC** Information.

An original and 8 copies of any such motion must be filed with Kimberly D. Bose, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. Please put the project name ''Lake Blackshear Project'' and number ''P–659–014'' on the front cover of any motion. Motions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15-day period.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1637 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–45–000]

Dominion Transmission Incorporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Utica 7 Project and Request for Comments on Environmental Issues

January 24, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Dominion Transmission Incorporation (DTI) Project involving the addition of a compressor unit at its existing Utica Compressor Stations, located at New Hartford, Herkimer County, New York. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on February 25, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

DTI proposes to install an additional compressor unit at its existing Utica Compressor Station to provide new firm transportation service for a new customer while maintaining reliability in meeting all existing service entitlement on the northeastern portion of DTI's transmission system. The project would be located in New Harford, Herkimer County, New York. Modification of the Utica Compressor Station will include the installation of:

- One natural gas-fired, reciprocating internal combustion engine with a nominal 2,250 HP rating.

All project activities would be contained within the property boundary for DTI's Utica Compressor Station. Approximately five acres of this facility would be utilized for project activities.

The general location of the proposed facilities is shown in Appendix 1.[1]

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to El Paso.

The EA Process

We [2] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes El Paso's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA.

With this notice, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative compressor station sites, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberley D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 2, PJ–11.2;
- Reference Docket No. CP08–45–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 25, 2008.

The Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

We may mail the EA for public comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, then on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1622 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–53–001]

Downeast Pipeline, LLC; Notice of Amendment

January 24, 2007.

Take notice that on January 16, 2007, Downeast Pipeline, LLC (Downeast Pipeline), PO Box 865, Calais, Maine 04619, filed, in Docket No. CP07–53–001, an application to amend its pending application for a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act (NGA) filed with the Commission on December 22, 2006. Downeast Pipeline proposes to amend its application to reflect a modification to its originally proposed pipeline route in order to avoid crossing the Moosehorn National Wildlife Refuge which is owned and managed by the U.S. Fish and Wildlife Service. The modification proposed by Downeast Pipeline affects 7.5 miles of the originally proposed 31-mile-long route and extends from milepost 10.2 to milepost 17.7, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The Commission staff will determine if this amendment will have an effect on the schedule for the environmental review of this project. A Notice of Schedule for Environmental Review will be issued when Commission staff has received all the information necessary in order to complete the draft EIS.

Any questions regarding this application should be directed to Robert Wyatt, Downeast LNG, Inc., PO Box 865, Calais, ME 04619 or Lisa M. Tonery, Fulbright & Jaworski, 666 Fifth Avenue, New York, NY 10103–3198, (212) 318–3009.

This filing is available for review at the Commission's Washington, DC office or may be viewed on the Commission's Web site at *http://www.ferc.gov/* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *ferconlinesupport@ferc.gov* or Telephone: 202–502–6652; Toll-free: 1–866–208–3676; or for TTY, contact (202) 502–8659.

There are two ways to become involved in the Commission's review of this Project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project and/or associated pipeline. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 285.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

Comment Date: February 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1621 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1249–000, ER07–1249–001, ER07–1249–002, ER07–1249–003]

Lockport Energy Associates, L.P.; Notice of Issuance of Order

January 23, 2008.

Lockport Energy Associates, L.P. (Lockport) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Lockport also requested waivers of various Commission regulations. In particular, Lockport requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Lockport.

On January 23, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the

Federal Register establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Lockport, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007). The Commission encourages the electronic submissions of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is February 22, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Lockport is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Lockport, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Lockport's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1586 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1406–000; ER07–1406–001; ER07–1406–002]

Long Beach Partners, LLC; Notice of Issuance of Order

January 23, 2008.

Long Beach Partners, LLC (Long Beach) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Long Beach also requested waivers of various Commission regulations. In particular, Long Beach requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Long Beach.

On January 23, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Long Beach, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007). The Commission encourages the electronic submissions of protests using the FERC Online link at *http://www.ferc.gov*.

Notice is hereby given that the deadline for filing protests is February 22, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Long Beach is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Long Beach, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Long Beach's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1588 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–398–000; CP07–399–000; CP07–400–000; CP07–401–000; CP07–402–000; CP07–403–000]

Gulf Crossing Pipeline Company LLC; Gulf South Pipeline Company, LP; Enogex Inc.; Notice of Meeting

January 24, 2008.

On January 30, 2008, staff of the Office of Energy Projects (OEP) will hold a meeting on the pending applications in the above referenced dockets. The purpose of the meeting is to discuss various procedural, tariff, and environmental matters.

The meeting will be held on Wednesday, January 30, 2008 at 2:30 p.m. (EST), in Room 62–26 at the Commission Headquarters in Washington, DC, and is open to the public.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1638 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA08–40–000; Docket No. OA08–31–000; Docket No. OA08–56–000]

PacifiCorp; NorthWestern Corporation; NorthWestern Corporation; Notice of FERC Staff Attendance

January 22, 2008.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the January 24, 2008, members of its staff will attend a stakeholder meeting sponsored by a number of transmission service providers in Northwestern United States. The purpose of the meeting is to coordinate transmission planning studies for a number of proposed transmission projects in the Northwest. The meeting will be held at the Portland, OR Airport Sheraton from 9 a.m. to 12 noon. The meeting is open to all stakeholders and staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov*; (916) 294–0233.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1591 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–208–000]

Rockies Express Pipeline LLC; Notice of Technical Conference

January 22, 2008.

On January 28, 2008, staff of the Office of Energy Projects (OEP) will hold a technical conference concerning issues raised by the U.S. Fish and Wildlife Service for the REX East Project. In particular, construction impacts dealing with the biological assessment and the Migratory Bird Treaty Conservation Agreement will be discussed.

The technical conference will be held on Monday, January 28, 2008, at 1:30 p.m. (EST) in Room 3M–2B at the Commission Headquarters in Washington, DC.

Information concerning any changes to the above may be obtained from the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–866–208–FERC (208–3372).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1595 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–84–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Technical Conference

January 23, 2008.

Take notice that the Commission will convene a technical conference in the above-referenced proceeding on Friday, February 8, 2008, at 10 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's December 28, 2007 Order [1] directed that a technical conference be held to address the issues raised by Southern Star Central Gas Pipeline, Inc.'s (Southern Star) November 30, 2007, tariff filings to reflect annual adjustments to its fuel and loss reimbursement percentages (FLRPs). Commission Staff and parties will have the opportunity to discuss all of the issues raised by Southern Star's filing including, but not limited to, technical, engineering and operational issues, and issues related to the interpretation of tariff provisions governing Southern Star's FLRPs.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Timothy Duggan at (202) 502–8326 or e-mail *Timothy.Duggan@ferc.gov* or Deborah Frazier at (202) 502–6089 or e-mail *Deborah.Frazier@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1585 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Southern Star Central Gas Pipeline, Inc., 121 FERC ¶ 61,306 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Board of Directors/Members Committee Meeting and Southwest Power Pool Regional State Committee Meeting

January 23, 2008.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool (SPP) Regional State Committee Board of Directors, SPP Members Committee and SPP Board of Directors as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Regional State Committee Annual Meeting: January 28, 2008 (1 p.m.–5 p.m.), Hyatt Regency Austin—Town Lake, 208 Barton Springs Rd., Austin, TX 78704, 512–477–1234.

SPP Board of Directors/Members Committee: January 29, 2008 (8:30 a.m.–3 p.m.), Hyatt Regency Austin—Town Lake, 208 Barton Springs Rd., Austin, TX 78704, 512–477–1234.

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.*

Docket No. EL06–71, *Associated Electric Cooperative, Inc.* v *Southwest Power Pool*

Docket No. ER07–319, *Southwest Power Pool, Inc.*

Docket No. ER07–371, *Southwest Power Pool, Inc.*

Docket No. EL07–27, *East Texas Electric Cooperative, Inc., et al.* and

Docket No. ER07–396, *Southwest Power Pool, Inc.*

Docket No. ER07–1255, *Southwest Power Pool, Inc.*

Docket No. ER07–1311, *Southwest Power Pool, Inc.*

Docket No. ER07–1417, *Midwest Independent System Operator, Inc.*

Docket No. EL07–87, *Xcel Energy Services Inc.* v. *Southwest Power Pool, Inc., John Deere Wind Energy*

Docket No. ER08–242, *Southwest Power Pool, Inc.*

Docket No. ER08–340, *Southwest Power Pool, Inc.*

Docket No. OA08–5, *Southwest Power Pool, Inc.*

Docket No. OA08–60, *Southwest Power Pool, Inc.*

Docket No. OA08–61, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market

Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1589 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–56–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

January 24, 2008.

Take notice that on January 16, 2008, Northern Natural Gas Company, (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP08–56–000, a prior notice request pursuant to sections 157.205 and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to install and operate 0.5 mile of a 36-inch diameter extension to its existing NBPL IA/MN State E-Line, located in Worth County, Iowa, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Northern states that the modifications proposed are necessary to meet Owatonna Public Utilities' request for firm capacity of 5 MMcf/d, effective November 1, 2008. Northern estimates the cost of construction to be $1,178,383, which will be financed with internally generated funds.

Any questions regarding the application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha Nebraska 68124, call (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, call (402) 398–7138.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1624 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1250–000, ER07–1250–001, ER07–1250–002, ER07–1250–003]

PowerGrid Systems, Inc.; Notice of Issuance of Order

January 23, 2008.

PowerGrid Systems, Inc. (PowerGrid) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. PowerGrid also requested waivers of various Commission regulations. In particular, PowerGrid requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PowerGrid.

On January 23, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by PowerGrid, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007). The Commission encourages the electronic submissions of protests using the FERC Online link at *http://www.ferc.gov*.

Notice is hereby given that the deadline for filing protests is February 22, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, PowerGrid is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of PowerGrid, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of PowerGrid's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1587 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–034]

Progress Energy Carolinas, Inc.; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2008.

Take notice that the following application has been filed with the

Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands And Waters.

b. *Project No:* 2206–034.

c. *Date Filed:* December 11, 2007.

d. *Applicant:* Progress Energy Carolinas, Inc.

e. *Name of Project:* Yadkin-Pee Dee River Hydroelectric Project; Tillery Development.

f. *Location:* This project is located on the Yadkin Pee Dee River in North Carolina. The Tillery Development is located in Stanly and Montgomery counties, North Carolina. This project does not occupy any Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Cecil Gurganus, Manager of Hydropower Operations; Progress Energy Carolinas, Inc.; 910–439–5211, extension 1205.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov*.

j. *Deadline for filing comments and or motions:* February 25, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2206–034) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Progress Energy has requested the Commissions' approval to grant permission to Dockside Condominiums Homeowners Association, LLC, to expand their existing dock facilities to accommodate a total of 12 watercraft. The marina would be located within the project boundaries of the Yadkin-Pee-Dee Hydroelectric Project (Tillery Development) near Albemarle, North Carolina. The expansion is described as being consistent with the license-approved SMP.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1635 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–035]

Progress Energy Carolinas, Inc; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2206–035.

c. *Date Filed:* December 12, 2007.

d. *Applicant:* Progress Energy Carolinas, Inc.

e. *Name of Project:* Yadkin-Pee Dee River Hydroelectric Project, Tillery Development.

f. *Location:* This project is located on the Yadkin Pee Dee River in North Carolina. The Tillery Development is located in Stanly and Montgomery counties, North Carolina. This project does not occupy any Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Cecil Gurganus, Manager of Hydropower Operations; Progress Energy Carolinas, Inc.; 910–439–5211, extension 1205.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov.*

j. Deadline for filing comments and or motions: February 25, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2206–035) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Progress Energy has requested Commission approval to grant permission for Woodrun Association Inc. to modify their existing marina. The modifications would result in additional boat slips to accommodate 25 watercraft. Presently, there are 55 boat slips at the existing

marina. The marina would be located within the project boundaries of the Tillery Hydroelectric Project near Mt. Gilead, North Carolina. The expansion is described as being consistent with the license-approved SMP.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1636 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

January 24, 2008.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date received	Presenter or requester
Prohibited:		
1. Project No. 6132–000	1–16–08	Commission Staff.[1]
Exempt:		
1. CP07–208–000	1–16–08	Hon. David J. Cappiello.
2. Project No. 2576–000	1–17–08	Hon. Timothy V. Johnson.

[1] There is a memorandum to the file concerning conversation between Commission Staff concerning phone calls received from Mr. John C. Jones.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1620 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI08–2–000]

Scott Hansen; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

January 24, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI08–2–000.

c. *Date Filed:* January 11, 2008.

d. *Applicant:* Scott Hansen.

e. *Name of Project:* Hansen Residential Microhydro.

f. *Location:* The proposed Hansen Residential Microhydro will be located on an unnamed stream in the Haines Borough near Haines, Alaska, at T. 30 S., R. 59 E., sec. 28, Copper River Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Scott Hansen, P.O. Box 1138, Haines, AK 99827; telephone: (907) 766–2323; fax: (907) 766–2365; e-mail: *www.shansen@chilkoot-nsn.gov*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov*

j. Deadline for filing comments, protests, and/or motions: February 25, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Please include the docket number (DI08–2–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Hansen Residential Microhydro will include: (1) A 3-foot-high, 10-foot-wide diversion from an unnamed stream into a 4.2 cubic yard concrete intake structure with a 120-cubic-foot capacity; (2) a 6-inch-diameter, 200-foot-long polyethylene penstock; (3) a powerhouse containing a generator with a total capacity of 26 kW; and (4) appurtenant facilities. The proposed project will not be connected to an interstate grid and will not occupy any tribal or federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1627 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–46–000]

Tarpon Whitetail Gas Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Whitetail Natural Gas Storage Project and Request for Comments on Environmental Issues

January 23, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Whitetail Natural Gas Storage Project involving construction and operation of natural gas facilities by Tarpon Whitetail Gas Storage, LLC (Whitetail) in Monroe County, Mississippi. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on February 25, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the

proposed facilities. Whitetail would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Whitetail could initiate condemnation proceedings in accordance with Mississippi state law.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Whitetail proposes to construct, own, operate, and maintain a high-deliverability, multi-cycle depleted reservoir natural gas storage facility, known as the Aberdeen Gas Storage Field, in Monroe County. The Whitetail Natural Gas Storage Project would accommodate the injection, storage, and subsequent withdrawal of natural gas for redelivery in interstate commerce. Upon completion of the project, the reservoir would have a total working gas storage capacity of 8.6 billion standard cubic feet.

The primary facilities associated with the proposed project are as follows:

- Up to 20 injection/withdrawal wells and 2 saltwater disposal wells in two general locations (the ''West Well Pad Site'' and the ''East Well Pad Site'');
- An interconnection (the ''TETCO Interconnect'') with Texas Eastern's existing interstate natural gas pipeline that includes a meter station, pig launcher/receiver, interconnect piping, and associated facilities;
- About 4.9 miles of 24-inch-diameter pipeline (the ''West Header Right-of-way pipeline'') and 1.0 mile of 16-inch-diameter pipeline (the ''Field Line Corridor pipeline''); and
- 14,200 horsepower (hp) of compression (four 3,550 hp natural gas-driven compressors and ancillary facilities) at a new compressor station (the ''Whitetail Compressor Station'').

The general location of the proposed storage field project is shown in Appendix 1.[1]

Land Requirements for Construction

The construction and development of the Aberdeen Gas Storage Field itself would encompass about 2,850 acres. An additional buffer zone, defined by the Mississippi Oil and Gas Board as necessary to ensure reservoir integrity, would bring the total storage area to 4,840 acres.

The West Header Right-of-way and the Field Line Corridor pipelines would together require about 79 acres of temporary disturbance for the construction rights-of-way, including extra work spaces. Of this total, about 36 acres would be retained for Whitetail's permanent rights-of-way.

The proposed TETCO Interconnect site is a 1-acre tract at the northwest terminus of the proposed West Header Right-of-way pipeline. This site would be fenced and permanently converted to natural gas operation.

Most of the remaining facilities associated with the proposed project would be constructed within the ''Plant Site,'' a 24.3-acre tract owned by Whitetail. Within this site, the Whitetail Compressor Station would encompass about 11.1 acres and the West Well Pad Site (for construction of injection/withdrawal and saltwater disposal wells and ancillary facilities) would encompass about 6.1 acres. About 4.3 acres would be used as temporary work space, pipe storage, construction offices, and similar use. The remaining 2.8 acres of the Plant Site consists of an existing facilities area which would not be disturbed by Whitetail's proposed construction, though it could be used for operational purposes. Once the project is completed, Whitetail would construct a permanent security fence around the Plant Site.

The proposed East Well Pad Site is about 1 mile southeast of the Plant Site and at the eastern terminus of the proposed Field Line Corridor pipeline. This site would encompass about 5 acres for construction of injection/withdrawal and saltwater disposal wells, a pig launcher/receiver, and ancillary facilities related to the wells and pipeline.

The EA Process

We[2] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes Whitetail's proposal. By this notice, we are also asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources and wetlands.
- Land use.
- Socioeconomics.
- Cultural resources.
- Vegetation and wildlife (including sensitive species).
- Air quality and noise.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section at the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Whitetail.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberley D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE; Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. CP08–46–000.
- Mail your comments so that they will be received in Washington, DC on or before February 25, 2008.

The Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. You can also request additional information by calling Whitetail at 713–337–2743.

Kimberley D. Bose,

Secretary.

[FR Doc. E8–1590 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–58–000]

Transcontinental Gas Pipe Line Corporation; Prior Notice of Activity Under Blanket Certificate

January 24, 2008.

Take notice that on January 18, 2008, Transcontinental Gas Pipe Line Corporation (TGPL) filed a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act, and TGPL's blanket certificate issued in Docket No. CP82–426, for authorization to replace three segments of mainline pipeline in Howard County, Maryland (MD).

As a result of population density increases along TGPL's mainline, TGPL must upgrade three parallel segments of pipeline—Mainlines A, B and C—each approximately 0.377 miles long, in Howard County, MD. These replacements are required in order to ensure compliance with the United States Department of Transportation's (USDOT) regulations at 49 CFR 192.611 and to maintain certificated service and the safety and reliability of TGPL's mainline. The replacement will take place in an area recently classified as meeting the USDOT Class 4 regulations, as defined at 49 CFR 192.5(b)(4). The estimated total cost of all pipeline replacements is approximately $9.6 million. TGPL's proposal is more fully described in the application that is on file with the Commission.

Any questions regarding the application should be directed to Bill Hammons LLP, P.O. Box 1396, Houston, Texas 77251 at (713) 215–2130.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such motions or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant, on or before the comment date. It is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1625 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–51–000]

Transwestern Pipeline Company, LLC; Notice of Request Under Blanket Authorization

January 22, 2008.

Take notice that on January 14, 2008, Transwestern Pipeline Company, LLC (Transwestern), 711 Louisiana Street, Suite 900, Houston, Texas 77002–2716, filed in Docket No. CP08–51–000, a prior notice request pursuant to sections 157.205, 157.210, and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct, own, operate, and abandon compression equipment, located in Apache County, Arizona, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Transwestern proposes to: (i) Construct, own, and operate compression equipment consisting of three 5,000 electric horsepower (HP) motors, compressor units, station piping, and ancillary facilities; and (ii) to abandon, in place, the existing three 4,000 HP reciprocating gas engines, compressors, and ancillary facilities, at Transwestern's Compressor Station 4, located in Apache County, Arizona (Station 4 Electrification Project). Transwestern estimates the cost of the project to be $14,000,000. Transwestern states that the purpose of the project is to improve system reliability and to reduce operating and maintenance costs by replacing older gas engines with new, more efficient electric engines.

Any questions regarding the application should be directed to Kelly Allen, Manager of Certificates and Reporting, Transwestern Pipeline Company, LLC, 711 Louisiana Street, 9th Floor South Tower, Houston, Texas 77002–2716, call (281) 714–2056, fax (281) 714–2180, or by e-mail *Kelly.Allen@energytransfer.com*.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–1592 Filed 1–29–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of request for comments.

SUMMARY: The Western Area Power Administration (Western) invites public comment on a proposed collection of information that Western is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.[1] Western invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before the close of the comment period which is March 31, 2008. Consideration will be given to all comments received on or before the close of the comment period.

ADDRESSES: Written comments or suggestions may be sent to the Acting Power Marketing Advisor at 12155 W. Alameda Parkway, Lakewood, CO 80228, by fax at 720–962–7009, or by e-mail at *pracomments@wapa.gov*. Please include the subject matter: Paperwork Reduction Act Information Collection.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Melanie Reed at 970–461–7229.

SUPPLEMENTARY INFORMATION:

[1] *See* 44 U.S.C. 3501, *et seq.*

I. Statutory Authority

Reclamation Laws are a series of laws arising from the Desert Land Act of 1872 and include but are not limited to: The Desert Land Act of 1872, Reclamation Act of 1902, Reclamation Project Act of 1939, and the Acts authorizing each individual project such as the Central Valley Project Authorizing Act of 1937.[2] The Reclamation Act of 1902 established the Federal reclamation program.[3] The basic principle of the Reclamation Act of 1902 was that the United States, through the Secretary of Interior, would build and operate irrigation works from the proceeds of public land sales in the sixteen arid Western states (a seventeenth was added later). The Reclamation Project Act of 1939 expanded the purposes of the reclamation program and specified certain terms for contracts that the Secretary of Interior enters into to furnish water and power.[4] Congress enacted the Reclamation Laws for purposes that include enhancing navigation, protection from floods, reclaiming the arid lands in the Western United States, and for fish and wildlife.[5] Congress intended that the production of power would be a supplemental feature of the multi-purpose water projects authorized under the Reclamation Laws.[6] No contract entered into by the United States for power may impair the efficiency of the project for irrigation purposes.[7] Section 5 of the Flood Control Act of 1944 is read *in pari materia* with Reclamation Laws.[8] In 1977, the Department of Energy Organization Act transferred the power marketing functions of the Department of Interior to Western.[9] Pursuant to this authority, Western markets Federal hydropower. As part of Western's marketing authority, Western needs to obtain information from interested entities who desire an allocation of Federal power. The Paperwork Reduction Act of 1995 requires Western to obtain a clearance from OMB before collecting certain information.[10]

[2] *See* Ch. 107, 19 Stat. 377 (1872), Ch. 1093, 32 Stat. 388 (1902), Ch. 418, 53 Stat. 1187 (1939), Ch. 832, 50 Stat. 844, 850 (1937), all as amended and supplemented.

[3] *See*, Ch. 1093, 32 Stat. 388, as amended and supplemented.

[4] *See*, Ch. 418, 53 Stat. 1187 (1939), as amended and supplemented.

[5] *See*, *e.g.*, Ch. 832, 50 Stat. 844, 850 (1937), as amended and supplemented.

[6] *See*, *e.g.*, Ch. 832, 50 Stat. 844, 850 (1937), as amended and supplemented.

[7] *See*, 43 U.S.C. 485h(c).

[8] *See*, Act of December 22, 1944, Ch. 665, 58 Stat. 887), as amended and supplemented.

[9] *See*, 42 U.S.C. 7152(a)(1)(E).

[10] *See* 44 U.S.C. 3501, *et seq.*

II. Background

Western is a Federal agency under the Department of Energy that markets and transmits wholesale electrical power from 56 Federal hydropower plants and one coal-fired plant. Western sells about 40 percent of regional hydroelectric generation in a service area that covers 1.3 million square miles in 15 states. To provide this reliable electric power to most of the western half of the United States, Western markets and transmits about 10,000 megawatts of hydropower across an integrated 17,000-circuit mile, high voltage transmission system. Western's preference customers include municipalities, cooperatives, public utility and irrigation districts, Federal and State agencies, and Native American tribes. They, in turn, provide retail electric service to millions of consumers in Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah, and Wyoming.

As part of its marketing mission, Western proposes to collect information from entities which may be interested in obtaining a power allocation from Western. Western will submit the information clearance requirement to the Office of Management and Budget after analyzing and responding to all comments received through this process. As required by the Paperwork Reduction Act, after receiving comments, Western will publish a notice of submittal.[11]

Pursuant to this proposed information collection, Western invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, 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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The proposed information collections in this program will not be part of a system of records covered by the Privacy Act,[12] and will be available under the Freedom of Information Act.[13]

[11] *See*, 44 U.S.C. 3507.

[12] *See*, 5 U.S.C. 552(a).

[13] *See*, 5 U.S.C. 552.

III. Purpose of Proposed Collection

The proposed collection of information is necessary for the proper performance of Western's functions. Western markets a limited amount of Federal power. Western has discretion to determine who will receive an allocation of Federal power. Due to the high demand for Western's power and limited amount of available power, under established marketing plans, Western needs to be able to collect information to evaluate who may receive an allocation of Federal power. As a result, the information Western collects is both necessary and useful.

This public process only determines the information which Western will collect from an entity desiring to apply for a Federal power allocation. The information Western proposes to collect is voluntary. Western will use the information collected, in conjunction with its marketing plan, to determine an entity's eligibility and ultimately who will receive an allocation of Federal power. Western will issue a call for application, as part of its marketing plan which will occur through a separate process. The actual allocation of power is outside the scope of this proceeding.

IV. Information Western Proposes To Collect

A. Applicant Profile Data (APD)

Western proposes to collect the information described below. Western will collect the information through an application. As part of this process, Western has identified what it believes is the minimum amount of information Western needs for its Regions to properly perform the functions of the agency. Due to the variations that may be developed in each Region, each Region through its marketing plan, may determine that it does not need all of the information. Each Region will identify the subset of the data that it will require in its application through its call for application.

Western proposes the applicant provide the information requested or the most reasonable estimates that are available. If the requested information is not applicable or is not available, the applicant shall note it. Western will request, in writing, additional information from any applicant whose application is deficient. Western will notify the applicant when such information is due. In the event that by the due date, an applicant fails to provide sufficient information to allow Western to make a determination regarding eligibility, the application will not be considered. The content and

format of the proposed APD are outlined below.

B. Form of APD

OMB Clearance Number___

Applicant Profile Data

All items of information in the Applicant Profile Data (APD) should be answered as if prepared by the entity/organization seeking the allocation of Federal power. The APD shall consist of the following:

1. Applicant Information. Please provide the following:

a. Applicant's (entity/organization requesting an allocation) name and address:

Applicant's Name:	
Address:	
City:	
State:	
Zip:	

b. Person(s) representing the applicant:

Contact Person (Name & Title):	
Address:	
City:	
State:	
Zip:	
Telephone:	
Fax:	
Email Address:	

c. Type of entity/organization:

- ☐ Federal Agency
- ☐ Irrigation District
- ☐ Municipal, Rural, or Industrial User
- ☐ Municipality
- ☐ Native American Tribe
- ☐ Public Utility District
- ☐ Rural Electric Cooperative
- ☐ State Agency
- ☐ Other, please specify:

d. Parent entity/organization of the applicant, if any:

e. Name of the applicant's members, if any: (Separated by commas)

f. Applicable law under which the applicant was established:

g. Applicant's geographic service area (if available, please submit a map of the service area and indicate the date prepared):

h. Describe whether the applicant owns and operates its own electric utility system.

i. Provide the date the applicant attained utility status. 10 CFR part 905.35 defines utility status to mean ''that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis for resale to retail consumers.''

j. Describe the entity/organization that will interact with Western on contract and billing matters.

2. Service Requested:

a. Provide the amount of power the applicant is requesting to be served by Western.

3. Applicant's Loads:

a. Utility and non-utility applicants:

(i) If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agricultural):

CUSTOMER TYPE AND NUMBER

	Residential	Commercial	Industrial	Military	Ag.	Other
Number of customers						
If not applicable, explain why						

(ii) Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) for each calendar month experienced in calendar year 20__:

CALENDAR YEAR 20__

	January	February	March	April	May	June
Demand (kilowatts)						
Energy (kilowatt-hours)						
	July	August	September	October	November	December
Demand (kilowatts)						
Energy (kilowatt-hours)						

(iii) Provide the average annual load factor for calendar year 20__:
Calendar Year 20__ Average Annual Load Factor

(iv) Provide the average monthly load factors for calendar year 20__:

CALENDAR YEAR 20__
[Average Monthly Load Factor]

	January	February	March	April	May	June
Load Factor						
	July	August	September	October	November	December
Load Factor						

(v) Identify any factors or conditions in the next 5 years which may significantly change peak demands, load duration, or profile curves.

b. Native American Tribe applicants only:
(i) Indicate the utility or utilities currently serving your loads:

(ii) If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agricultural):

CUSTOMER TYPE AND NUMBER

	Residential	Commercial	Industrial	Military	Ag.	Other
Number of customers						
If not applicable, explain why:						

(iii) Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) experienced in calendar year 20__. If the actual demand and energy data are not available provide the estimated monthly demand:

CALENDAR YEAR 20__

	January	February	March	April	May	June
Demand (kilowatts)						
Energy (kilowatt-hours)						
	July	August	September	October	November	December
Demand (kilowatts)						
Energy (kilowatt-hours)						

(iv) If the demand and energy data in 3.b(iii) above is estimated, provide a description of the method and basis for this estimation in the space provided below:

(v) Provide the actual average annual load factors for calendar year 20__. If the actual load factors are not available, provide the estimated load factors:
Calendar Year 20__ Average Annual Load Factor

(vi) Provide the actual monthly load factors for calendar year 20__. If the actual load factors are not available, provide the estimated load factors.

CALENDAR YEAR 20__ AVERAGE MONTHLY LOAD FACTOR

	January	February	March	April	May	June
Load Factor						
	July	August	September	October	November	December
Load Factor						

(vii) If the load factor data in 3.b.(v–vi) is estimated, provide a description of the method and basis for this estimation in the space provided below:

(viii) Identify any factors or conditions in the next 5 years which may significantly change peak demands, load duration, or profile curves:

4. Applicant's Resources. Please provide the following information:

a. A list of current power supplies if applicable, including the applicant's own generation, as well as purchases from others. For each supply, provide the resource name, capacity supplied, and the resource's location. Power supplies (resource name, capacity & location):

b. For each power supplier, provide a description and status of the power supply contract (including the termination date):

c. For each power supplier, provide the type of power:

☐ Power supply is on a firm basis.
☐ Power supply is not on a firm basis.

Please explain:

5. Transmission:

a. Points of delivery. Provide the requested point(s) of delivery on Western's transmission system (or a third party's transmission system), the voltage of service required, and the capacity desired, if applicable.

b. Transmission arrangements. Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery. Include a brief description of the applicant's transmission and distribution system including major interconnections. Provide a single-line drawing of applicant's system, if one is available.

c. Provide a brief explanation of the applicant's ability to receive and use, or receive and distribute Federal power as of [date].

6. Other Information. The applicant may provide any other information pertinent to receiving an allocation.

7. Signature: Western requires the signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for an allocation.

By signing below, I certify the information which I have provided is true and correct to the best of my information, knowledge and belief.

Signature _____

Title _____

Applications may be submitted by U.S. mail to the address below or electronically to *xxxx@wapa.gov* with an electronic signature. If submitting this application electronically and an electronic signature is not available, please fax this page *with a signature* to (xxx) xxx–xxx, or mail it to _____ Region, Western Area Power Administration, Address, State, City, Zip Code.

Recordkeeping Requirements: If Western accepts your application and you receive an allocation of Federal power you must keep all records associated with your APD for a period of 3 years after you sign your contract for Federal power. If you do not receive an allocation of Federal power, there is no recordkeeping requirement.

Western has obtained an OMB Clearance Number _____ for the collection of the above information.

V. Paperwork Reduction Requirements

A. Introduction

1. *OMB Number:* Western will obtain a new OMB Number. This number will be displayed on front page of the APD.

2. *Title:* Western will title the Information Collection Request: Applicant Profile Data.

3. *Type of Review:* Western will request that OMB treat its review as a New Review for an existing collection.

4. *Purpose:* The proposed collection of information is necessary for the proper performance of Western's functions. Western markets a limited amount of Federal power. Western has discretion to determine who may receive an allocation of Federal power. Due to the high demand for Western's power and limited amount of available power, under established marketing plans, Western needs to be able to collect information to evaluate who will receive an allocation of Federal power. As a result, the information Western collects is both necessary and useful. This public process only determines the information which Western will collect in its application. The actual allocation of Federal power will be done through a separate process and is outside the scope of this proceeding.

5. *Respondent:* The response is voluntary. However, in the event an entity seeks an allocation of Federal power, the applicant must submit an APD. Western has identified the following class of respondents as the most likely to apply: municipalities, cooperatives, public utilities, irrigation districts, Native American Tribes, Federal and State agencies. The respondents will be located in Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah, and Wyoming. Depending on the amount of power that becomes available for allocation, Western anticipates it could receive up to 100 requests for power during the 3-year period when the OMB Clearance Number is in effect. Western does not anticipate annual responses. The responses will be periodic and occur when Western has power available under an allocation process.

6. *Number of Burden Hours:*

a. *Initial Application:* Western anticipates that it will take less than 4 hours to complete the APD. Once the respondent completes the APD, it will submit the APD to Western for Western's review. After submitting the APD, provided the APD is complete and no clarification is required, Western does not anticipate requiring any further information for the APD from the applicant, unless the applicant is successful in obtaining a power allocation. The applicant submits only one APD. It does not submit an APD every year. If the applicant receives a power allocation, the applicant will need to complete a standard contract to receive its power allocation. Western's standard contract terms are outside the scope of this process.

b. *Record Keeping:* There is no mandatory record keeping requirements on the applicant if it does not receive an allocation of Federal power. In such case, any record keeping of the APD by a respondent is voluntary. For those entities that receive a Federal power allocation, Western proposes a requirement to keep the information for 3 years after the applicant signs its Federal power contract. The 3-year record retention policy proposed for such applicants will allow Western sufficient time to administer the

contract and to ensure the applicant provided factual information in its application. Western anticipates that a 3-year record retention policy will have little impact on most businesses in the power industry. Western anticipates that it would take less than 1 hour per successful candidate per year for record keeping purposes. Western anticipates that in a 3-year period, Western will have less than 30 successful applicants.

c. *Methodology:* Based on the total number of burden hours and the total number of applications described above, Western expects that over a 3-year period, the total burden hours to fill out the APD is 400 hours for 3 years (100 applicants over 3 years × 4 hours per applicant). This converts to an annual hourly burden of 133.333 hours. An entity will only fill out the APD once. It is not required to fill out the APD each year.

Based on the above, Western anticipates that there will be additional cost burdens for record keeping of 1 hour per year for each successful applicant, i.e., each applicant who receives a Federal power allocation. Western anticipates that over the course of 3 years there will be 30 successful applicants. The power may be allocated in year 1, year 2 or year 3. For the purposes of determining the cost burden, Western will presume all 30 applicants received an allocation in year 1. As a result, the annual hourly burden for record keeping is 30 hours.

For the purposes of this cost burden analysis, Western is assuming that a staff level power utility specialist will fill out the APD. Western estimates a staff level power utility specialist rate, including administrative overheard to be approximately $100/hour. For record keeping, Western estimates an administrative support rate of $50/hour. Based on the above, Western estimates the total annual cost as (133.333 hour/year × $100/hour) + (30 hour/year × $50/hour) = $14,833 per year.

Using the above estimates, on a per applicant basis, assuming the applicant receives a Federal power allocation, the total cost for the applicant over a 3-year period is $550. The cost to fill out the APD is a one time cost of $400. In addition to the one time cost, the applicant, if it successfully receives a power allocation, will incur an additional expense of 1 hour for record keeping per year × $50 per hour for a total record keeping cost of $150 for 3 years.

d. *Summary of Burdens:*

TABLE 1.—ANNUAL HOUR BURDEN ESTIMATES

Activity	Number of respondents	Number of responses per respondent	Average burden hour per response	Subtotal burden hours
APD	33.333	1	4	133.33
Recordkeeping	30	1	1	30.00
Total Burden				163.33

TABLE 2.—ANNUAL COST BURDEN ESTIMATE

Instrument	Number of respondents	Number of responses per respondent	Average annual burden hour	Cost per burden hour	Cost per response	Subtotal cost
Prepare APD	33.333	1	4	$100	$400	$13,333.20
Recordkeeping	30	1	1	50	50	1,500.00
Total Cost						14,833.20

The procedure and process for the allocation of power shall be the subject matter of a separate notice and is outside the scope of this process.

B. Does the proposed collection of data avoid unnecessary duplication?

To avoid unnecessary duplication, Western proposes that only entities who desire a Western allocation be required to submit an APD.

As it relates to each of the components of the APD, there is no duplication. Section 1 is information Western needs to determine who the applicant is, whether the applicant is a preference entity and whether the applicant is ready, willing and able to receive and/or distribute Federal power. Section 2 identifies the amount of Federal power which the applicant requests. Section 3 identifies the applicant's loads. Section 4 identifies the applicant's resources. Section 5 identifies the applicant's transmission delivery arrangements necessary to receive Federal power. Section 6 is voluntary and provides the applicant with the ability to provide any additional information. Section 7 is an attestation that the information provided is true and accurate to the best of the applicant's knowledge.

C. Does the proposed collection reduce the burden on the respondent, including small entities, to the extent practicable and appropriate?

The proposed information requested is the minimum amount of information to determine whether the applicant qualifies as a preference entity and is ready, willing and able to receive an allocation of Federal power.

D. Does the proposed collection use plain, coherent, and unambiguous language that is understandable to the respondent?

The proposed collection uses plain, coherent, and unambiguous language that is understandable to the target audience. The terms are those used in the power industry. Western does not market power to individual members of the public such as homeowners or shopkeepers. Preference entities are statutorily designated potential customers who generally are involved in the power business. As a result, the language used in the application is understandable to the target audience.

E. Is the proposed collection consistent with and compatible with the respondent's current reporting and recordkeeping practices to the maximum extent practicable?

The proposed information collection is voluntary. Western proposes to use the information to determine whether an applicant qualifies as a preference entity to receive an allocation of Federal power. As discussed above, there is no mandatory recordkeeping requirement on the applicant if it does not receive an allocation of Federal power. For those entities that receive a Federal power allocation, Western proposes a requirement that they keep the information for 3 years after Western grants the power allocation and the applicant signs a Federal power contract. The proposed 3-year record retention policy for such applicants would allow Western sufficient time to administer the contract and to ensure the applicant provided factual information in its application. Western anticipates that a 3-year record retention policy will have little impact on most businesses in the power industry who will keep the APD as part of their normal business records. The procedure and process for the allocation of power shall be the subject matter of a separate notice and is outside the scope of this process.

F. Does the proposed collection indicate the retention period for any recordkeeping requirements for the respondent?

The APD identifies that there is no recordkeeping requirement for the respondent if it does not receive an allocation of Federal power. It also identifies that applicants who receive an allocation of Federal power must retain the records for 3 years.

G. Does the proposed collection inform the public of the information they need to exercise scrutiny of the agency collecting information (the reasons the proposed information is collected, the way it is used, an estimate of the burden, whether the response is voluntary, required to obtain a benefit, or mandatory and a statement that no person is required to respond unless a valid OMB control number is displayed)?

If an entity desires a Federal power allocation from Western, Western needs certain information to determine whether the entity is eligible to receive power. Western has a limited amount of power available. Western uses its discretion in allocating power. In order to use its discretion in allocating power, Western will use the information collected on the application. Western will not accept incomplete applications. Western will work with Native American Tribes and other entities who may need assistance in filling out the application. No person is required to submit any information unless a valid OMB control number is displayed. No person is required to submit any information unless they desire a Federal power allocation.

H. Is the proposed collection developed by an office that has planned and allocated resources for the efficient and effective management and use of the information collected?

Western's power marketing offices will administer and evaluate the applications. Use and management of the collected information has been factored into these offices functions and resource requirements. Historically, Western has requested the same relative information from applicants in past marketing plan initiatives and effectively utilized Western resources to utilize and manage the information in its determinations. The power marketing offices will make a recommendation to Western's Administrator on which applicant(s) should be awarded a Federal power allocation based on the information contained in the APD. Western's Administrator shall use his discretion in the final power allocations. The procedure and process for the allocation of power shall be the subject matter of a separate notice and is outside the scope of this process.

I. Does the proposed collection use effective and efficient statistical survey methods?

Since the proposed information collected is used to determine whether an applicant receives an allocation of Federal power, this section is inapplicable.

J. Does the proposed collection use information technology to the maximum extent practicable to reduce the burden and to improve data quality, agency efficiency, and responsiveness to the public?

The APD will be accessible for downloading via Western's Web site. Western will accept electronic-mail submission of the APD, as well as submission via fax or regular mail. Applicants cannot enter the information on Western's Web site.

VI. Invitation for Comments

Western invites public comment on a proposed collection of information that Western is developing for submission to OMB pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: January 3, 2008.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–1504 Filed 1–29–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0179; FRL–8348–2]

Experimental Use Permit; Receipt of Amendment Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 264–EUP–140 from Bayer CropScience requesting to amend and extend the existing experimental use permit (EUP) for the *Bacillus thuringiensis* Cry1Ab protein and the genetic material necessary for its production in event T303–3 and T304–40 cotton plants. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before February 29, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0179, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0179. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of pesticidal substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

Bayer CropScience has requested an amendment and extension of EUP 264–EUP–140, which was first granted by EPA on February 7, 2006 and published in the **Federal Register** on July 19, 2006 (71 FR 41020) (FRL–8060–6). On March 8, 2007 this EUP was amended and published in the **Federal Register** on June 20, 2007 (72 FR 34009) (FRL–8133–5). Under the existing EUP, plantings are permitted through May 1, 2008. Bayer CropScience is now proposing to extend the experimental program until January 31, 2009 and to amend it by conducting testing with up to 0.018 pounds of Cry1Ab protein and the genetic material necessary for its production in events T303–3 and T304–40 on 88.5 acres (out of 297 total acres) planted to Cry1Ab-containing cotton. The Cry1Ab protein is effective in controlling lepidopteran larvae such as bollworm (*Helicoverpa zea*) and tobacco budworm (*Heliothis virescens*), which are common pests of cotton. The proposed program will be carried out in the States of Arizona, California, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Puerto Rico. The proposed experimental program includes insect efficacy trials, and the evaluation of herbicide efficacy, agronomic performance, and breeding lines. Also proposed is the production of seed blocks to evaluate seed production, dissemination, and

dormancy, and for harvest for future experimental field trial plantings.

III. What Action is the Agency Taking?

Following the review of the Bayer CropScience application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP amendment/extension request for this EUP program, and if issued, the conditions under which it is to be conducted. Any amendment/extension of this EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The specific legal authority for EPA to take this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 17, 2008.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–1412 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8522–7]

Local Government Advisory Committee Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Charter Renewal.

The Charter for the Environmental Protection Agency's Local Government Advisory Committee (LGAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 Section 9(c). The purpose of the LGAC is to provide advice and recommendations to EPA's Administrator on ways to improve its partnership with Local Governments and provide more efficient and effective environmental protection.

It is determined that the LGAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Frances Eargle, Designated Federal Officer, LGAC, U.S. EPA (mail code 1301A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or *eargle.frances@epa.gov.*

Dated: January 20, 2008

Christopher P. Bliley,

Associate Administrator for Congressional and Intergovernmental Relations.

[FR Doc. 08–402 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8522–8]

Notice of Public Workshop To Discuss Management of Underground Injection of Carbon Dioxide for Geologic Sequestration Under the Safe Drinking Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is holding a second public workshop to discuss the development of proposed regulations for the underground injection of carbon dioxide (CO_2) for geologic sequestration under the Safe Drinking Water Act (SDWA). The SDWA requires EPA to protect underground sources of drinking water from contamination due to underground injection activities. The Underground Injection Control Program works with States and Tribes to oversee underground injection activities and prevent endangerment of drinking water sources. This public workshop will provide an opportunity for dialogue with representatives from industry, government, public interest groups, and the general public on geologic sequestration of carbon dioxide.

DATES: This public workshop will be held from 1 p.m. to 5:30 p.m., Eastern time, on Tuesday, February 26, 2008, and from 8:30 a.m. to 5 p.m. on Wednesday, February 27, 2008. To register for this workshop, please visit the following site: *https://www.resolv.org/calendar/view_recurring_event.asp?CalendarID=10577.* If you experience difficulties with the registration Web site, you may contact Kate Zimmer at RESOLVE at *kzimmer@resolv.org.* Please register by February 18, 2008. Also note that while this workshop is open to the public, space is limited due to room capacity restrictions. We encourage you to register to ensure participation.

ADDRESSES: The meetings will be held at the Crystal City Sheraton Hotel. The hotel is located at 1800 Jefferson Davis Highway in Arlington, VA, two blocks from the Crystal City Metro Station. The hotel's telephone number is (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: For general information about these meetings, please contact Mary Rose (Molly) Bayer by phone at (202) 564–1981, by e-mail at *bayer.maryrose@epa.gov,* or by mail at: U.S. Environmental Protection Agency, Mail Code 4606M, 1200 Pennsylvania Ave., NW., Washington DC 20460. For information about EPA's Underground Injection Control Program & geologic sequestration activities visit the following Web site: *http://www.epa.gov/safewater/uic/wells_sequestration.html.*

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to continue to advance the dialogue between EPA and stakeholders on geologic sequestration of CO_2 under SDWA and to provide updates on the proposed rule making process. This workshop will also afford EPA an opportunity to seek feedback from stakeholders on a set of specific subjects identified as key areas of concern and interest to stakeholders, which were voiced during the first workshop (December 2007) and other EPA sponsored technical workshops, held from 2005 to present. These subjects may include, but are not limited to public participation, long term liability, site characterization/area of review (AoR), monitoring, and UIC well construction.

Special Accommodations

For information on access or services for individuals with disabilities, please contact Mary Rose (Molly) Bayer at (202) 564–1981 or *bayer.maryrose@epa.gov.* To request accommodation of a disability, please contact Mary Rose Bayer, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 24, 2008.

Cynthia C. Dougherty, Director

Director, Office of Ground Water and Drinking Water.

[FR Doc. 08–401 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1204; FRL–8348–4]

Notice of Filing of a Pesticide Petition for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before February 29, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1204 and the pesticide petition number (*PP 7F7290*), by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–1204. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0515; e-mail address: *reynolds.alan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing notice of the filing of a pesticide petition received under section 408 of the Federal Food, Drug,

and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

New Exemption from Tolerance

PP 7F7290. Syngenta Seeds, Inc., 3054 East Cornwallis Road, P.O. Box 12257, Research Triangle Park, NC 27709, proposes to establish an exemption from the requirement of a tolerance for residues of the plant-incorporated protectant, *Bacillus thuringiensis* modified Cry1Ab protein containing an additional 26 amino acid ''Geiser motif'' in all crops and agricultural commodities. The petition includes a reference to a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 17, 2008.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–1545 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0027; FRL–8522–6]

Proposed Approval of the Transuranic Waste Characterization Program at the Hanford Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA or we) is announcing the availability of, and soliciting public comments for 45 days on, the proposed approval of the radioactive, contact-handled (CH), transuranic (TRU) waste characterization program implemented at the Hanford Site in Richland, Washington. This waste is intended for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico.

In accordance with the WIPP Compliance Criteria, EPA evaluated the characterization of CH TRU debris and solid waste from Hanford during an inspection conducted the week of June 4, 2007. Using the systems and processes developed as part of the U.S. Department of Energy's (DOE's) Carlsbad Field Office (CBFO) program, EPA verified whether DOE could adequately characterize CH TRU waste consistent with the Compliance Criteria. The results of EPA's evaluation of Hanford's program and its proposed approval are described in the Agency's inspection report, which is available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**.

This notice summarizes the waste characterization processes evaluated by EPA and EPA's proposed approval. As required by 40 CFR 194.8, at the end of a 45-day comment period EPA will evaluate public comments received, and if appropriate, finalize the reports responding to the relevant public comments, and issue a final report and approval letter to DOE.

DATES: Comments must be received on or before March 17, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0027, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* To *a-and-r-docket@epa.gov*.
- *Fax:* 202–566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2008–0027. The Agency'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 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: All documents in the docket are listed in the *http://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 electronically at *http://www.regulations.gov*.

These documents are also available for review in hard-copy form at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m., phone number: 505–885–0731; in Albuquerque at the Government Publications

Department, Zimmerman Library, University of New Mexico, Hours: vary by semester, phone number: 505–277–2003; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m., phone number: 505–476–9700. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT:

Rajani Joglekar or Ed Feltcorn, Radiation Protection Division, Center for Federal Regulations, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202–343–9601; fax number: 202–343–2305; e-mail address: *joglekar.rajani@epa.gov* or *feltcorn.ed@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Should I Consider As I Prepare My Comments For EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

DOE is developing the WIPP, near Carlsbad in southeastern New Mexico, as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials that have atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

TRU waste is itself divided into two categories, based on its level of radioactivity. Contact-handled (CH) TRU waste accounts for about 97 percent of the volume of TRU waste currently destined for the WIPP. It is packaged in 55-gallon metal drums or in metal boxes and can be handled under controlled conditions without any shielding beyond the container itself. The maximum radiation dose at the surface of a CH TRU waste container is 200 millirems per hour. CH waste primarily emits alpha particles that are easily shielded by a sheet of paper or the outer layer of a person's skin.

Remote-handled (RH) TRU waste emits more radiation than CH TRU waste and must therefore be both handled and transported in shielded casks. Surface radiation levels of unshielded containers of remote-handled transuranic waste exceed 200 millirems per hour. RH waste primarily emits gamma radiation, which is very penetrating and requires concrete, lead, or steel to block it.

On May 13, 1998, EPA issued a final certification of compliance for the WIPP facility. The final rule was published in the **Federal Register** on May 18, 1998 (63 FR 27354). EPA officially recertified WIPP on March 29, 2006 (71 FR 18015). Both the certification and recertification determined that WIPP complies with the Agency's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C, and is therefore safe to contain TRU waste.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8 (revised July 2004).

Condition 3 of the WIPP Certification Decision requires EPA to conduct independent inspections at DOE's waste generator/storage sites of their TRU waste characterization capabilities before approving their program and the waste for disposal at the WIPP. EPA's inspection and approval process gives EPA (a) discretion in establishing technical priorities, (b) the ability to accommodate variation in the site's waste characterization capabilities, and (c) flexibility in scheduling site WC inspections.

As described in section 194.8(b), EPA's baseline inspections evaluate each WC process component (equipment, procedures, and personnel training/experience) for its adequacy and appropriateness in characterizing TRU waste destined for disposal at WIPP. During an inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability to comply with the regulatory limits and tracking requirements under § 194.24. A baseline inspection may describe any limitations on approved waste streams or waste characterization processes [§ 194.8(b)(2)(iii)]. In addition, a baseline inspection approval must specify what subsequent WC program changes or expansion should be reported to EPA [§ 194.8(b)(4)]. The Agency is required to assign Tier 1 (T1) and Tier 2 (T2) to the reportable changes depending on their potential impact on data quality. A T1 designation requires that the site must notify EPA of proposed changes to the approved components of an individual WC process (such as radioassay equipment or personnel), and EPA must also approve the change before it can be implemented. A WC element with a T2

designation allows the site to implement changes to the approved components of individual WC processes (such as visual examination procedures) but requires EPA notification. The Agency may choose to inspect the site to evaluate technical adequacy before approval. EPA inspections conducted to evaluate T1 or T2 changes are follow-up inspections under the authority of § 194.24(h). In addition to the follow-up inspections, if warranted, EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of § 194.24(h).

The site inspection and approval process outlined in § 194.8 requires EPA to issue a **Federal Register** notice proposing the baseline compliance decision, docket the inspection report for public review, and seek public comment on the proposed decision for a period of 45 days. The report must describe the WC processes EPA inspected at the site, as well as their compliance with § 194.24 requirements.

III. Proposed Baseline Compliance Decision

EPA has performed a baseline inspection of CH TRU waste characterization (WC) activities at Hanford (EPA Inspection No. EPA–HAN–6.07–8). The purpose of EPA's inspection was to verify that the waste characterization program implemented at Hanford for characterizing CH TRU, retrievably-stored, debris and solid waste is technically adequate and meets the regulatory requirements at 40 CFR 194.24.

During the inspection, EPA evaluated the adequacy of the site's WC programs for two CH TRU waste categories, debris (S5000) and solids (S3000), to be disposed of at the WIPP. The Agency examined the following activities:

- Acceptable knowledge (AK) for CH TRU debris waste (S5000) and solid waste (S3000) and AK for CH, repackaged debris waste (S5000) from the Plutonium Finishing Plant (PFP).
- Visual examination (VE) in lieu of real-time radiography (RTR) for CH TRU debris waste (S5000) and solid waste (S3000) and Visual Examination Technique (VET) for CH, repackaged debris waste from the PFP.
- RTR for CH TRU debris waste (S5000) and solid waste (S3000).
- Nondestructive assay (NDA) systems at the Waste Receiving and Processing (WRAP) Facility for characterizing debris (S5000) and solid (S3000) wastes: the Gamma Energy Analysis Units A and B (GEA A and GEA B); the Pajarito Imaging Passive Active Neutron Units A and B (IPAN A and IPAN B); and the Super High Efficiency Neutron Counter A (SHENCA).
- NDA systems at the plutonium Finishing Plant (PFP) for characterizing debris waste (S5000): Calorimeters AR–1, AR–5, P–13, P–14 and Q–1 in conjunction with the Room 172 Segmented Gamma Scanner Assay System (SGSAS).
- WIPP Waste Information System (WWIS) for tracking the components of CH retrievably-stored TRU debris waste (S5000) and solid waste (S3000).

During the inspection, Hanford personnel stated that load management will never be performed at the site and EPA did not evaluate this aspect during the inspection [see section 8.1(5) of the inspection report]. Therefore, this proposed approval does *not* include load management for Hanford.

The EPA inspection team determined that the Hanford WC program for CH TRU waste was technically adequate. EPA is proposing to approve the Hanford CH TRU WC program in the configuration observed during this inspection and described in this report and the attached checklists (Attachments A.1 through A.9). This proposed approval includes the following:

(1) The AK process for CH TRU debris and solid wastes and for newly-generated debris wastes.

(2) The WRAP GEA Units A and B for assaying solid and debris wastes.

(3) The WRAP IPAN Units A and B for assaying solid and debris waste.

(4) The WRAP SHENCA system for assaying solid and debris wastes.

(5) The PFP Calorimeters AR–1, AR–5, P–13, P–14 and Q–1 in conjunction with the Room 172 SGSAS for assaying debris wastes.

(6) The nondestructive examination (NDE) process of RTR for solid and debris wastes.

(7) VE in lieu of the RTR process for retrievably-stored solid and debris wastes and VET of newly-generated debris wastes.

(8) The WWIS process for tracking of waste contents of solid and debris wastes Hanford must report and receive EPA approval of any Tier 1 (T1) changes to the Hanford WC activities from the date of the baseline inspection, and must notify EPA regarding Tier 2 (T2) changes according to Table 1, below. It is worth noting that Table 1 in this report closely follows the format used in the previous CH baseline approval report of Los Alamos National Laboratory—Central Characterization Project (LANL–CCP) (see EPA Docket No. A–98–49, II–A4–88). This format departs from what was used in baseline inspection reports and EPA site approval letters prior to LANL–CCP in several ways, as detailed in the LANL–CCP report and repeated here. The most important of these differences involves presentation of the T2 elements. In previous reports, there were two T2 columns that have been merged into a single T2 column for Hanford. The T2 column entries have also been modified to better reflect the 40 CFR 194.24(h) requirements that the site provide notification regarding the completion or availability of specific T2 elements, whereas the previous tables stated that the site must actually provide the T2 elements (document or procedure revisions, etc.). This approach is similar to the tiering tables used in EPA reports for sites characterizing remote-handled TRU waste. Additionally, there are other minor word changes to the table for the sake of legibility.

TABLE 1. TIERING OF TRU WC PROCESSES IMPLEMENTED BY HANFORD BASED ON JUNE 4–7 AND 27, 2007 ON-SITE BASELINE INSPECTION

WC process elements	Hanford WC T1 changes	Hanford WC T2 changes*
Acceptable Knowledge (AK) and Load Management.	Implementation of load management; AK (5)	Notification to EPA upon completion of AK Accuracy Reports; AK (2).
	New waste streams created as a result of combining or separating previously distinct waste streams; AK (6).	Notification to EPA upon completion of updates to or substantive modifications****of the following: —AK Summaries/Waste Stream Profile Forms (WSPFs) and AK Documentation Reports; AK (16) —AK–NDA Communication changes; AK (3) —Changes to site procedure WMP 400.7.1.9; AK (4).
	Categories of waste not approved under this baseline inspection (e.g., soil/gravel, newly-generated solids including K Basin waste); AK (16).	Notification to EPA upon generation of new WSPFs, AK summaries and AK documentation reports; AK (16).
Nondestructive Assay (NDA)	New equipment or physical modifications to approved equipment**; NDA (1)***. Extension or changes to approved calibration range for approved equipment; NDA (2)***.	Notification to EPA upon completion of changes to software for approved equipment, operating range(s) and site procedures that require CBFO approval; NDA (2)***.
Real-Time Radiography (RTR)	N/A	Notification to EPA upon the following: —Implementation of new equipment or substantive changes****to approved equipment; RTR (1) —Completion of changes to site procedures requiring CBFO approval; RTR (2).
Visual Examination (VE) and Visual Examination Technique (VET).	N/A	Notification to EPA upon the following: —Completion of changes to site VE and VET procedures requiring CBFO approval; VE (1) and VET (1) —Addition of new Summary Category Group (SCG) or waste stream(s); VE (2) and VET (2).
WIPP Waste Information System (WWIS).	Implementation of load management; WWIS (4)	Notification to EPA upon the completion of changes to WWIS procedure(s) requiring CBFO approval; WWIS (1).

* Upon receiving EPA approval in this action, Hanford will report all T2 changes to EPA at the end of each fiscal year quarter.

** Modifications to approved equipment include all changes with the potential to affect NDA data relative to waste isolation and exclude minor changes, such as the addition of safety-related equipment.

*** These are discussed in Sections (1) and (2) of the section for each NDA system, i.e., 8.2.1 for WRAP GEA Units A & B, 8.2.2 for WRAP IPAN Units A & B, 8.2.3 for WRAP SHENCA and 8.2.4 for PFP Calorimeters and the Room 172 SGSAS.

**** Substantive changes means changes with the potential to impact the site's waste characterization activities or documentation thereof, excluding changes that are solely related to Environmental Safety & Health (ES&H), nuclear safety, the Resource Conservation and Recovery Act (RCRA) or are editorial in nature.

IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed the report discussing the results of the Agency's inspection of the Hanford Site in the public docket as described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the proposed approval decision, as described in the inspection report. EPA will accept public comment on this notice and supplemental information as described in section 1.B. above. EPA will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comments and revise the inspection report as necessary. If appropriate, the Agency will then issue a final approval letter and inspection report, both of which will be posted on the WIPP Web site.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in New Mexico (as listed in **ADDRESSES**). The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: January 18, 2008.

Elizabeth Cotsworth,

Director, Office of Radiation and Indoor Air.

[FR Doc. E8–1658 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2008–1]

Rules of Procedure

AGENCY: Federal Election Commission.

ACTION: Notice of Rules of Procedure.

SUMMARY: The Federal Election Commission is revising its written rules for conducting its activities to provide for the circumstance when the Commission has fewer than four Members. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

FOR FURTHER INFORMATION CONTACT: Associate General Counsel Lawrence L. Calvert, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under 2 U.S.C. 437c(e) the Commission ''shall prepare written rules for the conduct of

its activities.'' In 1978, the Commission adopted Directive 10 to fulfill this statutory obligation. *See Rules of Procedures,* 43 FR 31433, (July 21, 1978). On December 20, 2007, the Commission adopted revisions to Directive 10, which added new section L, to provide rules of conduct when the Commission has fewer than four Members. The Commission is publishing the revised Directive 10 below in accordance with 2 U.S.C. 437c(e). For the convenience of the reader, the entire text of Directive 10 is set forth below including sections A through K, which have not been published in the **Federal Register** since 1978.

Directive 10

A. Meetings

The Commission shall meet at least once every month and also at the call of any Member, pursuant to U.S.C. 437c(d).

1. For the purpose of these rules, the word Member means a Commissioner appointed by the President with the advice and consent of the Senate pursuant to 2 U.S.C. 437c(a)(1).

2. For the purpose of these rules, the word meeting means the collegiate deliberation of at least four Members of the Commission pursuant to 2 U.S.C. 437c(d).

B. Quorum

Four Members of the Commission shall constitute a quorum for the consideration and resolution of matters that involve the exercise of its duties and powers under the Federal Election Campaign Act of 1971 as amended and Chapters 95 and 96 of the Internal Revenue Code of 1954 (the Act). If less than four Members of the Commission are present at any time during a Commission meeting, the Chairman shall declare a temporary recess until a quorum is again present at which time the meeting may resume.

C. Presiding Officer

1. The Chairman of the Commission shall be the presiding officer over meetings of the Commission.

2. He or she shall call meetings to order.

3. The Vice-Chairman shall act as presiding officer in the absence or disability of the Chairman or in the event of a vacancy in the office of Chairman. In the absence of the Chairman and Vice-Chairman, the Members of the Commission present shall select a presiding officer, to act during the absence of the Chairman and Vice-Chairman.

D. Introduction of Business

1. Meetings of the Commission shall be called to order by the Chairman.

2. The Chairman shall ascertain the presence of a quorum before proceeding with the business of any meeting.

3. All business before the Commission shall be brought by the presiding officer.

E. Motions

1. Any motion shall be reduced to writing at the request of any Member of the Commission.

2. Any motion may be withdrawn or modified by the movant at any time before it is amended or voted upon.

3. Any principal or secondary motion that exercises a duty or power of the Commission under the Act shall require four votes for approval.

4. Any motion to adjourn or recess shall require a majority vote of at least three Members of the Commission for approval.

5. Any principal or secondary motion regarding a procedural matter shall require a majority vote of at least three Members of the Commission for approval.

6. For the purpose of these rules, a procedural motion is any matter not exercising the powers of the Commission under the Federal Election Campaign Act, as amended or Chapter 95 or 96 of the Internal Revenue Code of 1954, including but not limited to any motion to delay a vote on a matter to any subsequent meeting; or any motion requesting a status report; or directing further studies, information and reports from the General Counsel, the Staff Director or any division thereof; or any motion to waive the timely submission requirement for circulation of material for the agenda of the Commission.

7. Motions to Consider

The introduction of a principal motion puts a matter before the Commission for deliberation. When any such matter is under debate the Chairman shall entertain no motion except:

(a) A motion to adjourn.

(b) A motion to recess.

(c) A motion to call for the order of the day.

(d) Motion to Reconsider. The effect of the adoption of a motion to reconsider is to place before the Commission again the question on which the vote to reconsider was taken in the exact position in which it was before the original vote. Four votes are necessary to adopt a motion to reconsider. It is in order for any such motion to be offered by a member who was on the prevailing side of the question when it was initially adopted.

(e) A motion to lay a matter over. Any such motion shall require a majority vote of at least three members of the Commission; at least three votes will be required for any subsequent motion to take any such matter from the table. Any such motion shall be undebatable. Any such matter which is laid on the table pursuant to these rules shall be taken from the table pursuant to these rules at the next subsequent meeting or the matter dies. In order to table any agenda item which was placed on the agenda for a particular meeting by a Member of the Commission who is absent at that meeting a vote of a majority of at least three members of the Commission is required for approval. A motion to lay a matter over takes precedence over any motion to move the previous question.

(f) A motion to postpone consideration of a matter to a date certain. Any such motion shall require a majority vote of at least three members of the Commission.

(g) A motion to move the previous question.

(h) A motion in the nature of a substitute.

(i) A motion to amend. Any motion to amend takes precedence over the motion that it proposes to amend but is subordinate to all other motions. The effect of the foregoing is that the adoption of any such motion to amend does not result in the adoption of the motion to be amended; instead, that motion remains pending in its modified form. Rejection of a motion to amend leaves the pending motion as it was before the amendment was offered.

F. Personal Privilege

Any Commissioner may as a matter of personal privilege obtain recognition to speak upon any subject matter which in his or her judgment may affect the Commission or the Commissioner.

G. General Consent

In cases where there appear to be no opposition, the Chairman may state that in the absence of objection, action shall be considered taken on a matter.

H. Members Subsequently Recorded as Voting

Whenever any Member of the Commission who was absent when a vote was taken subsequently requests consent to be recorded as having voted on the matter, he or she shall place the reason for his or her absence on the record. Any such request shall be in order only on the same day on which the vote was taken.

I. Points of Order

Points of order shall be debatable at the discretion of the chair. Any Member of the Commission may appeal any decision of the chair but for any such appeal to prevail it must receive a majority vote of at least three Members of the Commission.

J. Proxies

No vote by any Member of the Commission with respect to any matter may be cast by proxy; 2 U.S.C. 437c(c).

K. Miscellany

Any parliamentary situation or circumstance not addressed in these Rules shall be governed by *Roberts Rules of Order, Newly Revised* or if not covered therein by a decision of the Chairman. Any Member of the Commission may appeal any such decision of the Chair but for any such appeal to prevail it must receive a majority vote of at least three Members of the Commission.

L. Special Rules To Apply Only When the Commission Has Fewer Than Four Members

When the Commission has fewer than four Members, all of the foregoing provisions of this directive shall apply, except as follows:

1. Notwithstanding section A.2 of this directive, the word ''meeting'' shall mean the collegiate deliberation of two or more Members.

2. Notwithstanding section B of this directive, all Members of the Commission must be present to constitute a quorum for the consideration or resolution of any matter. If any Member of the Commission is absent at any time during a Commission meeting, the Chairman shall automatically declare a temporary recess (notwithstanding the absence of a call for a quorum) until a quorum is again present at which time the meeting may resume.

3. When these special rules are in effect, the Commission may discuss any matter otherwise in order for discussion pursuant to the other provisions of this Directive. However, the Commission may not act on any matter except for the following:

(a) Documents such as *Campaign Guides* and any other brochures or public education materials that may customarily be voted on by the Commission;

(b) Notices of filing dates, including filing dates for special elections;

(c) Any action otherwise requiring Commission approval with respect to FEC Conferences or invitations for public appearances;

(d) Election of which Members shall serve as chairman and vice chairman solely for the period during which the Commission has fewer than four Members, provided that in each instance that there is a Member eligible to hold the position pursuant to the eligibility requirements of 2 U.S.C. 437c(a)(5);

(e) Appointment of an acting general counsel, an acting staff director, an acting chief financial officer or an acting inspector general, approval of temporary personnel actions at the GS–15 level and above, and approval of other personnel actions;

(f) Budget estimates or requests for concurrent submission to the President and Congress, and other budget related matters requiring Commission approval;

(g) Minutes of previous meetings;

(h) Non-filer notices issued pursuant to 2 U.S.C. 438(a)(7);

(i) Debt settlement plans pursuant to 11 CFR Part 116;

(j) Administrative terminations pursuant to 11 CFR 102.4 and Commission Directive 45;

(k) Systems of Records Notices pursuant to the Privacy Act;

(l) Policies, procedures and directives pursuant to the Privacy Act or Section 522 of the Consolidated Appropriations Act, 2005;

(m) Agency head review of labor-management agreements;

(n) Any other action where a statute imposes a duty of ''agency head review'' on the Commission;

(o) Appeals under the Freedom of Information and Privacy Acts;

(p) Sunshine Act recommendations for items on an agenda;

(q) Contracts;

(r) The FEC Management Plan, pursuant to OMB Circular A–123 and the Federal Managers' Financial Integrity Act;

(s) Corrective action plans prepared in response to audits both financial and non-financial pursuant to FEC Directive 50 and/or the Accountability of Tax Dollars Act; or,

(t) EEO-related **Federal Register** notices.

4. Notwithstanding any provision of sections E, I or K of this directive, approval of any motion or appeal properly before the Commission under this section L shall require the affirmative vote of a majority of the Members of the Commission. However, if such majority comprises exclusively the affirmative votes of Members affiliated with the same political party (or Members whose positions are aligned for the purpose of nomination by the President), then the motion or appeal shall be deemed not approved.

5. Section H of this directive shall not be operative during any period in which these special rules are in effect.

Dated: January 24, 2008.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. E8–1565 Filed 1–29–08; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 201177.

Title: Marine Terminal Services Agreement between Port of Houston Authority and Hapag-Lloyd AG.

Parties: Port of Houston Authority and Hapag-Lloyd AG.

Filing Party: Erik A. Eriksson, Esq.; General Counsel; Port of Houston Authority; P.O. Box 2562; Houston, TX 77252.

Synopsis: The agreement sets discounted rates and charges applicable to Hapag-Lloyd's container vessels calling at the port's facilities.

Dated: January 24, 2008.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–1575 Filed 1–29–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to

contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Air Eagle Logistics Inc., 15506 Roper Avenue, Norwalk, CA 90650. *Officer:* Yin Yan Wu, President, (Qualifying Individual).

World Cargo Service, Inc., 6905 NW 73 Court, Miami, FL 33166. *Officers:* Luis A. Marquez, Logistics Manager, (Qualifying Individual), Gregorio Zambrano, President.

Quality International Shipping, Inc., 1043 East 223rd Street, Bronx, NY 10466. *Officer:* Alphanso I. Jackson, President, (Qualifying Individual).

Global Business Link Inc., 2009 Cedar Barn Way, Windsor Mill, MD 21244. *Officers:* Wael Y. Ghanem, Vice President, (Qualifying Individual), Abudullah W. Alsawi, President.

Yaseen Trading and Investment Inc., dba Yaseen Shipping, 2547 South Main Street, Santa Ana, CA 92707. *Officers:* Tareq K. Elbarq, President, (Qualifying Individual), Haya K. Elrarq, Treasurer.

SBB International Shipping LLC, 100 Plaza Drive, Ste. 100, Secaucus, NJ 07094. *Officers:* Susan Marme, Secretary, (Qualifying Individual), Daniel L. Vesque, Vice President.

Ultra Air Cargo Inc., 20900 Normandie Avenue, Ste. B, Torrance, CA 90502. *Officer:* David Li Hsu, President, (Qualifying Individual).

AO Container Lines Inc., 419 N. Oak Street, Inglewood, CA 90302. *Officers:* Spencer Ho, Vice President, (Qualifying Individual), Alex Chan, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Deployed Logistics, Inc., 1547 Avenida Salvador, San Clemente, CA 92672. *Officers:* Kevin D. McCarlton, CEO, (Qualifying Individual), Richard Stapleton, Director.

Global International Traders, Inc. dba GIT, 7255 N.W. 88th Street, Miami, FL 33166. *Officers:* Ricardo Ortiz, President, (Qualifying Individual), Terrie DeRouen, Vice President.

C.T. Freight USA Inc., c/o Aeronet Worldwide, 21023 Main St., Bldg. E2, Carson, CA 90745. *Officers:* Leslie Osborn, General Manager, (Qualifying Individual).

MBC Latinamerican Group, Corp., 2801 N.W. 74th Avenue, Miami, FL 33122. *Officers:* Martha S. Baptista, President, (Qualifying Individual).

Avion Shipping Corp. dba Shipping, 154–09 146th Avenue, Jamaica, NY 11434. *Officers:* Ana M. Lanfranco, Secretary, (Qualifying Individual), Massimo Giordano, President.

Ocean One Shipping Inc., 16972 Wabash Avenue, Yorba Linda, CA 92886. *Officer:* Joe Castano, President, (Qualifying Individual).

B A Hill Corporation, 40 Atlantic Avenue, Cohasset, MA 02025. *Officer:* Brian A. Hill, President, (Qualifying Individual).

Continental Shipping Inc., 11950 New Kings Road, Jacksonville, FL 32219. *Officers:* Anne Cheri Hogan, Exec. V. President, (Qualifying Individual), Suzanne Kostenski, President.

Panobulk Logistics, Inc., 1971 W. 190th Street, Torrance, CA 90504. *Officers:* Eun Y. Chun, General Manager, (Qualifying Individual), Alex B. Lee, Manager.

Japan Express America Inc., 370 Shaw Road, So. San Francisco, CA 94080. *Officers:* Masahiro Naka, Secretary, (Qualifying Individual), Ryo Hijikata, Chairman.

BA Capital Venture Firm, Inc. dba Cres Global dba Phantom Logistics, Transportation and Distribution, 8660 N.W. 6 Lane, Miami, FL 33126. *Officers:* Alba Diaz, Secretary, (Qualifying Individual), Brandy Abre, President.

Royal Pacific Shipping, Inc., 58 Leslie Street, Newark, NJ 07108. *Officers:* Atta Boamah, President, (Qualifying Individual), Alice Boamah, Secretary.

Freights USA Inc., 12903 Old Richmond Rd., Ste. A, Houston, TX 77099. *Officers:* Hanaa M. Hussein, President, (Qualifying Individual).

NYK Logistics (Americas) Inc. dba Double Wing Express, 8295 Tournament Drive, Ste. 150, Memphis, TN 38125. *Officers:* Karen Quintana, Vice President, (Qualifying Individual), Tetsuichi Nozaki, Director.

Translink Global Shipping, Inc., 15020 Bothell Way NE., Ste. 100, Seattle, WA 98155. *Officer:* Sam H. Chen, President, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

MMI Logistics & Forwarding, 1006 Sable Drive, Friendswood, TX 77546, Karen Crain, Sole Proprietor.

Autocorolla, 3333 N.W. 27 Avenue, Miami, FL 33142. *Officer:* Ramon A. Ceballos Green, Director, (Qualifying Individual).

Milan Freight Express Corp., 8901 NW 34 Avenue Road, Miami, FL 33147. *Officers:* Vladimir A. Rojas, Vice President, (Qualifying Individual), Braulio Milan, President.

Platinum Cargo Logistics Inc., 871 E. Artesia Blvd., Carson, CA 90746. *Officers:* Kelli Spiri, President, (Qualifying Individual), William Mancini, Vice Pres. Operations.

MDM Forwarding L.L.C., 482 S. Elm Street, Maywood, NJ 07607. *Officer:* Marianela Capellan, Managing Member, (Qualifying Individual).

Middle-East Air Cargo Inc., 83 Gordon Street, Elk Grove Village, IL 60007. *Officer:* Sadeddin Lambaz, President, (Qualifying Individual).

International Trade Compliance Group, LLC, 101 North Riverside Dr., Suite 203, Pompano Beach, FL 33062. *Officers:* Raul A. Villavicencio, Vice President, (Qualifying Individual), Michael A. Capuzzi, Managing Member.

Dated: January 24, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–1576 Filed 1–29–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 2008.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Premier Financial Bancorp, Huntington, West Virginia; to acquire 100 percent of the voting shares of Citizens First Bank, Inc., Ravenswood, West Virginia.

2. Premier Financial Bancorp Huntington, West Virginia; to acquire 100 percent of Traders Bankshares, Inc., Spencer West Virginia, and thereby indirectly acquire Traders Bank, Spencer, West Virginia.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. UCBH Holdings, Inc., San Francisco, California; to acquire up to 6.52 percent of the voting shares of First American International Corporation, and thereby indirectly acquire First American International Bank, both of Brooklyn, New York.

Board of Governors of the Federal Reserve System, January 25, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–1610 Filed 1–29–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. Name of Subcommittee: Health Care Quality and Effectiveness Research.

Date: February 26, 2008 (Open from 8 a.m. to 8:15 a.m. on February 26 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ). John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

2. Name of Subcommittee: Health Care Technology and Decision Sciences.

Date: February 28, 2008 (Open from 8 a.m. to 8:15 a.m. on February 28 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ). John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

3. Name of Subcommittee: Health Care Research Training.

Date: March 6–7, 2008 (Open from 9 a.m. to 9:15 a.m. on March 6 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ). John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

4. Name of Subcommittee: Health Systems Research.

Date: March 6, 2008 (Open from 8 a.m. to 8:15 a.m. on March 6 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ). John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: January 22, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. 08–388 Filed 1–29–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: State Plan for Grants to States for Refugee Resettlement.

OMB No.: New Collection.

Description: A State Plan is required by 8 U.S.C. Sec. 1522 of the Immigration and Nationality Act (the Act) [Title IV, Sec. 412 of the Act] for each State agency requesting Federal funding for refugee resettlement under 8 U.S.C. Sec. 1524 [Title IV, Sec. 414 of the Act], including Refugee Cash and Medical Assistance, Refugee Social Services, and Targeted Assistance program funding. The State Plan is a comprehensive narrative description of the nature and scope of a State's programs and provides assurances that the programs will be administered in conformity with the specific requirements stipulated in 45 CFR 400.4–400.9. The State Plan must include all applicable State procedures, designations, and certifications for each requirement as well as supporting documentation. A State may use a pre-print format prepared by the Office of Refugee Resettlement (ORR) of the Administration for Children and Families (ACF) or a different format, on the condition that the format used meets all of the State plan requirements under Title IV of the Act and ORR regulations at 45 CFR part 400.

Respondents: State Agencies, Replacement Designees under 45 CFR 400.301(c), and Wilson-Fish Grantees (State Agencies) administering or supervising the administration of programs under Title IV of the Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title IV State Plan	50	1	15	750

Estimated Total Annual Burden Hours: 750.

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 23, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. 08–382 Filed 1–29–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Adoption and Foster Care Analysis Reporting System for title IV–B and title IV–E.

OMB No. 0980–0267.

Description: Section 479 of title IV–E of the Social Security Act (the Act) directs States to establish and implement an adoption and foster care reporting system. Federal regulations at 45 CFR 1355.40 sets forth the requirements of section 479 of the Social Security Act for the collection of uniform, reliable information on children who are under the responsibility of the State title IV–B/IV–E agency for placement, care, and adoption. The respondents are child welfare agencies in the 50 States, the District of Columbia, and Puerto Rico. The data collected will inform State/Federal policy decisions, program management, and responses to Congressional and Department inquiries. Specifically, the data are used for short/long-term budget projections, trend analysis, child and family service reviews, and to target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption.

Respondents: States, District of Columbia and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
AFCARS (Electronic Submission)	52	2	3,005	312,513

Estimated Total Annual Burden Hours: 312,513.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 23, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. 08–383 Filed 1–29–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Office of Community Services (OCS) Evaluation Initiatives: Community Economic Development (CED) and Job Opportunities for Low-Income (JOLI) Individuals.

OMB No.: 0970–0317.

Description: The Office of Community Services (OCS) is a component of the Administration for Children and Families (ACF), which is part of the U.S. Department of Health and Human Services (HHS). Part of OCS' responsibilities is the program administration of Federal grants awarded through an annual competitive process to support urban and rural community economic development projects carried out by local, non-profit, community-based organizations. The legislative requirement for these two

programs is in Title IV of the Community Opportunities, Accountability and Training and Educational Services Act (COATS Human Services Reauthorization Act) of October 27, 2998, Pub. L. 105–285, section 680(b) as amended. The questionnaire will collect information concerning its outcomes and management. OCS will use the data to critically review the overall design and effectiveness of each program.

Respondents: OCS Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Questionnaire for OCS–JOLI Grantees in the US	25 JOLI grantees	1	1.5	37.5
Questionnaire for OCS–CED Grantees in the US	147 CED grantees	1	1.5	220.5

Estimated Total Annual Burden Hours:

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: January 23, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. 08–384 Filed 1–29–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0031] (formerly Docket No. 2001D–0044)

Guidance for Industry and Food and Drug Administration Staff; Clinical Laboratory Improvement Amendments of 1988: Recommendations for Clinical Laboratory Improvement Amendments of 1988: Waiver Applications for Manufacturers of In Vitro Diagnostic Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices.'' FDA is issuing this guidance to recommend approaches for determining whether a laboratory test may be performed by laboratories with a certificate of waiver under CLIA.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Carol Benson,Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration,2098 Gaither Rd., Rockville, MD 20850, 240–276–0396.

SUPPLEMENTARY INFORMATION:

I. Background

CLIA requires that clinical laboratories obtain a certificate from the Secretary of Health and Human Services (the Secretary) before accepting materials derived from the human body for laboratory tests (42 U.S.C. 263(b)). Laboratories that perform only tests that are ''simple'' and that have an ''insignificant risk of an erroneous result'' may obtain a certificate of waiver (42 U.S.C. 263a(c)(2)). The Secretary has delegated to FDA the authority to determine under CLIA whether particular tests (waived tests) are ''simple'' and have ''an insignificant risk of an erroneous result'' (69 FR 22849, April 27, 2004). This guidance describes recommendations for device manufacturers seeking to submit information (CLIA waiver application) to FDA to support a determination that a cleared or approved in vitro diagnostic (IVD) device meets this CLIA waiver standard.

In the guidance document, FDA recommends an approach for manufacturers to demonstrate in a CLIA waiver application that a device is simple and has an insignificant risk of erroneous result as required under CLIA (42 U.S.C. 263a). FDA based the recommendations in the guidance

document on interpretation of the law, experience with CLIA complexity determinations, and comments and information from stakeholders.

The draft of this guidance was issued September 7, 2005 (70 FR 53231). FDA received and considered approximately 40 sets of comments on the draft guidance document. After taking the comments into consideration, FDA has updated the document to provide clarifications as needed. The guidance has also been revised to allow for additional supplementation of the actual patient specimens in the clinical study with alternative samples, preferably banked patient samples. The revised guidance recommends that, when neither patient specimens nor banked samples are available, it may be acceptable to supplement with other types of prepared samples, e.g., spiked, or diluted samples that mimic patient samples in terms of analyte and matrix. The revised guidance specifies that up to a total of one third of the clinical study samples may be supplemented with these types of alternative samples. The revised guidance also provides more flexibility in selecting the comparator method as well as more consistency in terms of the criteria for accuracy for waived tests as compared with moderate and high complexity tests.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on reporting results from studies evaluating diagnostic tests. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1171 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.fda.gov/ohrms/dockets/default.htm*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0598.

V. 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 on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: January 22, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–1557 Filed 1–29–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Case-Cohort Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China (OMB No. 0925–0454)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Case-Cohort Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China. *Type of Information Collection Request:* Emergency Extension. *Need and Use of Information Collection:* Since 1987, the National Cancer Institute has collaborated with the Chinese Academy of Preventive Medicine (currently designated Chinese Centers for Disease Control) in a factory-based investigation of cancer mortality and incidence of lymphohematopoietic disorders in a cohort of 75,000 and 36,000 comparison workers in 12 cities in China. Our initial study revealed elevated risks of leukemia, myelodysplastic syndromes, non-Hodgkin lymphoma, benzene poisoning, and lung cancer among the benzene-exposed workers. During the past five years, data have been collected to enable more precise quantification of risks of the malignancies and related disorders with an additional 12 years of follow-up of the subjects using a case-control study design. Cases included all workers from the exposed and unexposed groups who were diagnosed with leukemia, myelodysplastic syndromes, non-Hodgkin lymphoma and all other hematopoietic disorders; benzene poisoning; and lung cancer. Controls were frequency matched to cases and selected from the exposed (N=1200) and unexposed (N=300) cohort members. Data have been collected from factories, hospitals, and directly from interviews of all living and next of kin of deceased cases and controls. Information collected from the interviews focuses on potential confounding exposures including smoking, non-occupational benzene exposure, level of education, medical conditions, use of specific medications, and family cancer history. This study

will provide better understanding of occupational and environmental risks from benzene exposure in the United States. It will be important to complete all data collection for the study to realize the full scientific benefit of this 20 year international collaboration. However, due to unexpected and unforeseen personnel problems and training issues in China, the researchers are requesting an emergency extension of three months to complete data collection. A detailed plan has been discussed and developed with the collaborators in China to complete all remaining data collections in the next three months.

Frequency of Response: One-time study. *Affected Public:* Individuals or households.

Type of Respondents: Workers or their next of kin. The annual reporting burden is reported in the following table:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Workers	2156	1	[1].37	317
Total				317

[1] (22 minutes).

There are no Capital Costs to report. There are also no Operating and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Richard Hayes, Project Officer, OEB/EBP/DCEG/NCI 6120 Executive Blvd., EPS Room 8114, Bethesda, MD 20892–7364, or call non-toll-free number (301) 435–3973 or fax your request to (301) 402–1819 or E-mail your request, including your address to: *HayesR@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: January 24, 2008.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E8–1550 Filed 1–29–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Training and Education.

Date: February 20, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Laurie Friedman Donze, PhD., Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Studies on CAM.

Date: February 25–26, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Jeanette M. Hosseini, PhD., Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–9096, *jeanetteh@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Mechanisms of Immune Modulation.

Date: March 27–28, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20814.

Contact Person: Martina Schmidt, PhD., Scientific Review Administrator, Office of Scientific Review, National Center for Complementary & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov.*

Dated: January 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–378 Filed 1–29–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Medication Development Research Subcommittee, March 13, 2008, 8 a.m. to March 13, 2008, 5 p.m. Omni Shoreham Hotel, 2500 Calvert Street, NW. Washington, DC, 20008 which was published in the **Federal Register** on January 9, 2008, Volume 73, Number 6.

The date and the time of the meeting were changed to March 12, 2008, 5 p.m. to March 13, 2008, 5 p.m. The meeting is closed to the public.

Dated: January 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–379 Filed 1–29–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Data Coordinating Center RFA DK07–008.

Date: March 6, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: D. G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Limited Competition Chronic Kidney Disease in Children Prospective Cohort Study.

Date: March 14, 2008.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Chronic Renal Disease Cohort Limited Competition.

Date: March 28, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–380 Filed 1–29–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2007–0020]

Privacy Act of 1974: ICE Pattern Analysis and Information Collection (ICEPIC) System of Records

AGENCY: Department of Homeland Security.

ACTION: Privacy Act System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security, U. S. Immigration and Customs Enforcement, is publishing this notice of system of records for the Department's ICE Pattern Analysis and Information Collection (ICEPIC) system. A proposed rulemaking is also published in this issue of the **Federal Register** in which the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. Due to urgent homeland security and law enforcement mission needs, ICEPIC is currently in limited operation. Recognizing that ICE is publishing a notice of system of records for an existing system, ICE will carefully consider public comments, apply appropriate revisions, and republish the ICEPIC notice of system of records within 180 days of receipt of comments. Additionally, a Privacy Impact Assessment will be posted on the Department's privacy Web site. (See *http://www.dhs.gov/privacy* and follow the link to ''Privacy Impact Assessments.'')

DATES: The established system of records will be effective February 29, 2008. A revised ICEPIC notice of system of records that addresses public comments, responds to OMB direction, and includes other ICE changes will be published not later than August 27, 2008 and will supersede this notice of system of records.

ADDRESSES: You may submit comments, identified by Docket Number DHS 2007–0020 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: For system related questions please contact Steven W. Cooper, Executive Information Unit, Office of Investigations, U.S. Immigration and Customs Enforcement, 425 I Street, NW, Washington, DC 20536. For privacy issues please contact: Hugo Teufel III, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Part of ICE's mission is to investigate possible violations of U.S. immigration law. Many times this involves hours of analysis regarding a particular case or operation. As part of the investigative

process analysts must identify and understand the relationships among individuals, places, and items that are the subject of investigation.

The ICEPIC Tool builds on earlier ICE initiatives to verify the identity of Special Interest Aliens (SIAs), as designated by the Department of State. In 2003 ICE implemented the National Security Entry Exit Registration System (NSEERS) to manage the growing collection of over 500,000 SIA records. National and international terrorist threats in the 2004 and 2005 timeframe resulted in ICE reviewing not only the SIA records in NSEERS, but also the records of aliens registered with the Student and Exchange Visitor Information System (SEVIS) and entered into the United States Visitor and Immigrant Status Indicator Technology (US VISIT) system as well. Since 2005, ICE's expanding law enforcement role has demanded increasingly sophisticated tools to detect potential violations of immigration and criminal law and terrorist threats.

ICE analyzes relationships among individuals using conventional database queries and link analysis tools; however, traditional link analysis tools rely on the consistency of key data, such as names and addresses, to establish relationships. If the source data is of poor quality or an individual seeks to conceal his/her identity through intentional, but subtle, changes to names, addresses, and other biographic information, then conventional tools are less effective at recognizing relationships. As a result, investigators and analysts may miss important relationships among suspects, family members, other associates, organizations, addresses, and vehicles.

ICEPIC allows ICE law enforcement agents and analysts to look for non-obvious relationship patterns among individuals and organizations that are indicative of violations of the customs and immigration laws that are enforced by DHS agencies, as well as possible terrorist threats and plots. From these relationships, ICE agents can develop specific leads and law enforcement intelligence for active and new investigations. Identified relationships can also be recorded for reuse in subsequent investigative analyses. The information processed by ICEPIC comes from existing ICE investigative and apprehension records systems, as well as immigration and alien admission records systems. All ICEPIC activity is predicated on ongoing and valid law enforcement investigations.

ICEPIC includes capabilities that assist investigators to record results of analyses performed in support of investigations and to capture additional relevant information obtained from outside sources. The information collected by, on behalf of, in support of, or in cooperation with DHS and its components may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies or organizations.

ICEPIC assists ICE investigators by automating five business processes:

A. Analysis of leads, law enforcement and intelligence reports, referrals, and processing of queries of ICE and DHS information to locate relevant records and produce reports;

B. Integration and resolution of information from multiple ICE and DHS databases to provide leads for law enforcement investigations and disruption of potential terrorist activities;

C. Initiation of analyses that support investigative cases in DHS and field offices and recording the results of beneficial analyses;

D. Production and dissemination of target indicator profiles and other law enforcement intelligence; and

E. Management of analysis workflows and information resources.

Information that is produced or maintained by ICEPIC is used by ICE agents in headquarters and field offices to identify potential violations of customs or immigration law, confirm suspected violations, or investigate potential terrorist threats. ICEPIC is used to identify relationships among different individuals or among records for the same individual from multiple sources when an individual or individuals have been identified as subjects, leads, or associates in an investigative case. In cases where DHS determines that the information would assist in the enforcement of civil or criminal laws, ICE may share the information with the appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations. Information may also be used by national intelligence community agencies where analysis of the records indicates a potential or confirmed threat of terrorist activity justifying further analysis or investigation. ICE may also share this information with the FBI when ICE becomes aware of information that may be related to an individual in the Terrorist Screening Database.

The Department of Justice (DOJ) and other Federal agencies may use reports generated through ICEPIC in the review, settlement, and prosecution of claims, complaints, and lawsuits involving matters over which ICE exercises jurisdiction or when conducting litigation or in proceedings before any court, adjudicative, or administrative body. This includes any litigation matters where ICE, DOJ, or an employee in his or her official capacity in support of ICE, the United States, or any agency thereof is involved.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other particular assigned to the individual. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.21 and DHS will review each request on a case-by-case basis in light of exemptions taken by ICEPIC.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

System of Records

DHS–ICE–002

SYSTEM NAME:

ICE Pattern Analysis and Information Collection.

SECURITY CLASSIFICATION:

Sensitive But Unclassified

SYSTEM LOCATION:

U.S. Department of Homeland Security Immigration and Customs Enforcement Headquarters data facilities are located in the Virginia suburbs of Washington, DC, with continuity of operations sites in remote locations within the continental United States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals or entities who are associated with investigations, inspections, apprehensions, detentions, patrols, removals, examinations, naturalizations, intelligence production, legal proceedings, or other operations that implement and enforce the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) and related treaties, statutes, orders, and regulations.

B. Individuals or entities who are associated with investigations, inspections, apprehensions, detentions, law enforcement intelligence production, legal proceedings or other operations that implement and enforce immigration- and customs-related laws, specifically those found in Titles 8, 19, and 31 of the United States Code.

C. Individuals who are respondents, representatives, or witnesses in administrative, civil penalty, or forfeiture proceedings, or defendants, representatives or witnesses in criminal prosecution or extradition proceedings under immigration or customs-related laws or regulations.

D. Associates of the above individuals and entities who are sources of information relevant to an investigation.

E. Individuals wanted by other law enforcement agencies, including Federal, State, local, tribal, foreign and international, or individuals who are the subject of inquiries, lookouts, or notices by another agency or a foreign government.

F. Individuals, including U.S. Citizens, Lawful Permanent Residents, immigrants and non-immigrants who apply for immigration benefits and/or any form of automated or other expedited inspection for verifying eligibility to cross the borders into the United States.

G. Non-United States citizens and Non-Lawful Permanent Residents who present themselves for entry into and/or exit from the United States, including individuals subject to the requirements and processes of US–VISIT. Individuals covered under US–VISIT include those who are not United States citizens at the time of entry or exit or who are United States citizens or Lawful Permanent Residents who have not identified themselves as such at the time of entry or exit.

H. Individuals unlawfully present in the United States to include persons who have failed to maintain a valid immigration status as well as persons who are otherwise unlawfully present in the United States.

I. Nationals of countries that threaten to wage war, or are at war with the United States, and individuals required to register as agents of foreign governments in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records come directly from information collected from individuals during DHS or federal enforcement encounters, from information provided by individuals when applying for U.S. immigration benefits or temporary admission to the U.S., or from persons entering or leaving the U.S. Analyzed records include biographical data; biometric identifiers, including fingerprints and photographs; and information or data related to the individual subject's case, including immigration history, alien registration, and other identification or record numbers. The system maintains records used to show relationships across all categories of records. These records include:

A. Information collected from individuals during a DHS enforcement encounter or investigation, including, but not limited to: Names, aliases, dates of birth, phone numbers, addresses, nationality, identification numbers such as A-File Number, Social Security Number, or driver's license number, and physical characteristics. This information is maintained in the Treasury Enforcement Communications System (TECS), last published October 18, 2001, 66 FR 52984 and in the DHS Enforcement Operational Immigration Records (ENFORCE) system, last published DHS/ICE–CBP–CIS–001–03, ENFORCE/IDENT March 20, 2006, 71 FR 13987;

B. Information collected about individuals during a DHS enforcement encounter or investigation, or provided by other State, local, tribal Federal, or foreign law enforcement or other relevant agencies, including, but not limited to: Names, aliases, nationality, dates of birth, phone numbers, addresses, affiliations, identification numbers such as A-File Number, Social Security Number, or driver's license number, or physical characteristics. This information is maintained in TECS;

C. Biographic information such as names, aliases, dates of birth, phone numbers, addresses, nationality, identification numbers such as A-File Number, Social Security Number, or driver's license number, and immigration violation information obtained from the DHS ENFORCE or successor systems;

D. Biographic information such as names, aliases, dates of birth, phone numbers, addresses, nationality, identification numbers such as A-File Number, Social Security Number, or driver's license number, and descriptive information obtained from U.S. Citizenship and Immigration Services (USCIS) immigration benefits applications and application review findings;

E. Information obtained from other Federal or foreign law enforcement agencies about individuals known or reasonably suspected to be or to have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism;

F. Biographic information and other information such as name, address, and phone number obtained from commercial data providers for individuals identified as prospective leads or suspects in active investigations; and

G. Biographic information such as names, aliases, dates of birth, phone numbers, addresses, nationality, identification numbers such as A–File Number, Social Security Number, or driver's license number, and descriptive information obtained from U.S. Customs and Border Protection (CBP) encounters at Ports of Entry during border crossings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. § 301; 8 U.S.C. § 1103; 8 U.S.C. § 1225(d)(3); 8 U.S.C. § 1324(b)(3); 8 U.S.C. § 1357(a); 8 U.S.C. § 1360(b); 19 U.S.C. § 1; and 19 U.S.C. § 1509.

PURPOSE:

The purpose of the ICEPIC system is to provide the information technology infrastructure products and services that enable investigators and analysts within ICE and other DHS components to recognize non-obvious person, address, and organizational relationships within existing DHS records systems, and to develop timely, actionable leads needed to accomplish ICE law enforcement and counter-terrorism mission objectives. All ICEPIC activity is predicated on ongoing and valid law enforcement investigations. Current manual and automated processes for research, collation, organization, validation, and analysis of the information in numerous DHS alien registration, entry, intelligence, lookout, and enforcement systems can accomplish similar objectives, but are cumbersome, time-consuming, and error-prone. ICEPIC will provide a reliable, responsive, and secure system to support production of actionable leads and law enforcement intelligence for DHS components and other Federal entities, as appropriate and in conformance with this system of records notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ) or other Federal agency in the review, settlement, defense, and prosecution of claims, complaints, and lawsuits involving matters over which ICE exercises jurisdiction, or when conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS; or (b) any employee of DHS in his/her official capacity; or (c) any employee of ICE in his/her individual capacity, where DOJ or DHS has agreed to represent the employee; or (d) the United States, or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of domestic and foreign civil or criminal laws.

C. To U.S. agencies of the national intelligence community or through established liaison channels to selected foreign governments where analysis of the records indicates a potential or confirmed threat of terrorist activity justifying further analysis or investigation.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function. Those provided information under this routine use are subject to the same Privacy Act limitations as are applicable to DHS officers and employees.

E. To the National Archives and Records Administration (NARA) or other Federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Those provided information under this routine use are subject to the same Privacy Act limitations as are applicable to DHS officers and employees.

G. To appropriate Federal, State, tribal, local, or foreign law enforcement, intelligence, and regulatory agencies, foreign governments, and international law enforcement organizations, for example: the Department of Defense; the Department of State; the Department of the Treasury; the Central Intelligence Agency; the Selective Service System; the United Nations; and INTERPOL; as well as to other individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS' jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when DHS deems that such disclosure is necessary to elicit information required to accomplish the purposes described in this paragraph.

H. To an appropriate Federal, State, tribal, local, or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence, but only when the disclosure is appropriate to the proper performance of the official duties of the person receiving the disclosure.

I. To an appropriate Federal, State, local, tribal, or foreign government agency, international organization, or private organization where the President or the Secretary of Department of Homeland Security has declared an event to be a National Special Security Event, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit, but only when disclosure is appropriate to the proper performance of the official duties of the person making the request.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically at one or more ICE data centers that are located in secure facilities. The records are stored on magnetic disc, tape, digital media, and optical media, and may also be retained in hard copy format in secured file folders.

RETRIEVABILITY:

Data are retrievable by an individual's name, Social Security Number, A–File Number, or other unique identifier, as well as by non-identifying information such as address or date of entry into the United States.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws and policies, including the DHS information technology security policies and the Federal Information Security Management Act (FISMA). All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature, which provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

The system also maintains a real-time auditing log of individuals who access and update the system. Audit logs are reviewed and analyzed for unauthorized and inappropriate system usage. DHS will investigate instances of unauthorized or inappropriate access or use of the system and take appropriate disciplinary actions where violations have occurred.

RETENTION AND DISPOSAL:

The National Archives Records Administration has not yet approved a retention schedule for this system of records. Because a history of Federal law enforcement interactions with persons and organizations is essential to detecting criminal and terrorist patterns of behavior and locating leads in current investigations, ICE has proposed to retain records in ICEPIC for ten (10) years from ICE's last use of the individual's data, and then archive the information for an additional five (5) years. After the five (5) year period, information will be destroyed unless it has become relevant to a legal action, at which point the retention schedule would reset.

SYSTEM MANAGER(S) AND ADDRESS:

Steven W. Cooper, Executive Information Unit, Office of Investigations, U.S. Immigration and Customs Enforcement, 425 I St., NW., Washington, DC 20536, telephone: (202) 616–7571.

NOTIFICATION PROCEDURES:

Pursuant to 5 U.S.C. 552a (j) and (k), this system of records may not be accessed by members of the public for purposes of determining if the system contains a record pertaining to a particular individual. Nonetheless persons may seek access to records maintained in ICEPIC as outlined in the Record Access Procedures section below. Requests for such access will be reviewed on a case-by-case basis.

RECORD ACCESS PROCEDURES:

ICEPIC is exempt from record access procedures pursuant to 5 U.S.C. 552a (j) and (k). Nonetheless persons may seek access to records maintained in ICEPIC by contacting FOIA/Privacy Act request to the Office of Investigations, Information Disclosure Unit, 425 I St., NW., Washington, DC 20536 and using the form found at *http://www.ice.gov/doclib/g-639.pdf*. Requests for such access will be reviewed on a case-by-case basis to ensure that the records meet the requirements set out by the Privacy Act.

CONTESTING RECORD PROCEDURES:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G) and (H), and (f) pursuant to 5 U.S.C. 552a(j)(2), (k)(2); however, requests for amendment of records may be reviewed on a case-by-case basis. Follow the ''Record Access Procedures'' noted above.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from DHS investigators, other DHS law enforcement officers, other Federal, State, foreign and tribal law enforcement and intelligence agencies, public records, commercial data aggregators, and immigration and alien admission records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). In addition, to the extent a record contains information from other exempt systems of records, ICE will rely on the exemptions claimed for those systems.

Issued in Arlington, VA.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–1556 Filed 1–29–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–5191–N–03]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Demonstration Program for Elderly Housing for Intergenerational Families

AGENCY: Office of Housing Assistance and Grant Administration, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 13, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act Compliance Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian.Deitzer@HUD.gov*; telephone (202) 402–2374. 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 U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a new collection for selecting applicants for the Demonstration Program for Elderly Housing for Intergenerational Families grants.

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: Demonstration Program for Elderly Housing for Intergenerational Families.

Description of Information Collection: This is a new collection for selecting applicants for the 202 Program for Supportive Housing for the Elderly grants which will be part of the 2008 Notice of Funding Availability (NOFA). These grants are to provide assistance for a demonstration program to expand the supply of intergenerational dwelling units for very low income grandparent(s) or relative(s) heads of households 62 years of age or older raising a child who is not attending school and is not more than 18 years of age or is attending school and is not more than 19 years of age. The family must meet the age requirements to be eligible for an intergenerational dwelling unit. Project Rental Assistance (PRAC) funds are available for eligible section 202 projects that are funded

under this program to cover the difference between the HUD-approved operating costs of the project and the tenant's contribution toward rent (30 percent of their adjusted monthly income). The Demonstration Program application submission requirements are necessary to assist HUD in determining an applicant's eligibility and ability to develop and operate housing for intergenerational families.

New collections would include the need for supportive housing for the target population in the area to be served, site control and suitability of the site, and adequacy of the provision of supportive services and of the proposed project; and general application requirements, certifications and resolutions.

OMB Control Number: 2502–Pending.

Agency Form Numbers: SF–424, SF–424–Supplemental, SF LLL, HUD–2880, HUD–2991, HUD–92041, HUD–92042, HUD–96010–I, HUD 27300, Form HUD–96011, HUD–2990, and HUD–2994–A.

Members of Affected Public: Not-for-profit institutions.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 33, number of respondents is 11 frequency response is 1 per annum, and the total hours per respondent is 363.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 24, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–1579 Filed 1–29–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–01]

Application for Technical Assistance for Community Planning and Development (CPD) Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application for technical assistance funds with which CPD grantees will engage providers to supply expertise to shape their resources into effective, coordinated, neighborhood and community development strategies to revitalize and physically, socially and economically strengthen their communities.

DATES: *Comments Due Date:* February 29, 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 (2506–0166) 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) 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: Application for Technical Assistance for Community Planning and Development (CPD) Programs

OMB Approval Number: 2506–0166.

Form Numbers: SF–424, HUD–424CB, HUD–424CBW, SF 424 Supplement, SF–LLL, HUD–2880, HUD–2994–A, SF–269A.

Description of the Need for the Information and Its Proposed Use:

Application for technical assistance funds with which CPD grantees will engage providers to supply expertise to shape their resources into effective, coordinated, neighborhood and community development strategies to revitalize and physically, socially and economically strengthen their communities.

Frequency of Submission: On occasion, Quarterly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	286	11.78		6.06		20,411

Total Estimated Burden Hours: 20,411.

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: January 24, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–1580 Filed 1–29–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish And Wildlife Service

[FWS–R2–ES–2008–N0002], [20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before February 29, 2008.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. 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. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103 (505) 248–6920.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–676811

Applicant: Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Applicant requests an amendment to the permit for research and recovery purposes to conduct recovery activities for the Devil's Hole pupfish (*Cyprinodon diabolis*) at Willow Beach National Fish Hatchery in Arizona and Dexter National Fish Hatchery and Technology Center in New Mexico.

Permit TE–053085

Applicant: Bureau of Reclamation, Boulder City, Nevada.

Applicant requests an amendment to a current permit to conduct presence/absence surveys for research and recovery purposes for the following species: Bonytail chub (*Gila elegans*) and razorback sucker (*Xyrauchen texanus*) within Arizona, Nevada, and California.

Permit TE–037155

Applicant: Bio-West, Inc., Round Rock, Texas.

Applicant requests an amendment to a previous permit for research and recovery purposes to conduct presence/absence surveys for spikedace (*Meda fulgida*) within Arizona.

Permit TE–170625

Applicant: Daniel Howard, Tulsa, Oklahoma.

Applicant requests a new permit to conduct presence/absence surveys for research and recovery purposes for American burying beetle (*Nicrophorus americanus*) within Oklahoma.

Permit TE–030115

Applicant: Bureau of Land Management, Safford Field Office, Safford, Arizona.

Applicant requests an amendment to an existing permit for research and recovery purposes to conduct presence/absence surveys for the following species: Gila Chub (*Gila intermedia*) and Peebles Navajo cactus (*Pediocactus peeblesianus* var. *peeblesianus*) within Arizona.

Permit TE–037780

Applicant: Texas Westmoreland Coal Company, Jewett, Texas.

Applicant requests an amendment to an existing permit for research and recovery purposes to conduct presence/absence surveys for interior least tern (*Sterna antillarium*) within Texas.

Permit TE–821356

Applicant: Grand Canyon Monitoring and Research Center (USGS), Flagstaff, Arizona.

Applicant requests an amendment to an existing permit for research and recovery purposes to conduct presence/absence surveys for humpback chub (*Gila cypha*) within Arizona.

Authority: 16 U.S.C. 1531 et seq.

Dated: January 8, 2008.

Christopher T. Jones,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. E8–1604 Filed 1–29–08; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N007], [20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a) (1) (A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before February 29, 2008. Comments must be submitted before midnight (Eastern Standard Time) on the date specified in the **DATES** section.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. 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. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, P.O. Box 1306, Room 4102,

Albuquerque, New Mexico 87103, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–169770

Applicant: New Mexico Interstate Stream Commission, Santa Fe, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of Rio Grande silvery minnow (*Hybognathus amarus*) within New Mexico.

Permit TE–166070

Applicant: New Mexico Department of Game and Fish, Santa Fe, New Mexico.

Applicant requests an amendment to an existing permit for research and recovery purposes to conduct presence/absence surveys of Gila chub (*Gila intermedia*) within New Mexico.

Permit TE–168189

Applicant: Michael Green, Texas State University, San Marcos, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of black capped vireo (*Vireo atricapilla*) within Texas.

Permit TE–168185

Applicant: Cox McLain Environmental Consulting, Inc., Austin, Texas.

Applicant requests a new permit to conduct presence/absence surveys for research and recovery purposes for the following species: black capped-vireo (*Vireo atricapilla*), golden-checked warbler (*Dendroica chrysoparia*), Attwater's prairie chicken (*Tynpanuchus cupido attwateri*), Northern aplomado falcon (*Falco fernoralis septentrionalis*), piping plover (*Charadrius melodus*), red-cockaded woodpecker (*Picoides borealis*), interior least tern (*Sterna antillarium*) and Houston toad (*Bufo houstonensis*) within Texas.

Permit TE–036436

Applicant: Environmental Planning Group, Tucson, Arizona.

Applicant requests an amendment to a previous permit for research and recovery purposes to conduct presence/absence surveys for lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) within Arizona.

Permit TE–168688

Applicant: Sarah Itz, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species: black-capped vireo (*Vireo atricapilla*) and golden-checked warbler (*Dendroica chrysoparia*) within Texas.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 14, 2008.

Christopher T. Jones,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E8–1605 Filed 1–29–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1050–HF–PALE; NV–030–04–003; 8–08807; TAS: 14X1109]

Notice to the Public of Emergency Closure of Public Lands, Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Certain public lands located in the Pine Nut Mountain range of Douglas County, Nevada, will be temporarily closed to motorized vehicles. An emergency closure is necessary to prevent further adverse effects to paleontological resources in the Ruhenstroth paleontological area where resource damage is occurring. The potential for additional adverse effects as a result of unrestricted off-highway vehicle use within the area is substantial and significant. Major roads in the area will remain open.

DATES: The emergency closure becomes effective on January 30, 2008.

FOR FURTHER INFORMATION CONTACT: James Carter, (775) 885–6109.

SUPPLEMENTARY INFORMATION: This closure is authorized under the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* and 43 CFR 8341.2. Any person who fails to comply with a closure or restriction order is subject to arrest and fines in accordance with applicable provisions of 18 U.S.C. 3571 and/or imprisonment not to exceed 12 months. This closure applies to all forms of motorized vehicle use excluding (1) any emergency, law enforcement or other BLM vehicle while being used for emergency or administrative purposes, and (2) any vehicle whose use is expressly authorized in writing by the Manager, Carson City Field Office. The public lands affected by the closure are located east of Gardnerville, Nevada and Highway 395, in the Pine Nut Mountain Range.

Mount Diablo Meridian, Nevada

T.12 N., R. 21 E.
secs. 7 and 8;
portions of secs. 6, 18, 19, and 23.

The area described contains 2,340 acres, more or less.

Maps showing these lands are available at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701.

The closure will remain in effect for five months and may be renewed until the Pine Nut Mountains Resource Management Plan Amendment Record of Decision is signed.

Authority: (43 CFR 8341.2)

Dated: January 23, 2008.

Donald T. Hicks,

Manager, Carson City Field Office.

[FR Doc. E8–1571 Filed 1–29–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–DF; HAG 08–0050]

Southeast Oregon Resource Advisory Council: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of the Interior Bureau of Land Management (BLM) announces the following advisory committee meeting:

Name: Southeast Oregon Resource Advisory Council (SEORAC).

Time and Date: 8 a.m. February 21, 2008; 8 a.m. February 22, 2008.

Place: BLM, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738.

Status: Open to the public.

Matters to be Considered: The SEORAC will consider fire rehabilitation initiatives, Sagebrush Cooperative progress, Southeast Oregon Geographic Information Systems mapping status, fire and fuel management practices, and transportation planning strategies for lands administered by the Oregon and Washington BLM and Fremont-Winema National Forests. Council members

will also hear updates from designated federal officials, provide orientation to new members, review the new Charter and Standard Operating Procedures, give liaison and subgroup reports, establish meeting priorities and develop agenda items for the next meeting. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 11:30 a.m. on February 22, 2008. Those who verbally address the SEORAC during the public comment period are asked to provide a *written* statement of their comments or presentation. Unless otherwise approved by the SEORAC chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

Contact Person for More Information: Program information, meeting records and a roster of council members may be obtained from Scott Stoffel, public affairs specialist, 1301 S. G Street, Lakeview, OR 97630; (541) 947–6237. The meeting agenda will be posted at *http://www.blm.gov/or/rac/seorrac-minutes.php* when available.

Should you require reasonable accommodation, please contact the BLM Lakeview District at (541) 947–2177 as soon as possible.

Shirley Gammon,

District Manager.

[FR Doc. E8–1566 Filed 1–29–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1430–ES; COC–63837]

Notice of Realty Action: Termination of Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This notice terminates in part the existing classification for 102.91 acres of public land that was classified as suitable for lease and conveyance under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The termination will allow the Bureau of Land Management (BLM) to offer a 6.5-acre parcel for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 and 1713), as amended. Termination of the classification in part is consistent with BLM policies and the BLM Colorado Northeast Resource Management Plan, dated September 16, 1986, and has been reviewed with local officials.

EFFECTIVE DATE: February 29, 2008.

FOR FURTHER INFORMATION CONTACT: Debbie Bellew, Realty Specialist, at 719–269–8514 or by e-mail *dbellew@co.blm.gov*.

SUPPLEMENTARY INFORMATION: By notice published in the **Federal Register** (70 FR 33190) on June 7, 2005, a 102.91-acre parcel of public land under the jurisdiction of the BLM was classified as suitable for lease and conveyance under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). It has been determined to be in the public interest to partially terminate this classification to permit the BLM to offer a 6.5-acre parcel for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 and 1713), as amended.

Notice: Pursuant to 43 CFR 2091.2–2, the classification is terminated as to the following described parcel upon publication of this notice in the **Federal Register**:

Sixth Principal Meridian, Colorado,

T. 1 N., R. 73 W.,
Section 12: Lot 67.
Containing 6.5 acres.

The above described land is hereby made available for sale in accordance with Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 and 1713), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. In the event the 6.5-acre parcel is not sold, this termination shall have no force or effect.

Roy L. Masinton,

Royal Gorge Field Office Manager.

[FR Doc. E8–1606 Filed 1–29–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–160–08–1110-PI]

Notice of Order Closing Public Lands to Motorized Use, Gunnison and Saguache Counties, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Closure.

SUMMARY: To protect fragile, wintering mule deer, bighorn sheep, pronghorn antelope, and elk herds, the Bureau of Land Management (BLM) is closing to motorized use this winter, certain public lands in the Gunnison Basin. This action is in coordination with the Colorado Division of Wildlife's emergency winter feeding program for big game herds in the Gunnison Basin. The BLM and CDOW have cooperatively identified winter feeding areas and procedures, as well as area closures in conjunction with the feeding program. Extreme snow depths, combined with extreme cold temperatures, have prompted the closure and emergency feeding decisions.

DATES: The closure for this winter will take effect immediately and will end on April 30, 2008 unless terminated sooner by the BLM Authorized Officer.

ADDRESSES: The address of the BLM Authorized Officer is: Field Manager, Gunnison Field Office, 216 N. Colorado St., Gunnison, Colorado 81230. Maps of the closure areas will be available at the Gunnison Field Office, 216 N. Colorado St., Gunnison, Colorado 81230. Additionally, signs will be posted at places near and/or within the areas to which the closure applies.

FOR FURTHER INFORMATION CONTACT: Kenny McDaniel, Field Manager, Gunnison Field Office, 216 N. Colorado St., Gunnison, Colorado 81230; telephone (970) 641–0471.

SUPPLEMENTARY INFORMATION: Due to extreme snow depths and extreme cold temperatures, big game in the Gunnison Basin are highly stressed. The Colorado Division of Wildlife has begun an emergency winter feeding program for mule deer, bighorn sheep, pronghorn antelope, and elk herds. The Gunnison Resource Area Approved Resource Management Plan (RMP) specifically provides for winter closures to protect wintering big game when necessary. The purpose of this motorized use closure is to prevent undue and unnecessary disturbance and harm to wintering mule deer, bighorn sheep, pronghorn antelope, and elk herds concentrating on crucial winter range. This order pertains to identified areas (shown on the maps) on public lands in Gunnison and Saguache Counties, Colorado, thus described:

Public Lands within New Mexico Principal Meridian, north of U.S. Highway 50:

T.49N., R.4W., secs. 13–14, sec. 24, E½;
T.49N., R.3W., secs. 1–26;
T.50N., R.2W., sec. 12, south of West Antelope Creek, secs. 13–14, 23–26, 35–36;
T.49N., R.2W., secs. 1–24, sec.30;
T.50N., R.1W., sec. 17, south of West Antelope Creek, secs. 20–21, 26–33;
T.49N., R.1W., secs. 4–6;
T.50N., R.1E., secs. 1–4, 9–16, 19–30, 32–36;
T.49N., R.1E.. secs. 1–3, 12;
T.50N., R.2E., secs.17–21, 25–36;
T.49N., R.2E., secs. 1–14;
T.50N., R.3E., secs. 28–33;
T.49N., R.3E., secs. 3–10, 13–29, 33–36;
T.48N., R.3E., sec. 1;
T.49N., R.4E., secs. 19, 29–32;
T.48N., R.4E., secs. 4–9, 15.

Public Lands within New Mexico Principal Meridian, south of U.S. Highway 50, west of Razor Creek, north of Camp Kettle Gulch/

Poverty Gulch Road, and east of Colorado Highway 114:

T.49N., R.2E., secs. 21–23, 25–28, 33–36;
T.48N., R.2E., secs. 1–4, 9–16, 21–27, 35–36;
T.49N., R.3E., secs. 30–32;
T.48N., R.3E., secs. 4–8, 17–20, 29–31.

Exceptions to this temporary motorized use closure include the following:

1. BLM Road #3103 (North Parlin Flats Road) to the U.S. Forest Service boundary is open to motorized use as seasonal conditions allow.

2. Any Federal, State, or local officer or employee acting within the scope of their duties, members of any organized rescue in the performance of an official duty, or any person holding written permission from the BLM.

3. Persons or agencies holding a special use permit or right-of-way for access to exercise their permit within the restricted area, for purposes related to access for maintenance and operation of authorized facilities, and provided such motorized use is limited to the routes specifically identified in the special use permit or right-of-way.

Authority

This emergency closure order is issued under the authority of 43 Code of Federal Regulations 8364.1 and 9268.3.

Penalties: Any person who knowingly and willfully violates any closure order issued under 42 CFR 8364.1 shall be subject to the penalties provided for in CFR Title 43, subpart 8360.0–7, and may be fined not more than $1,000 and/or imprisoned for not more than 12 months. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: January 22, 2008.

Kenny McDaniel,

Field Manager, Gunnison Field Office.

[FR Doc. E8–1551 Filed 1–29–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 142589]

Public Land Order No. 7688; Withdrawal of Public Lands for the Protection of Yermo xanthocephalus Plant Habitat; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 360 acres of public land from surface entry and mining for a period of 20 years to protect *Yermo xanthocephalus* (Desert yellowhead) plant habitat.

EFFECTIVE DATE: January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

SUPPLEMENTARY INFORMATION: The land has been and will continue to remain open to mineral leasing.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (2000)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect *Yermo xanthocephalus* plant habitat:

Sixth Principal Meridian

T. 31 N., R. 95 W.,
Sec. 27, SW¼;
Sec. 34, NW¼ and W½W½NE¼.

The area described contains 360.00 acres in Fremont County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: January 10, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–1639 Filed 1–29–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–065–5870–EU; N–76426; 8–08807; TAS: 14X5260]

Notice of Realty Action: Direct (Non-Competitive) Sale of Public Lands, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: One parcel of public land (N–76426) located in Beatty, Nevada, and totaling 0.46 acres, has been examined and found suitable for disposal utilizing direct sale procedures. The authority for the sale is under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719.

DATES: Interested parties may submit written comments to the Bureau of Land Management (BLM) regarding the proposed sale on or before March 17, 2008.

ADDRESSES: Mail written comments to the BLM Assistant Field Manager, Tonopah Field Station, 1553 South Main Street, P.O. Box 911, Tonopah, NV 89049.

FOR FURTHER INFORMATION CONTACT: Alan Buehler, (775) 482–7800. For general information on BLM's public land sale procedures, refer to the following Web address: *http://www.blm.gov/wo/st/en.html.*

SUPPLEMENTARY INFORMATION: The sale parcel is located in Southern Nye County, section 6, within the most southeast corner section and touches the southeast corner at one point. A portion of the parcel lies within the Nevada Department of Transportation (Nev 042808) right-of-way for United States (U.S.) Highway 95.

The following described public land is being considered for sale:

Mount Diablo Meridian, Nevada

T. 12 S., R. 47 E.,
Sec. 6, lot 9.
The area described contains 0.46 acres, more or less.

This parcel of public land is proposed for sale to the Stagecoach Hotel and Casino, owned by Edward Ringle of Beatty, Nevada at no less than the appraised fair market value (FMV) of $1,300, as determined by the authorized officer after appraisal. An appraisal report has been prepared by a State-certified appraiser for the purposes of establishing the FMV.

Consistent with Section 203 of FLPMA, a tract of public land may be sold where, as a result of approved land use planning, the sale of the tract meets the disposal criteria of that section. The lands described above are identified as suitable for disposal in the BLM Tonopah Resource Management Plan (RMP) approved on October 2, 1997. The proposed disposal action is consistent with the objectives, goals, and decisions of the RMP.

The disposal (sale) of the parcel would serve an important public

objective by resolving the management costs of an inadvertent unauthorized use of the public lands. As such, these lands meet the criteria under 43 CFR 2710.0–3(a)(3) which states ''Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.'' The sale of these lands meet the criteria under 43 CFR 2711.3–3(a) for direct sale, to be used where necessary to protect existing equities in the land, to resolve inadvertent unauthorized use and occupancy of the lands. A small portion of the hotel/casino's northeast corner has expanded onto the subject land. The subject parcel is being used to house the hotel/casino's propane tanks and waste disposal dumpsters, as well as for storage, parking lot, and delivery service. The size of the unauthorized use has been reduced to the smallest aliquot part identified through development of a supplemental plat. These lands are not required for Federal purposes. Direct sale would not change the status quo in that no other land uses are expected for these lands.

The BLM prepared a preliminary Environmental Assessment (EA) and provided a 30-day comment period as part of its public involvement. All comments received have been considered and incorporated into the EA and Decision Record. The EA (NV065–EA07–117), Decision Record, Environmental Site Assessment, map, and approved appraisal report covering the proposed sale, are available for review at the BLM Tonopah Field Station.

Minerals for this parcel will be reserved in accordance with BLM's approved Mineral Potential Report dated January 18, 2005. Information pertaining to the reservation of minerals specific to the parcel is located in the case file and available for public review at the BLM Tonopah Field Station.

Publication of this Notice of Realty Action in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining and mineral laws, except the sale provisions of FLPMA. Upon publication of this Notice of Realty Action and until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregation will terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation or February 1, 2010, whichever occurs first.

Terms and Conditions of Sale:

The patent issued would contain the following numbered reservations, covenants, terms and conditions:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. Oil, gas, and geothermal resources are reserved on the land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights;

3. Those rights for highway purposes which have been granted to Nevada Department of Transportation, its successors and assigns, by right-of-way Nev 042808, pursuant to the Act of August 27, 1958, 72 Stat. 916; 23 U.S.C. 317, for United States Highway 95, extending from Beatty to Goldfield, Nevada;

4. All valid existing rights;

5. The patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the patentee, its employees, agents, contractors, lessees, or any third-party arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now, or in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), pollutant(s) or containment(s), and/or petroleum product or derivative of a petroleum product, as defined by Federal and State environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) Other activities by which solid or hazardous substance(s), pollutant(s) or contaminant(s), and/or petroleum product or derivative of a petroleum product, or waste(s), as defined by Federal and State environmental laws, are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substance(s) or waste(s), pollutant(s) or contaminant(s), and/or petroleum product or derivative of a petroleum product; or (6) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction; and

6. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat.1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No representation, warranty or covenant of any kind, express or implied, will be given or made by the United States, its officers or employees, as to access to or from the above described parcel of land, the title to the land, whether or to what extent the land may be developed, its physical condition or its past, present or potential uses, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable Federal, State and local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.0–6 and 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50 non-refundable filing fee for conveyance of the available mineral interests. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price, the $50 filing fee for conveyance of mineral interests, and for payment of publication costs. The purchaser must

remit the remainder of the purchase price within 180 days from the date the sale offer is received. Payments must be by certified check, postal money order, bank draft or cashiers check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited.

Public Comments

The subject parcel of land will not be offered for sale prior to the 60-day publication of this Notice of Realty Action. For a period until March 17, 2008, interested parties may submit written comments to the BLM Tonopah Field Station. Only written comments submitted by postal service or overnight mail will be considered as properly filed. Facsimiles, telephone calls, and e-mails are unacceptable means of notification.

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.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1–2)

Dated: January 16, 2008.

Thomas J. Seley,

Tonopah Assistant Field Manager.

[FR Doc. E8–1568 Filed 1–29–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (1024–xxxx).

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted on or before March 31, 2008.

ADDRESSES: *Send Comments To:* Angela Walters, Appalachian National Scenic Trail (ANST), NPS, P.O. Box 50, Harpers Ferry, WV 25425; or via phone at 304/535–6278; or via fax at 304/535–6270, or via e-mail at *angela_walters@nps.gov.* Also, you may send comments to Leonard E. Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW. (2605), Washington, DC 20240; or by e-mail at *leonard_stowe@nps.gov.* All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information Contact: Angela Walters, ANST, NPS, P.O. Box 50, Harpers Ferry, WV 25425; or via phone at 304/535–6278; or via fax at 304/535–6270; or via e-mail at *angela_walters@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St., Washington, DC 20005; or via phone at 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov.* You are entitled to a copy of the entire ICR package free of charge.

SUPPLEMENTARY INFORMATION:

Title: Appalachian Train Management Partner Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New Collection.

Description of Need: The National Park Service Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.*, requires that the NPS preserve national parks for the use and enjoyment of present and future generations. The Appalachian National Scenic Trail (ANST) is an unusual unit of the national park system, managed through a decentralized volunteer-based cooperative management system involving eight national forests, six other national park units, agencies in fourteen states, the Appalachian Trail Conservancy, and citizen volunteers in 30 affiliated trail club organizations. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62) requires that the NPS develop goals and measure performance related to these goals. The Appalachian Trail Management Partner Survey (ATMPS) measures performance toward those goals through a partner satisfaction survey. The project is an element of the NPS Strategic Plan and the Department of the Interior (DOI) Strategic Plan.

The purpose of the ATMPS is to track the satisfaction of federal, state, and not-for-profit partner organizations and agencies receiving support from the Appalachian Trail Park Office (ATPO) provides support to State and Federal agencies, and not-for-profit organizations to assist them in fulfilling shared and delegated management activities in the management of the ANST. Achievement of on-the-ground results depends on the actions of these partner agencies and organizations. Progress towards management goals is measured by a satisfaction survey where key partners evaluate quality of support provided by ATPO. This effort is required by GPRA and other NPS and DOI strategic planning efforts. Data from the proposed survey is needed to assess performance regarding NPS GPRA goal IIb0. HPS performance on all goals measured in this study will contribute to DOI Department-wide performance reports.

Automated data collection: This information will be collected via mail-back surveys. No automated data collection will take place.

Description of respondents: Partners in the Appalachian Trail Cooperative Management System.

Estimated average number of respondents: 200 (150 respondents and 50 non-respondents).

Estimated average number of responses: 200 (150 respondents and 50 non-respondents).

Estimated average burden hours per response: 1 minute for non-respondents and 3 minutes for respondents.

Frequency of Response: 1 time of respondent.

Estimated annual reporting burden: 23 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Dated: January 25, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 08–405 Filed 1–29–08; 8:45 am]

BILLING CODE 4312–JR–M

DEPARTMENT OF THE INTERIOR

National Park Service

30 Day Notice of Submission to the Office of Management and Budget (OMB); Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a revision of a currently approved collection of information (OMB #1024–0037).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before February 29, 2008.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0037), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov.* Please also send a copy of your comments to Dr. Francis P. McManamon, Manager, Archeology Program, NPS, 1849 C Street, NW., (2275), Washington, DC 20240; or via phone at 202/354–2123; or via fax at 202/371–5102.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Mudar, Archeologist, Archeology Program, NPS, 1849 C Street, NW., (2275), Washington, DC 20240; or via phone at 202/354–2103; or via fax at 202/371–5102; or via e-mail at *Karen_mudar@nps.gov.* You are entitled to a copy of the entire ICR package free-of-charge. You may obtain this information at the Web site *http://www.reginfo.gov.*

Comments Received on the 60-Day Federal Register Notice: The NPS published a 60-Day Notice to solicit public comments on this ICR in the **Federal Register** on August 1, 2007 (Vol. 72, No. 147, FR 42108). The comment period closed on October 1, 2007. No comments on the 60-Day Notice were received.

SUPPLEMENTARY INFORMATION:

Title: Archeology Permits and Reports—43 CFR Parts 3 and 7.

Bureau Form Number: DI–1926 (permit application).

OMB Number: 1024–0037.

Expiration Date: 1/31/2008.

Type of Request: Revision of a currently approved information collection.

Description of Need: Section 4 of the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470cc), and Section 3 of the Antiquities Act (AA) of 1906 (16 U.S.C. 432), authorize any individual or institution to apply to Federal land managing agencies to scientifically excavate or remove archeological resources from public or Indian lands. Permits for Archeological Investigations ordinarily are requested for conducting scientific research; in conjunction with statutorily required environmental clearance activities prior to commencing a Federal undertaking; or issuing a Federal license or permit for a third party activities such as energy development on public or Indian lands.

ARPA and AA require that Federal land managers issue permits to qualified applicants and place terms and conditions on the permits, including reporting requirements, as set forth in the implementing regulation for the two statutes (43 CFR Part 7 for ARPA; 43 CFR Part 3 for the AA), to ensure that the resources are scientifically excavated or removed and deposited, along with associated records, in a suitable repository for preservation. If the permit is for work on Indian lands, ARPA required that the Federal land manager place terms and conditions on the permit as requested by the Indian landowner and the Indian tribe having jurisdiction over the lands. If the permit may have an effect on a resource on public lands that has Indian tribal religious or cultural importance, ARPA requires that the Federal land manager notify the pertinent tribe for the purpose of developing terms and conditions to be placed on the permit.

Section 13 of ARPA (16 U.S.C. 470II) requires that the Secretary of the Interior report to Congress on archeological activities conducted pursuant to the Act. To fulfill this requirement, the Secretary must collect information about permitted activities from the various land managing agencies and the Department's land managing bureaus.

Information collected responds to statutory requirements that Federal agencies (1) issue permits to qualified individuals and institutions desiring to excavate or remove archeological resources from public or Indian lands and (2) specify terms and conditions, including reporting requirements, in permits. The information collected is reported to Congress and is issued for land management purposes. The obligation to respond is required to obtain a benefit.

Automated data collection: This information will be collected via a paper form. No automated data collection will take place.

Frequency of Collection: Once at the beginning of each archeological project for which a permit is required. An interim and/or final report is required at the end of the archeological project.

Description of Respondents: Businesses, scholarly institutions, and tribes wishing to excavate or remove archeological resources from public or Indian lands.

Estimated average number of respondents: 1,600.

Estimated average number of responses: 3,200.

Estimated average burden hours per respondent: 3 hours. 2.5 hours to complete the application form; 30 minutes to complete the investigative report.

Frequency of Response: On occasion for applications; upon completion of project for report.

Estimated total annual reporting burden: 4,800 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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 OMB in your comments to withhold your personal identifying information from public review, we cannot guarantee that OMB will be able to do so.

Dated: January 25, 2008.

Leonard E. Stowe,

Information Collection Clearance Officer, NPS.

[FR Doc. 08–406 Filed 1–29–08; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Extension of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

EFFECTIVE DATE: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2007. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Conc ID number	Concessioner name	Park
GLAC002–81	Glacier Park, Inc	Glacier National Park.
GLCA002–88	ARAMARK	Glen Canyon National Recreation Area.
GRTE004–98	Triangle X Ranch, LLP	Grand Teton National Park.
YELL001–03	Medcor, Inc	Yellowstone National Park.
NACE006–88	Casco Marina Development, LLC	National Capital Parks—East.
NACC004–89	Landmark Services Tourmobile, Inc	National Capital Parks—Central.
CALO005–07	Morris Marina, Kabin Kamps & Ferry Service, Inc	Cape Lookout National Seashore.
GRSM001–07	Cades Cove Campground Store, Inc	Great Smoky Mountains National Park.
CHIS001–98	Island Packers, Inc	Channel Islands National Park.
LARO00–92	Dakota Columbia Rentals	Lake Roosevelt National Recreation Area.
YOSE003–88	Vaughn, Vaughn & Carter, dba EL Portal Market	Yosemite National Park.
GRBA001–98	Raven's Roost, Inc	Great Basin National Park.
VOYA002–96	Kettle Falls Hotel	Voyageurs National Park.
FIIS003–98	Sayville Ferry Service, Inc	Fire Island National Seashore.
FIIS004–02	Davis Park Ferry Company, Inc	Fire Island National Seashore.
GATE003–98	Marinas of the Future, Inc	Gateway National Recreation Area.
STLI003–89	ARAMARK Sports & Entertainment Services, Inc	Statue of Liberty National Monument.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

Dated: November 26, 2007.

Katherine H. Stevenson,

Acting Assistant Director, Business Services.

[FR Doc. 08–407 Filed 1–29–08; 8:45 am]

BILLING CODE 4310–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Delaware Water Gap National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Announcement of boundary revision and land exchange.

SUMMARY: This notice announces the revision to the boundary of Delaware Water Gap National Recreation Area, pursuant to the Act specified below, to include a 6.67-acre parcel of adjacent land identified as Tract 921 located in Smithfield Township, Monroe County, Pennsylvania, and depicted on a map prepared by the National Park Service entitled ''Delaware Water Gap National Recreation Area Proposed Boundary,'' dated November 7, 2007, and numbered 620/80,055. The United States will acquire Tract 921 in exchange for 1.22 acres of Federal land also located within Monroe County.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Headquarters, River Road at Route 209, Bushkill, PA 18324. Telephone 570–426–2418. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

SUPPLEMENTARY INFORMATION: Public Law 89–158, as amended, authorizes the Secretary of the Interior to make adjustments in the boundary of the national recreation area by publication of the amended description thereof in the **Federal Register** and to acquire, by such means as he may deem to be in the public interest, such lands and interests therein included in the area by reason of the boundary adjustment. Pursuant to that authority, the boundary of the national recreation area is revised to include 6.67 acres located adjacent to the present boundary and identified as Tract 921. Thereafter the Secretary will convey to the Borough of Delaware Water Gap 1.22 acres of Federal land located in the Borough identified as Tract 574 within the Delaware Water Gap National Recreation Area, and, in exchange, the Borough will convey Tract 921 to the United States. Both tracts will remain within the national recreation area boundary. The purpose for the exchange is to convey to the Borough land that has been traditionally used for summer festivals in exchange for land that will provide additional buffer from large-scale housing projects planned for the area.

The maps are on file and available for inspection in the Lands, Concessions and Leasing Division of Realty, National Park Service Northeast Regional Office, U.S. Custom House, 200 Chestnut Street, Room 324, Philadelphia, Pennsylvania 19106-2988, and in the Offices of the National Park Service Department of the Interior, Washington, DC 20240.

Dated: November 9, 2007.

Dennis R. Reidenbach,

Regional Director, Northeast Region.

[FR Doc. E8–1649 Filed 1–29–08; 8:45 am]

BILLING CODE 4312–JG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 12, 2008. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by [Insert date].

Dated: February 14, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

LOUISIANA

Tangipahoa Parish

Randal House, 301 E. Michigan Ave., Hammond, 08000029.

Wascom House, 303 E. Michigan Ave., Hammond, 08000030.

MISSOURI

St. Louis Independent City

Immaculate Conception Church and Rectory, 312 Lafayette Ave., St. Louis (Independent City), 08000031.

Locust Street Automotive District (Boundary Increase), (Auto-Related Resources of St. Louis, Missouri MPS) 3133–3207 & 3150–3202 Locust St., St. Louis (Independent City), 08000032.

NEVADA

Douglas County

Gardnerville Elementary School, (School Buildings in Nevada MPS) 1290 Toler Ave., Gardnerville, 08000033.

Minden Elementary School, (School Buildings in Nevada MPS) 1638 Mono Ave., Minden, 08000034.

NEW YORK

Broome County

Bennett, Abel, Tract Historic District, Bounded by Riverside Dr., Seminary & St. John Aves., & Beethoven St., Binghamton, 08000035.

Marlborough Building, 81 Clinton St., Binghamton, 08000036.

Delaware County

New Kingston Historic District, Co. Rd. 6, New Kingston, 08000037.

Genesee County

Marion Steam Shovel, Gulf Rd., LeRoy, 08000038.

Steuben County

Rowe House, 11763 Rowe Rd., Wayland, 08000039.

Wyoming County

First Universalist Church of Portageville, E. Koy Rd. at NY 19A, Portageville, 08000040.

OREGON

Klamath County

Rim Drive Historic District, PO Box 7, Crater Lake, 08000041.

SOUTH DAKOTA

Day County

Karpen, Anton and Mary Agnes, House, 818 1st St. W., Webster, 08000042.

Williams, John and Kittie, House, 1009 Main St., Webster, 08000043.

Douglas County

Delmont State Bank, 104 W. Main St., Delmont, 08000044.

Grant County

Friewald, Herman, Barn, 48603 148th St., Big Stone City, 08000045.

Gold, James A. and Ida Bell, House, 202 2nd Ave., Big Stone City, 08000046.

Johnson, Emil and Hannah, House, 117 Diggs Ave., Milbank, 08000047.

Koch, George and Mary, Farm, 14849 474th Ave., Twin Brooks, 08000048.

Nelson, Ole, Barn, 14674 454th Ave., Summit, 08000049.

Hamlin County

Hoffelt Drug Store, 212 Main St., Estelline, 08000050.

Marshall County

Britton Clinic and Hospital, NE., corner of Main & 7th Sts., Britton, 08000051.

Glendenning, William T. and Rebecca, House, 204 9th Ave., Britton, 08000052.

McCook County

Kuhle, Henry, House, 321 E. Washington, Salem, 08000053.

Pennington County

Madison, Pap, Cabin, Bounded by W. Main St., St. Joseph St. & West Blvd., Rapid City, 08000054.

Perkins County

Sittner Farm, (German-Russian Folk Architecture TR) RR T18N R15E S5&6, Meadow, 085000055.

Union County

Star School District 61, (Schools in South Dakota MPS) 47446 305th St., Alcester, 08000056.

UTAH

Cache County

Barrett, William & Elizabeth, Farmstead, 20 S. 100 West, Mendon, 08000057.

Forster Hotel, 176 N. 100 West, Mendon, 08000058.

Mendon Station, 95 N. Main St., Mendon, 08000059.

Muir House, 145 S. Main St., Mendon, 08000060.

Whitney, James F. & MaryJane, House, 195 W. 100 North, Mendon, 08000061.

Grand County

Apache Motel, 166 S. 400 East, Moab, 08000062.

VIRGINIA

Arlington County

Arlington Heights Historic District, (Garden Apartments, Apartment Houses and Apartment Complexes in Arlington County, Virginia MPS) Bounded by Arlington Blvd., S. Fillmore St., S. Walter Reed Dr., Columbia Pk., & S. Glebe Rd., Arlington, 08000063.

Monroe Courts Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) 1041–1067 N. Nelson and 1036–1062 & 1033–1055 N. Monroe Sts., Arlington, 08000064.

Virginia Heights Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Bounded by 10th Pl. S., S. Frederick St. & S. George Mason Dr., Arlington, 08000065.

Charlottesville Independent City

Jefferson, Martha, Historic District, Includes parts of Lexington, Locust & Grove Aves., & E. High, Maple, Sycamore, Poplar & Hazel Sts., Charlottesville (Independent City), 08000066.

Chesterfield County

Beach Station, 11410 & 11400 Beach Rd., Chesterfield, 08000067.

Culpeper County

Auburn, 17736 Auburn Rd., Brandy Station, 08000068.

Fauquier County

Catlett Historic District, Prospect Ave., & parts of Gaskins Ln., Tenerife, Elk Run, Old Catlett, Catlett, Old Dumfries & Catlett School Rds., Catlett, 08000069.

Hume Historic District, Hume & Leeds Manor Rds., Hume, 08000070.

Henrico County

Redesdale, 8603 River Rd., Richmond, 08000071.

Henry County

Fieldale Historic District, Roughly bounded by 10th St., VA 682, Co. Rd. 609 & Chestnut St., Fieldale, 08000072.

Lynchburg Independent City

Presbyterian Orphans Home, 150 Linden Ave., Lynchburg (Independent City), 08000073.

Montgomery County

Blacksburg Motor Company, Inc., 400 S. Main St., Blacksburg, 08000074.

Newport News Independent City

Causey's Mill, 11700 Warwick Rd., Newport News (Independent City), 08000078.

Richmond Independent City

Fairmont Historic District, Roughly bounded by 24th, Y, 20th, T, R, Q & P Sts., Fairfield & Carrington Aves., & Mechanicsville Tpk., Richmond (Independent City), 08000075.

Southern Stove Works, Manchester, 516–520 Dinwiddie Ave., Richmond (Independent City), 08000076.

Shenandoah County

Wierman, Benjamin, House, 4049 Flat Rock Rd., Quickburg, 08000077.

Virginia Beach Independent City

Hermitage, The, 4200 Hermitage, Virginia Beach (Independent City), 08000079.

WISCONSIN

Jackson County

Warren & Quachita Valley Railroad Steam Locomotive #1, 123 Hixton Rd., Black River Falls, 08000080.

[FR Doc. 08–353 Filed 1–29–08; 8:45 am]

BILLING CODE 4312–51–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Revision of the Approval of Information Collection Requirements

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 to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection for the following medical reports: Roentgenographic Interpretation (CM–933), Roentgenographic Quality Rereading (CM–933b), Medical History and Examination for Coal Mine Workers' Pneumoconiosis (CM–988), Report of Arterial Blood Gas Study (CM–1159), and Report of Ventilatory Study (CM–2907). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 31, 2008.

ADDRESSES: Mr. Steve Andoseh, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0373, fax (202) 693–1451, *E-mail andoseh.steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Black Lung Benefits Act of 1977 as amended, 20 U.S.C 901 et seq. and 20 CFR 718.102 set forth criteria for the administration and interpretation of x-rays. When a miner applies for benefits, the Division of Coal Mine Workers' Compensation (DCMWC) is required to schedule a series of four diagnostic tests to help establish eligibility for black lung benefits. Each of the diagnostic tests has its own form that sets forth the medical results. The forms are: Roentgenographic Interpretation (CM–933), Roentgenographic Quality Rereading (CM–933b), Medical History and Examination for Coal Mine Workers' Pneumoconiosis (CM–988), Report of Arterial Blood Gas Study (CM–1159), and Report of Ventilatory Study (CM–2907). This information collection is currently approved for use through July 31, 2008.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to determine eligibility for black lung benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Roentgenographic Interpretation (CM–933), Roentgenographic Quality Rereading (CM–933b), Medical History and Examination for Coal Mine Workers' Pneumoconiosis (CM–988), Report of Arterial Blood Gas Study (CM–1159), and Report of Ventilatory Study (CM–2907).

OMB Number: 1215–0090.

Agency Number: CM–933, CM–933b, CM–988, CM–1159, and CM–2907.

Affected Public: Business or other for-profit, and Not-for-profit institutions.

Form No.	Number of respondents	Number of responses	Avg. time per response (min.)	Burden hours
Burden Estimates:				
CM–933	3,500	3,500	5	292
CM–933b	3,500	3,500	3	175
CM–988	3,500	3,500	30	1,750
CM–1159	3,500	3,500	15	875
CM–2907	3,500	3,500	20	1,167
Total	17,500	17,500	14.6	4,259

Total Respondents: 17,500.
Total Annual Responses: 17,500.
Average Time per Response: 14.6 minutes.
Estimated Total Burden Hours: 4,259.
Frequency: On Occasion.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 25, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–1616 Filed 1–29–08; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part.

SUMMARY: The Mine Safety and Health Administration (MSHA) enforces mine operator compliance with mandatory safety and health standards that protect miners and improve safety and health conditions in U.S. Mines. This **Federal Register** Notice (FR Notice) notifies the public that it has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web site at *http://www.msha.gov/indexes/petition.htm.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

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 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. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2006–063–C.
FR Notice: 71 FR 58434 (October 3, 2006).
Petitioner: Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444.
Mine: No. 7 Mine, MSHA I.D. No. 01–01401.
Regulation Affected: 30 CFR 75.364(b)(1) (Weekly examination).

• *Docket Number:* M–2006–066–C.
FR Notice: 71 FR 58433 (October 3, 2006).
Petitioner: Monterey Coal Company, 14300 Brushy Mound Road, Carlinville, Illinois 62626.
Mine: No. 1 Mine, MSHA I.D. No. 11–00726.
Regulation Affected: 30 CFR 75.364(b)(1) (Weekly examination).

• *Docket Number:* M–2006–068–C.
FR Notice: 71 FR 70549 (December 5, 2006).
Petitioner: Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241.
Mine: Bailey Mine, MSHA I.D. No. 36–07230.
Regulation Affected: 30 CFR 75.364(b)(1) (Weekly examination).

• *Docket Number:* M–2007–004–C.
FR Notice: 72 FR 20885 (April 26, 2007).
Petitioner: Oak Grove Resources, LLC, 8800 Oak Grove Mine Road, Adger, Alabama 35006.
Mine: Oak Grove Mine, MSHA I.D. No. 01–00851.
Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

• *Docket Number:* M–2007–006–C.
FR Notice: 72 FR 20887 (April 26, 2007).
Petitioner: Knight Hawk Coal, LLC, 7290 County Line Road, Cutler, Illinois 62238.
Mine: Prairie Eagle Underground Mine, MSHA I.D. No 11–03147.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

• *Docket Number:* M–2007–007–C.
FR Notice: 72 FR 31858 (June 8, 2007).
Petitioner: Mingo Logan Coal Company, P.O. Box 553, Charleston, West Virginia 25322.
Mine: Mountaineer II Mine, MSHA I.D. No. 46–09029.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2007–012–C.
FR Notice: 72 FR 31859 (June 8, 2007).
Petitioner: Eighty-Four Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241.
Mine: Mine 84, MSHA I.D. No. 36–00958.
Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

• *Docket Number:* M–2007–022–C.
FR Notice: 72 FR 31861 (June 8, 2007).
Petitioner: Little Buck Coal Company, 57 Lincoln Road, Pine Grove, Pennsylvania 17963.
Mine: Bottom Split Slope, MSHA I.D. No. 36–09491.
Regulation Affected: 30 CFR 75.1100–2(a)(2) (Quantity and location of firefighting equipment).

• *Docket Number:* M–2007–032–C.
FR Notice: 72 FR 36065 (July 2, 2007).
Petitioner: Chestnut Coal Company, RD 3, Box 142B, Sunbury, Pennsylvania 17801.
Mine: No. 12 Slope, MSHA I.D. No. 36–09493.
Regulation Affected: 30 CFR 75.1200(d), (h), & (i) (Mine map).

• *Docket Number:* M–2007–033–C.
FR Notice: 72 FR 36065 (July 2, 2007).
Petitioner: Chestnut Coal Company, RD 3, Box 142B, Sunbury, Pennsylvania 17801.
Mine: No. 12 Slope, MSHA I.D. No. 36–09493.
Regulation Affected: 30 CFR 75.1202–1(a) (Temporary notations, revisions, and supplements).

• *Docket Number:* M–2007–034–C.
FR Notice: 72 FR 36065 (July 2, 2007).
Petitioner: Chestnut Coal Company, RD 3, Box 142B, Sunbury, Pennsylvania 17801.

Mine: No. 12 Slope, MSHA I.D. No. 36–09493.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

• *Docket Number:* M–2007–037–C.

FR Notice: 72 FR 39464 (July 18, 2007).

Petitioner: Mallie Coal Company, Inc., 8442 Highway 6, Corbin, Kentucky 40701.

Mine: Mine No. 7, MSHA I. D. No. 15–19007.

Regulation Affected: 30 CFR 75.380(f)(4)(i) (Escapeways; bituminous and lignite mines).

• *Docket Number:* M–2007–038–C.

FR Notice: 72 FR 39464 (July 18, 2007).

Petitioner: Mallie Coal Company, Inc., 8442 Highway 6, Corbin, Kentucky 40701.

Mine: Mine No. 7, MSHA I.D. No. 15–19007.

Regulation Affected: 30 CFR 75.342 (Methane monitors).

• *Docket Number:* M–2007–045–C.

FR Notice: 72 FR 45829 (August 15, 2007).

Petitioner: Alpha & Omega Coal Company, LLC, Drawer 887, Louisa, Kentucky 41230.

Mine: No. 2 Deep Mine, MSHA I.D. No. 46–09187.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility).

• *Docket Number:* M–2007–048–C.

FR Notice: 72 FR 45830 (August 15, 2007).

Petitioner: Paramont Coal Company Virginia, LLC, 2333 Alumni Park Plaza, Suite 310, Lexington, Kentucky 40517.

Mine: Deep Mine #26, MSHA I.D. No. 44–06929.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2006–006–M.

FR Notice: 71 FR 58434 (October 3, 2006).

Petitioner: Mosaic Potash Carlsbad, Inc., P.O. Box 71, 1361 Potash Mines Road, Carlsbad, New Mexico 88221–0071.

Mine: Mosaic Potash Carlsbad, Inc., Mine, MSHA I.D. No. 29–00802.

Regulation Affected: 30 CFR 57.15031 (Location of self-rescue devices).

• *Docket Number:* M–2006–008–M.

FR Notice: 71 FR 58434 (October 3, 2006).

Petitioner: Intrepid Potash NM, LLC, 1996 Potash Mines Road, P.O. Box 101, Carlsbad, New Mexico 88221–0101.

Mine: Intrepid Potash West Mine, MSHA I.D. No. 29–00175.

Regulation Affected: 30 CFR 57.15031 (Location of self-rescue devices).

• *Docket Number:* M–2006–009–M.

FR Notice: 71 FR 58434 (October 3, 2006).

Petitioner: Intrepid Potash NM, LLC, 1996 Potash Mines Road, P.O. Box 101, Carlsbad, New Mexico 88221–0101.

Mine: Intrepid Potash East Mine, MSHA I.D. No. 29–00170.

Regulation Affected: 30 CFR 57.15031 (Location of self-rescue devices).

• *Docket Number:* M–2007–003–M.

FR Notice: 72 FR 31860 (June 8, 2007).

Petitioner: Intrepid Potash NM, LLC, 1996 Potash Mines Road, P.O. Box 101, Carlsbad, New Mexico 88221–0101.

Mine: Intrepid Potash West Mine, MSHA I.D. No. 29–00175.

Regulation Affected: 30 CFR 57.18028 (Mine emergency and self-rescuer training).

• *Docket Number:* M–2007–004–M.

FR Notice: 72 FR 31861 (June 8, 2007).

Petitioner: Intrepid Potash NM, LLC, 1996 Potash Mines Road, P.O. Box 101, Carlsbad, New Mexico 88221–0101.

Mine: Intrepid Potash East Mine, MSHA I.D. No. 29–00170.

Regulation Affected: 30 CFR 57.18028 (Mine emergency and self-rescuer training).

• *Docket Number:* M–2007–007–M.

FR Notice: 72 FR 45830 (August 15, 2007.

Petitioner: Phelps Dodge Safford, Inc., 1124 W. Thatcher Blvd., Suite 202, Safford, Arizona 85546.

Mine: Phelps Dodge Safford, Inc., Mine, MSHA I.D. No. 02–03131.

Regulation Affected: 30 CFR 56.6309(b) (Fuel oil requirements for ANFO).

Dated: January 24, 2008.

Jack Powasnik,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E8–1609 Filed 1–29–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket ID–OSHA–2008–0002]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations to serve on NACOSH; announcement of new and reappointed members.

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health invites interested parties to submit nominations for membership on NACOSH and announces the appointment of new NACOSH members.

DATES: Nominations for NACOSH must be submitted (postmarked, sent or received) by February 29, 2008.

ADDRESSES: You may submit nominations for NACOSH, identified by Docket No. OSHA–2008–0002, by any of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for submitting nominations.

Facsimile: If your nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: Submit three copies of your nominations to the OSHA Docket Office, Docket No. OSHA–2008–0002, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All nominations for NACOSH must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2008–0002). All submissions in response to this **Federal Register** notice, including personal information provided, will be posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting certain personal information, such as social security numbers and birthdates. Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations, see the **SUPPLEMENTARY INFORMATION** section below.

Docket: To read or download submissions, go to *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted

material, are available for inspection and copying at the OSHA Docket Office at the address above.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1932; fax (202) 693–1641; e-mail address *crawford.deborah@dol.gov.*

SUPPLEMENTARY INFORMATION:

The Assistant Secretary of Labor for Occupational Safety and Health (OSHA) invites interested parties to submit nominations for membership on NACOSH. The Committee is authorized by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act and the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 101–6 and 102–3).

NACOSH is comprised of 12 members, all of whom the Secretary of Labor appoints. Nominations will be accepted for five vacancies (29 CFR 1912a.2). The composition of the committee and categories of members to be appointed are as follows:

- Four public representatives. Two will be appointed;
- Two management representatives. One will be appointed;
- Two labor representatives. No vacancies;
- Two representatives representing occupational safety professions. One will be appointed; and,
- Two representing occupational health professions. One health representative will be appointed.

Pursuant to § 1912a.2, the Secretary of Health and Human Services (HHS) will designate for appointment by the Secretary of Labor one of the public representatives and the representative from the occupational health professions. Therefore, OSHA will provide to HHS all nominations, including supporting materials, for those membership categories.

NACOSH members serve staggered two-year terms, unless the member becomes unable to serve, resigns, ceases to be qualified to serve because he or she no longer meets the relevant representational requirements, or is removed by the Secretary of Labor. If a vacancy occurs before a term expires, the Secretary may appoint a new member who represents the same interest as the predecessor to serve the remainder of the unexpired term. The committee meets at least two times a year (§ 1912a.4).

Any interested person or organization may nominate one or more qualified individuals for membership. Nominations must include the nominee's name, occupation or current position, and contact information. The nomination also must identify the category that the candidate is qualified to represent, and include a resume of the nominee's background, experience, and qualifications. In addition, the nomination must state that the nominee is aware of the nomination and is willing to serve on NACOSH for a two-year term. NACOSH members will be selected upon the basis of their experience and competence in the field of occupational safety and health (§ 1912a.2). The information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary of Labor in appointing members to serve on NACOSH. In selecting NACOSH members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish a list of the new NACOSH members in the **Federal Register**.

Public Participation—Submission of Nominations and Access to Docket

You may submit nominations (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2008–0002). You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic nomination by name, date, and docket number so OSHA can attach them to your nomination.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information such as social security numbers and birth dates. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, is also available at OSHA's Webpage at *http://www.osha.gov.*

Appointment of New NACOSH Members

In November 2007, Secretary Elaine Chao appointed the following four new NACOSH members to serve two-year terms:

- Ms. Barbara McCabe, International Union of Operating Engineers, as a labor representative;
- Ms. Jennifer Bailey, American Cast Iron Pipe Company, as a management representative;
- Mr. Karl Jacobson, Liberty Mutual Insurance Group, as a safety representative; and
- Ms. Susan Randolph, University of North Carolina-Chapel Hill, as a health representative.

In addition, the Secretary reappointed the following three NACOSH members to another two-year term:

- Mr. Douglas Kalinowski, Michigan Department of Consumer and Industry Services, as a public representative;
- Ms. Vickie Wells, San Francisco Department of Public Health, as a public representative; and
- Mr. Kevin Sommers, Fraternal Order of Police, as a labor representative.

Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by sections 6(b)(1) and 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), 29 CFR 1912a, Federal Advisory Committee Act (5 U.S.C. App.2); and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC this 24th day of January, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–1582 Filed 1–29–08; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2008–1 CRB CD 98–99]

Distribution of 1998 and 1999 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress

ACTION: Notice announcing commencement of Phase II distribution proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of a proceeding to determine the Phase II distribution of 1998 and 1999 royalties collected under the cable statutory license. The Judges also are announcing the date by which a party who wishes to participate in this distribution proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due on or before February 29, 2008.

ADDRESSES: An original, five copies, and an electronic copy on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Participate, along with the $150 filing fee, must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the $150 filing fee, must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Each year, semiannually, cable systems must submit royalty payments to the Copyright Office as required by the cable statutory license for the privilege of retransmitting over-the-air television and radio broadcast stations. 17 U.S.C. 111. These royalties are then distributed to copyright owners whose works were included in such retransmissions and who timely filed a claim for royalties. Distribution of the royalties for each calendar year are conducted by the Copyright Royalty Judges (''Judges'') in two phases. At Phase I, the royalties are divided among the representatives of the major categories of copyrightable content (movies, sports programming, music, etc.) requesting the distribution. At Phase II, the royalties are divided among the various copyright owners within each category.

This Notice announcing the commencement of a proceeding under 17 U.S.C. 803(b)(1) for distribution of cable royalties collected for 1998 and 1999 is confined to Phase II. A Phase I proceeding for these royalty years was conducted by the Librarian of Congress under the Copyright Arbitration Royalty Panel (''CARP'') system, the predecessor to the Copyright Royalty Judges. The Librarian issued his determination dividing the royalties among the eight Phase I claimant groups, 69 FR 3606 (January 26, 2004), and the U.S. Court of Appeals for the District of Columbia Circuit affirmed his determination. *Program Suppliers* v. *Librarian of Congress,* 409 F.3d 395 (DC Cir. 2005). The Librarian did not, however, resolve the Phase II distribution of these royalty years and terminated the proceeding on August 10, 2007. 72 FR 45071. Consequently, it is now necessary for the Copyright Royalty Judges to resolve this Phase II distribution.[1]

Commencement of Phase II Proceeding

Consistent with 17 U.S.C. 804(b)(8), the Copyright Royalty Judges determine that a Phase II controversy exists as to the distribution of 1998 and 1999 cable royalties. We reach this determination, in this instance, for several reasons. First, we observe that certain interested parties represented to the Librarian some time ago that several Phase II controversies exist for these years. Second, the Program Suppliers have recently represented to us that a Phase II controversy with the National Association of Broadcasters remains for these years. Comments of the Program Suppliers on the Existence of a Controversy, at 5, n. 3 (filed in Docket No. 2005–4 CRB CD 2003 on September 19, 2007). And third, we have not received notification that any settlements have been reached, nor have we received motions for final distribution.

The Judges are consolidating the 1998 and 1999 royalty years into a single proceeding. The Librarian consolidated these years for purposes of the Phase I proceeding without incident, and Phase II proceedings are traditionally less extensive and complicated, thereby making consolidation of multiple royalty years more administratively efficient.

Petitions To Participate

Petitions to Participate must be filed in accordance with the § 351.1(b) of the Judge's regulations. See 37 CFR 351.1(b). Petitions to Participate submitted by interested parties whose claims do not exceed $1,000 must contain a statement that the party will not seek a distribution of more than $1,000. No filing fee is required for these parties. We note, however, that interested parties with claims exceeding one thousand dollars ($1,000) must submit a filing fee of one hundred and fifty dollars ($150) with their Petition to Participate or it will be rejected. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to the ''Copyright Royalty Board.'' If a check received in payment of the filing fee is returned for lack of sufficient funds, the

[1] It is important to note that this is a new proceeding before the Copyright Royalty Judges and not a transfer or continuation of a prior proceeding of the Librarian. See Section 6(b)(1) of the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108–419 (any CARP proceeding terminated by the Librarian ''shall become null and void'').

corresponding Petition to Participate will be dismissed.

Further procedural matters, including scheduling, will be addressed after Petitions to Participate have been received.

Note that in accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Copyright Royalty Judges, unless the party is an individual who represents herself or himself.

Dated: January 24, 2008.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E8–1672 Filed 1–29–08; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

Distribution of 1999, 2000, 2001, 2002, 2003, 2004 and 2005 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Request for comments.

SUMMARY: The Copyright Royalty Judges are requesting comments as to the existence of controversies at Phase I and Phase II for distribution of the 1999 through 2005 royalty funds collected under the satellite carrier statutory license.

DATES: Comments are due on or before February 29, 2008.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov*. In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Each year, semiannually, satellite carriers must submit royalty payments to the Copyright Office as required by the satellite carrier statutory license for the privilege of retransmitting over-the-air television broadcast stations. 17 U.S.C. 119. These royalties are then distributed to copyright owners whose works were included in such retransmissions and who timely file a claim for royalties. Distribution of the royalties for each calendar year are conducted by the Copyright Royalty Judges in two phases. At Phase I, the royalties are divided among the representatives of the major categories of copyrightable content (movies, sports programming, music, etc.) requesting the distribution. At Phase II, the royalties are divided among the various copyright owners within each category.

Final distribution of royalties in any given royalty year may be made by agreement of all the copyright owners making claim to the funds. If, however, there is a controversy as to the proper distribution, either at Phase I or Phase II, the Copyright Royalty Judges are required to conduct a proceeding under chapter 8 of the Copyright Act. *See* 17 U.S.C. 119(b)(4)(B).

Request for Comments

In order to determine whether further proceedings are necessary for the distribution of the 1999–2005 satellite royalty funds, the Copyright Royalty Judges request that interested copyright claimants identify the existence of both Phase I and Phase II controversies. Claimants should identify the specific royalty years in which they have a controversy, whether the controversy is at Phase I and/or Phase II, and the approximate extent of the controversy. In addition, the Judges seek comment as to the advisability of consolidating multiple royalty years into a single distribution proceeding and what, if any, royalty years should be consolidated.

Dated: January 24, 2008.

James Scott Sledge,

Chief, Copyright Royalty Judge.

[FR Doc. E8–1663 Filed 1–29–08; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2007–3 CRB CD 2004–2005]

Distribution of the 2004 and 2005 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing partial Phase I settlement and soliciting comments on motion for partial distribution.

SUMMARY: The Copyright Royalty Judges are announcing a partial Phase I settlement in connection with the 2004 and 2005 cable royalty funds. The Judges are also soliciting comments on a motion for partial distribution in connection with those funds.

DATES: Comments are due on or before February 29, 2008.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov*. In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). These royalties are then distributed to copyright owners whose works were included in a qualifying

transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges (''Judges'') must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

On November 2, 2007, representatives of the Phase I claimant categories (the ''Phase I Parties'') [1] filed with the Judges a motion requesting a partial distribution of 50% of each of the 2004 and 2005 cable royalty funds. Under section 801(b)(3)(C) of the Copyright Act, the Judges must publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any controversy exists over the requested funds before ruling on the motion. Consequently, by today's Notice, the Judges seek comments on whether any controversy exists that would preclude the distribution of 50% of the 2004 and/or 2005 cable royalty funds to the Phase I Parties.

The Judges also seek comment on the existence and extent of any controversies to the 2004 and 2005 cable royalty funds, either at Phase I or Phase II, with respect to the 50% of those funds that would remain if the partial distribution is granted. In Phase I of a cable royalty distribution, royalties are distributed to certain categories of broadcast programming that have been retransmitted by cable systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music, public radio programming, and Canadian programming. In Phase II of a cable royalty distribution, royalties are distributed to claimants within each of the Phase I categories. Any party submitting comments on the existence of a Phase II controversy must identify the category or categories in which there is a dispute and the extent of the controversy or controversies.

The Judges must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to their attention after the close of that period.

The Motion of the Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/proceedings/2007–3/11–02–07-phase1motion.pdf*.

Dated: January 24, 2008.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E8–1661 Filed 1–29–08; 8:45 am]

BILLING CODE 1410–72–P

[1] The ''Phase I Parties'' are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, the National Association of Broadcasters, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., Canadian Claimants, National Public Radio, and the Devotional Claimants.

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20836; License No. 25–21479–01; EA–07–303]

In the Matter of Mattingly Testing Services, Inc., Molt, MT; Demand for Information

I

Mattingly Testing Services, Inc., (Mattingly Testing) is the holder of Materials License No. 25–21479–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 and 10 CFR Part 34. The license, initially issued on December 2, 1983, authorizes Mattingly Testing to possess radioactive sealed sources for use in industrial radiography in Molt, Montana, and at temporary job sites anywhere in the United States where the NRC maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States. The license was last renewed in its entirety on February 22, 2006, and is due to expire on February 28, 2016.

II

On November 7, 2007, during an inspection of Mattingly Testing's radiographic operations at a temporary job site, several apparent violations of NRC regulations were identified. In addition, during a follow-up inspection and investigation during the week of November 12, 2007, the NRC inspector and investigator were informed that senior management of Mattingly Testing discouraged employees from speaking with NRC inspectors and investigators. The NRC is concerned that an environment exists within Mattingly Testing's workplace that could inhibit employees from raising safety concerns to the NRC. The NRC inspections and investigation, which are still ongoing, have indicated that:

1. Mattingly Testing's control of licensed material at temporary job sites is not in compliance with NRC requirements;

2. Mattingly Testing's senior management has apparently caused employees to engage in activities that are in violation of NRC regulations and Orders; and

3. Mattingly Testing's senior management has discouraged employees from raising safety concerns both to their management and to the NRC.

This information demonstrates a lack of management control and supervision over licensed activities, raises questions as to whether Mattingly Testing will provide complete and accurate information to the NRC in compliance with 10 CFR 30.9, and whether Mattingly Testing is complying with the provisions with 10 CFR 19.15(b). Therefore, further information is needed to determine whether the Commission can have reasonable assurance that Mattingly Testing will comply with the Commission's requirements, ensure a healthy work environment, provide complete and accurate information to the Commission and otherwise conduct its activities in accordance with the Commission's requirements.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, and 10 CFR 30.9, and 10 CFR 30.32(b), in order for the Commission to determine whether your license should be modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, Mattingly Testing is required to submit the following information in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, within 20 days of the date of this Demand for Information. If security-related information is necessary to provide an acceptable response, you must mark your entire response ''Proprietary Information in accordance with 10 CFR 2.390(d)(1)'' and follow the instructions for withholding in 10 CFR 2.390(b)(1). In accordance with 10 CFR 2.390(b)(1)(ii), the NRC is waiving the affidavit requirements for your response.

1. Provide the information requested in the non-publicly available Appendix to this Demand for Information.

2. Describe the actions it has taken and plans to take to provide reasonable assurance that its organization establishes and maintains an appropriate safety conscious work environment[1] where employees are free

[1] NRC defines Safety Conscious Work Environment as a work environment in which employees are encouraged to raise safety concerns, are free to raise concerns both to their own

to raise safety concerns to the NRC and to Mattingly Testing's senior management without fear of retaliation. In addition, describe the actions it has taken and plans to take to ensure its employees understand the provisions of 10 CFR 19.15, 10 CFR 30.7, and 10 CFR 30.9.

Copies of this information shall also be sent to the Assistant General Counsel for Materials Litigation and Enforcement at the same address above, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–4005.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

For the Nuclear Regulatory Commission.

Dated this 23rd day of January, 2008.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E8–1645 Filed 1–29–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through December 2008.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

John H. Kitchen,

Associate Director for Economic Policy, Office of Management and Budget.

Attachment.

Appendix C

(Revised January 2008)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid for calendar year 2008. A copy of the updated appendix can be obtained in electronic form through the OMB home page at *http://www.whitehouse.gov/omb/circulars/a094/a94_appx-c.html,* the text of the main body of the Circular is found at *http://www.whitehouse.gov/omb/circulars/a094/a094.html,* and a table of past years' rates is located at *http://www.whitehouse.gov/omb/circulars/a094/DISCHIST-2008.pdf.* Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381).

Nominal Discount Rates. A forecast of nominal or market interest rates for 2008 based on the economic assumptions for the 2009 Budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-Year	5-Year	7-Year	10-Year	20-Year	30-Year
4.1	4.3	4.4	4.6	4.9	4.9

Real Discount Rates. A forecast of real interest rates from which the inflation premium has been removed and based on the economic assumptions from the 2009 Budget is presented below. These real rates are to be used for discounting constant-dollar flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-Year	5-Year	7-Year	10-Year	20-Year	30-Year
2.1	2.3	2.4	2.6	2.8	2.8

management and to the NRC without fear of retaliation, where concerns are promptly reviewed, given the proper priority, and appropriately resolved and timely feedback is provided. The NRC issued a Policy Statement, ''Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation'' on May 14, 1996 [61 FR 24336] and additional guidelines in Regulatory Issue Summary 2005–18, ''Guidance for Establishing and Maintaining a Safety Conscious Work Environment'' on August 25, 2005.

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 08–416 Filed 1–29–08; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF MANAGEMENT AND BUDGET

FY 2007 Pilot Program for Alternative Approaches to Performance and Accountability Reporting Open Forum

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice of open forum.

SUMMARY: An open forum on the FY 2007 Performance and Accountability Report (PAR) pilot will be held at the National Academy of Public Administration (NAPA) on April 14, 2008 from 10 a.m. to 12 p.m. The PAR pilot allows agencies to explore different formats to enhance the presentation of financial and performance information and make this information more meaningful and transparent to the public. As an alternative to the traditional PAR, agencies that participated in the pilot had to prepare and submit to OMB three component documents. The component documents included an Agency Financial Report (AFR), an Annual Performance Report (APR), and a Highlights document that presents performance and financial information in a summary fashion. The purpose of the forum is to obtain feedback from individual users and stakeholders regarding the results of the pilot. Those interested in participating should respond to the questions listed below by e-mail to either Regina Kearney at *rkearney@omb.eop.gov,* or Pat Harris at *pharris@omb.eop.gov* by close of business March 28, 2008.

- Do the PAR pilot component documents (Annual Financial Report, Annual Performance Report, and Highlights):
  - ○ Provide an enhanced presentation of the financial and performance information in a more transparent way (i.e., information is presented in a manner that is user friendly and easy enough for a novice reader to understand)?
  - ○ Report financial and performance information more meaningfully (i.e., financial and performance data is reliable, relevant, and include measurable results linked to strategic goals)?
  - ○ Tailor financial and performance information to meet stakeholder needs?
  - ○ Report performance and financial results candidly and clearly articulate remedies to performance or financial shortfalls?
- Are the PAR pilot component documents easily accessible via the web and are they easy to use?
- Did the development of the PAR pilot component documents:
  - ○ Improve internal and external communications?
  - ○ Increase/decrease the burden on preparers?
- What are individuals' recommendations for improving performance and financial reporting?

DATED: April 14, 2008 from 10 a.m. to 12 p.m.

ADDRESSES: The forum will be held in the National Academy of Public Administration (NAPA) building located at 900 7th Street, NW., Suite 600, Washington, DC 20001.

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the forum date. Electronic mail comments may be submitted to: *rkearney@omb.eop.gov* or *pharris@omb.eop.gov.* Please include ''PAR Pilot Open Forum'' in the subject line and put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted by mail at 725 17th St, NW., Room 6025, Washington, DC 20503. Please advise also if you will require any special accommodations in order to participate in the forum.

FOR FURTHER INFORMATION CONTACT: Regina Kearney, OMB Office of Federal Financial Management, 202–395–3993 or E-mail: *rkearney@omb.eop.gov.* Pat Harris OMB Office of Performance and Personnel Management, at 202–395–5018 or *pharris@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Performance and Accountability Reports provide the public with agency financial and performance information. PARs are transparent tools Congress and the public can use to hold agencies accountable for their program performance and financial results.

The FY 2007 PAR pilot, conducted from May 2007 to February 2008, was established so that agencies could explore different formats and timeframes for presenting financial and performance information and make this information more meaningful and transparent to the public. The pilot adjusted the timing for more detailed performance reporting, allowing the APR to coincide with the release of the President's Budget. The pilot further required participating agencies to produce a Highlights document, which summarized key financial and performance information from the AFR and APR.

Agencies who participated in the pilot include the Department of Health and Human Services, Department of Defense, Small Business Administration, Department of State, National Aeronautics and Space Administration, Department of Homeland Security, National Science Foundation, Department of Energy, Denali Commission, Corporation for National Community Service and U.S. Agency for International Development.

Dustin Brown,

Deputy Assistant Director for Management.

[FR Doc. E8–1573 Filed 1–29–08; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 611; OMB Control No. 3238–0600; SEC File No. 270–540.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- (Rule 611 (17 CFR 242.611)—Order Protection Rule

On June 9, 2005, effective August 29, 2005 (*see* 70 FR 37496, June 29, 2005), the Commission adopted Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to require any national securities

exchange, national securities association, alternative trading system, exchange market maker, over-the-counter market maker and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish, maintain, and enforce policies and procedures reasonably designed to prevent the execution of a transaction in its market at a price that is inferior to a bid or offer displayed in another market at the time of execution (a ''trade-though''), absent an applicable exception and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception. Without this collection of information, respondents would not have a means to enforce compliance with the Commission's intention to prevent trade-throughs pursuant to the rule.

There are approximately 788 respondents[1] per year that will require an aggregate total of 36,540 hours to comply with this rule.[2] It is anticipated that each respondent will continue to expend approximately 60 hours annually: Two hours per month of internal legal time and three hours per month of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with Rule 611. The estimated cost for an in-house attorney is $295 per hour and the estimated cost for an assistant compliance director in the securities industry is $301 per hour. Therefore the estimated total cost of compliance for the annual hour burden is as follows: [(2 legal hours × 12 months × $295) × 788] + [(3 compliance hours × 12 months × $301) × 788] = $14,117,808.[3] There are no longer start-up costs associated with Rule 611.

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: January 23, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1617 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate includes nine national securities exchanges and one national securities association that trade NMS stocks. The estimate also includes the approximately 731 firms that were registered equity market makers or specialists at year-end 2006, as well as automated trading systems that operate trading systems that trade NMS stocks.

[2] The one-time hour burden associated with developing the required policies and procedures is no longer applicable.

[3] The total cost of compliance for the annual hour burden has been revised to reflect updated estimated cost figures for an in-house attorney and an assistant compliance director. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2007,* adjusted by the SEC staff for an 1800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. *See* Securities Exchange Act Release No. 50870 (Dec. 16, 2004), 69 FR 77424 (Dec. 27, 2004) at notes 427, 428 and accompanying text.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 27d–1 and Form N–27D–1; SEC File No. 270–499; OMB Control No. 3235–0560.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information under the Investment Company Act of 1940 (''Act'') summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27d–1 (17 CFR 270.27d–1) is entitled ''Reserve Requirements for Principal Underwriters and Depositors To Carry Out The Obligations To Refund Charges Required by Section 27(d) and Section 27(f) of the Act.'' Form N–27D–1 (17 CFR 274.127d–1) is entitled ''Accounting of Segregated Trust Account.'' Rule 27d–2 (17 CFR 270.27d–2) is entitled ''Insurance Company Undertaking in Lieu of Segregated Trust Account.'' Rule 27d–1 requires the depositor or principal underwriter for an issuer to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f). The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. A single account may be used for the periodic payment plans of multiple investment companies. Rule 27d–1(j) directs depositors and principal underwriters to make an accounting of their segregated trust accounts on Form N–27D–1, which is intended to facilitate the Commission's oversight of compliance with the reserve requirements set forth in rule 27d–1. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule also must be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d–1. Depositors and principal underwriters must file the form once a year on or before January 31 of the year following the year for which information is presented.

Instead of relying on rule 27d–1 and filing Form N–27D–1, depositors or principal underwriters for the issuers of periodic payment plans may rely on the exemption afforded by rule 27d–2. In order to comply with the rule: (i) The depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements, (ii) the insurance company must satisfy certain financial criteria, and (iii) the depositor or principal underwriter must file as an exhibit to the issuer's registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual audited balance sheet.

Rules 27d–1 and 27d–2, which were explicitly authorized by statute, provide assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decisions to invest in a periodic payment plan. The information collection requirements in rules 27d–1 and 27d–2 enable the Commission to monitor compliance with reserve rules.

The depositor or principal underwriter of issuers must file a Form N–27D–1 annually or comply with the requirements in rule 27d–2. The Commission received zero Form N–27D–1 filings in 2007. Therefore, the total annual hour burden associated with rule 27d–1 and Form N–27d–1 is estimated to be zero hours; however, we are requesting 1 burden hour for administrative purposes.

Only one registered investment company has issued a new periodic payment plan certificate within the past 18 months, and the principal underwriter or depositor for this sole issuer relies on the exemption in rule 27d–2. The respondent makes approximately three responses per year.[1] The insurance company provides the written undertaking, annual statement, and certified balance sheet at no cost to the respondent. The staff estimates that the respondent spends approximately one hour per year filing the required documents from the insurance company on EDGAR. Thus, we estimate that the annual burden is approximately 1 hour.

The staff believes that rules 27d–1 and 27d–2 and Form N–27D–1 do not impose any cost burdens other than those arising from the hour burdens discussed above.

The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[2]

Complying with the collection of information requirements of rule 27d–1 is mandatory for depositors or principal underwriters of issuers of periodic payment plans unless they comply with the requirements in rule 27d–2. The information provided pursuant to rules 27d–1 and 27d–2 is public and, therefore, will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: January 22, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1618 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[1] The three responses are: (i) Obtaining and filing the written undertaking or an amendment to the undertaking, (ii) filing the insurance company's annual statement that the financial conditions were satisfied, and (iii) filing the insurance company's certified balance sheet.

[2] These estimates are based on telephone interviews between the Commission staff and representatives of depositors or principal underwriters of periodic payment plan issuers.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 204A–1; SEC File No. 270–536; OMB Control No. 3235–0596.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 204A–1 (17 CFR 275.204A–1) under the Investment Advisers Act of 1940'' (15 U.S.C. 80b–1 *et seq.*). Rule 204A–1, the Code of Ethics Rule, requires investment advisers registered with the SEC to (i) set forth standards of conduct expected of advisory personnel (including compliance with the federal securities laws), (ii) safeguard material nonpublic information about client transactions, and (iii) require the adviser's ''access persons'' to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The code of ethics also requires access persons to obtain the adviser's approval before investing in an initial public offering (''IPO'') or private placement. The code of ethics also requires prompt reporting, to the adviser's chief compliance officer or another person designated in the code of ethics, of any violations of the code. Finally, the code of ethics requires the adviser to provide each supervised person with a copy of the code and any amendments, and require the supervised persons to acknowledge, in writing, their receipt of these copies. The purposes of the information collection requirements is (i) to ensure that advisers maintain codes of ethics applicable to their supervised persons; (ii) to provide advisers with information about the personal securities transactions of their access persons for purposes of monitoring such transactions; (iii) to provide advisory clients with information with which to evaluate advisers' codes of ethics; and (iv) to assist the Commission's examination staff in assessing the adequacy of advisers' codes of ethics and assessing personal trading activity by advisers' supervised persons.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that compliance with rule 204A–1 imposes a burden of approximately 117 hours per adviser annually based on an average adviser having 84 access persons. Our latest data indicate that there were 10,817 advisers registered with the Commission. Based on this figure, the Commission estimates a total annual burden of approximately 1,265,865 hours for this collection of information.

Rule 204A–1 does not require recordkeeping or record retention. The collection of information requirements under the rule are mandatory. The information collected pursuant to the rule are not filed with the Commission, but rather take the form of communications between advisers and their supervised persons. Investment advisers use the information collected to control and assess the personal trading activities of their supervised persons. Responses to the reporting requirements will be kept confidential to the extent each investment adviser provides confidentiality under its particular practices and procedures. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the

following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 23, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1619 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 28, 2008:

An Open Meeting will be held on Wednesday, January 30, 2008 at 10 a.m., in the Auditorium, Room L–002, and Closed Meetings will be held on Wednesday, January 30, 2008 at 11 a.m. and Thursday, January 31, 2008 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meetings in closed sessions, and determined that no earlier notice of the meetings was possible.

The subject matter of the Open Meeting scheduled for Wednesday, January 30, 2008 will be:

The Commission will hear oral argument in an appeal by Jeffrey L. Gibson from the decision of an administrative law judge. Gibson is a part-owner and associated person of Gibson Gaither Wealth Management Advisors, an investment adviser, and also was, during the time at issue, associated with H. Beck, Inc., a broker-dealer. On May 9, 2006, the United States District Court for the Northern District of Georgia enjoined Gibson, with his consent, from violations of the antifraud provisions of the securities laws.

Upon motion for summary disposition, the law judge found that it was undisputed that Gibson was associated with an investment adviser and a broker-dealer and that he had been enjoined from violating the antifraud provisions of the securities laws. The law judge determined that Gibson should be barred from association with an investment adviser or broker-dealer.

Among the issues likely to be argued are:

whether the law judge properly granted the Division of Enforcement's motion for summary disposition; and

if so, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, January 30, 2008 will be: Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, January 31, 2008 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims; and

Post-argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 25, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–1694 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28133; 812–13467]

Schroder Series Trust, et al.; Notice of Application

January 24, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

Summary of Application: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Schroder Series Trust, Schroder Global Series Trust, and Schroder Capital Funds (Delaware) (collectively, the ''Trusts''), Schroder Investment Management North America Inc. (''SIMNA''), Schroder Investment Management North America Limited (''SIMNA Ltd.''), and Schroder Fund Advisors Inc. (''SFA'').

Filing Dates: The application was filed on December 21, 2007, and amended on January 19, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 19, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Abby Ingber, Esq., Schroder Investment Management North America Inc., 875 Third Avenue, 22nd Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0104 (telephone (202) 551–8090).

Applicants' Representations:

1. Each Trust is organized as either a Delaware statutory trust or a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trusts offer separate series (''Funds'') that may invest in other registered investment companies in reliance on section 12(d)(1)(G) of the Act and rule 12d1–2 under the Act (''Underlying Funds'').[1] Applicants propose that the Funds be permitted to invest in futures contracts, options on futures contracts, swap agreements, derivatives, and other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'') in addition to the Underlying Funds and other securities.

2. SIMNA is a wholly-owned subsidiary of Schroders plc, a publicly-owned holding company organized under the laws of England. SIMNA Ltd. is an affiliate of SIMNA. SIMNA and SIMNA Ltd. are both registered as investment advisers under the Investment Advisers Act of 1940 and serve as investment advisers to the Funds. SFA, also an affiliate of SIMNA and registered as a broker-dealer under the Securities Exchange Act of 1934 Act (''Exchange Act''), provides all distribution and marketing services for the Trusts and serves as administrator to Schroder North American Equity Fund.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. In connection with its approval of any investment advisory agreement under section 15 of the Act, the Board of the appropriate Fund, including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory agreement. Such finding, and the basis upon which the finding is made, will be recorded fully in the minute books of the appropriate Fund.

2. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1648 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[1] Applicants request that the relief apply to all existing and future series of the Trusts and all other registered open-end management investment companies and their series registered under the Act that are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trusts (included in the term ''Funds''). All Funds that currently intend to rely on the order have been named as applicants. Any other existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57187; File No. SR–Amex–2007–109]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Trading of Exchange Traded Notes (ETNs)

January 23, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on October 9, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On January 11, 2008, the Amex submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 107 of the Amex *Company Guide* (''Company Guide'') to permit certain index-linked securities, commodity-linked securities, and currency-linked securities to trade under the rules applicable to exchange-traded funds (''ETFs''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.amex.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, 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 proposes to amend Sections 107D, 107E and 107F of the Company Guide to permit certain index-linked securities (''Index-Linked Securities''), commodity-linked securities (''Commodity-Linked Securities''), and currency-linked securities (''Currency-Linked Securities'') (collectively, ''Exchange-Traded Notes or ETNs'') that offer a weekly redemption feature to be traded subject to the AEMI trading rules specific to ETFs.[3]

The Exchange believes that the existence of a weekly redemption feature, at the option of the holder, ensures a strong correlation between the market price of the ETN and the performance of the underlying asset. This feature is similar to the daily redemption feature available in ETFs. In addition, the Exchange notes that these Exchange Traded Notes are typically continuously offered, on a daily basis, so that the issuer would have the ability to issue new securities from time to time at market prices. This process is similar to the manner in which ETFs are continuously offered via the creation/redemption process in Creation Unit aggregations (*i.e.*, 50,000 shares).

Background

The Exchange states that Securities listed pursuant to Section 107 of the *Company Guide* (''Section 107 Securities'') are debt securities of an issuer that typically provide for a cash payment at maturity, or if available, upon earlier redemption (such as a weekly redemption feature) at the holder's option, based on the performance of an underlying index or asset. Permitted underlying assets for Index-Linked Securities include domestic and international equity indexes. Commodity-Linked Securities may be based on a commodity index, basket of commodities, or single commodity while Currency-Linked Securities may similarly be linked to a currency index, basket of currencies, or single currency.

Section 107 Securities typically have a term of at least one (1) year but not greater than 30 years. The issuer may or may not provide for periodic interest payments to holders. The holder of a Section 107 Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying asset.

A number of Section 107 Securities based on securities indexes that are listed and traded on the Exchange provide for a payment amount in a multiple of the positive index return or performance, subject to a maximum gain or cap. The Exchange's generic listing standards in connection with Section 107 Securities allow for the multiple performance on the upside but prohibit payment at maturity based on a multiple of the negative performance of an underlying asset. Section 107 Securities may or may not provide for a minimum guaranteed amount to be repaid, *i.e.*, ''principal protection.'' The Exchange believes that the flexibility to list a variety of Section 107 Securities offers investors the opportunity to more precisely focus their specific investment strategies.

Section 107 Securities do not give the holder a right to receive the underlying asset or any other ownership right or interest in the underlying portfolio. The current value of the underlying asset is required to be widely disseminated at least every 15 seconds during the trading day.

The Exchange submits that Section 107 Securities are ''hybrid'' securities whose rates of return are largely the result of the performance of an underlying asset. Prior to the listing and trading of Section 107 Securities, the Exchange states that it typically highlights and discloses the special risks and characteristics of such security in an Information Circular.

Current Rules

Sections 107D,[4] 107E,[5] and 107F[6] of the Company Guide treat Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities as equity instruments subject to the Exchange's AEMI trading rules for equities. The only exception to this requirement is when a Section 107 Security is listed as a bond or debt (*i.e.*, in $1,000 denominations). In such a case, the Section 107 Security will be subject to Exchange rules applicable to bond or debt securities.[7]

Because the current Rules deem ETNs and other Section 107 Securities as ''equity instruments,'' the full range of AEMI trading rules specific to equities apply to all Section 107 Securities regardless of the particular structure of the Section 107 Security. In connection with an ETN that is continuously-offered with a weekly redemption option (such as BWV), the Exchange believes that the AEMI trading rules applicable to ETFs (rather than equities) should equally apply to such ETN.

Proposal

In order to qualify, the ETN would be required to offer a weekly redemption option to holders (''Eligible ETNs'').[8]

[3] The Exchange states that with the introduction of iPath Exchange-Traded Notes Issued by Barclays Bank PLC linked to the performance of the CBOE S&P 500 BuyWrite Index (symbol: BWV) on May 23, 2007, the Exchange listed its first ETN that is structurally similar to an ETF.

[4] *See* Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR–Amex–2005–001).

[5] *See* Securities Exchange Act Release No. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR–Amex–2007–45).

[6] *Id.*

[7] *Id.*

[8] *See* e-mail from Jeffrey P. Burns, Vice President & Associate General Counsel, Exchange, to Geoffrey

Continued

The Exchange believes that the redemption feature coupled with the effective continuous offering ensures a strong correlation between the price of the underlying asset and the performance of the Eligible ETN. This is similar to how ETFs have historically been structured. Accordingly, the Exchange submits that the specific AEMI trading rules developed for ETFs should also apply to Eligible ETNs.

The following rules specifically applicable to ETF trading would apply to the trading of Eligible ETNs:

- Rule 108—AEMI(c). The execution of Eligible ETN orders at the opening would be effected in the same manner as ETFs so that orders in Eligible ETNs would be executed before any broker-dealer bids or offers.
- Rule 110—AEMI(p). A Registered Trader in ETFs (including Eligible ETNs) would only actively quote ETFs traded on the same or contiguous panels for a maximum of three contiguous panels. A Registered Trader would also not actively quote more than a maximum of 15 ETFs (including Eligible ETNs). A Senior Floor Official of the Exchange may modify this restriction if a Registered Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.
- Rule 128A—AEMI(d)(iv). Any quotation in an ETF entered into the AEMI platform by the specialist or Registered Trader while Auto-Ex is enabled that would cause the Amex Published Quote (APQ) to be locked or crossed would be automatically executed. In the case of a non-ETF Amex-listed security or a non-Nasdaq UTP equity security, quotations that are entered into the AEMI platform by the specialist while Auto-Ex is enabled that would cause the APQ to cross would be rejected. Therefore, Eligible ETNs would be automatically executed, rather than rejected, when a specialist or Registered Trader quotation causes the APQ to be locked/crossed when Auto-Ex is enabled.
- Rule 128A—AEMI(f)(iv). AEMI does not automatically execute non-ETF orders when the automatic execution of an order exceeds the price change parameters of the ''1%, 2, 1, ½ point'' rule. This rule does not apply to ETFs and would accordingly not apply to the trading of Eligible ETNs.
- Rule 131—AEMI(o). AEMI rejects ''too marketable'' non-ETF stop and stop limit orders. ''Too marketable'' is defined as a buy stop order received during the regular trading session with a stop price equal to the bid or lower, or a sell stop order received during the regular trading session with a stop price equal to the offer or higher. ETF stop orders that are ''too marketable'' are executed by AEMI under this Rule, and accordingly, Eligible ETN stop orders would similarly be executed.
- Rule 131—AEMI(r). AEMI does not accept electronic cross orders for non-ETFs and non-Nasdaq UTP securities. As a result, electronic cross orders are acceptable only for ETFs. As proposed, electronic cross orders for Eligible ETNs would be acceptable in AEMI.
- Rule 154—AEMI(c)(i). The Stop Order Rule requires floor official approval prior to the specialist electing a stop order by selling to the bid/buying on the offer. Prior floor official approval is not required for ETFs and would similarly not apply to Eligible ETNs.
- Rule 154—AEMI(c)(ii). Stop and stop limit orders in ETFs are elected by a quotation, although such orders in non-ETFs are not. Accordingly, stop and stop limit orders in Eligible ETNs would similarly be elected by quotation, pursuant to this rule.
- Rule 154—AEMI(e). Maximum price variation requirements are set forth in Rule 154—AEMI(e) (also known as the ''1%-2, 1, .5 Point Rule). This Rule specifically provides that it does not apply to the trading of ETFs. Accordingly, Rule 154—AEMI(e) would similarly not apply to Eligible ETNs.
- Commentary .03 to Rule 170—AEMI. A specialist quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether having the effect of reducing or increasing the specialist's position, would bear a proper relation, in the case of ETFs or other derivatively-based securities, to the value of underlying or related securities. Eligible ETNs would similarly be subject to this requirement.
- Commentary .11 to Rule 170—AEMI. Commentary .11 to Rule 170—AEMI specifically exempts ETFs from the stabilization requirements. Accordingly, Eligible ETNs would similarly be exempt.
- Rule 206—AEMI. This Rule prohibits a specialist from crossing the market for the purpose of electing odd-lots and requires floor official approval in various circumstances for non-ETFs. The exemption for ETFs would similarly apply to Eligible ETNs.

Eligible ETNs would be subject to the same parity allocation as currently exists for ETFs and other equity-traded products that are not listed stocks, UTP stocks, or closed-end funds. In addition, Rule 110—AEMI (o), among other things, permits market makers (*i.e.*, ''Registered Traders'') to participate in transactions in Section 107 Securities, including Eligible ETNs. However, due to the manner in which Eligible ETNs are designated in the AEMI platform as ''equities'' consistent with Sections 107D, 107E and 107F, AEMI effectively prevents Registered Traders from receiving a parity allocation consistent with Rule 126—AEMI(c). In addition, the proposal would also provide Registered Traders with a greater ability to trade Eligible ETNs through the parity allocation process and the designation of such Eligible ETNs as ''ETFs.'' Accordingly, the Exchange believes that the proposal would better coordinate the requirements in AEMI by permitting the designation of Eligible ETNs as ETFs subject to the AEMI trading rules applicable to ETFs.[9]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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 did not receive any written comment 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

Pemble and Michou Nguyen, Special Counsels, Division of Trading and Markets, Commission, on January 17, 2008.

[9] *Id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–109 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–Amex–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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–109 and should be submitted on or before February 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1612 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57188; File No. SR–Amex–2007–70]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Listing and Trading of Units of the United States Heating Oil Fund and the United States Gasoline Fund, LP

January 23, 2008.

I. Introduction

On June 29, 2007, the American Stock Exchange LLC (''Amex'' 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 list and trade units (a ''Unit,'' and collectively, the ''Units'') of each of the United States Heating Oil Fund, LP (''USHO'') and the United States Gasoline Fund, LP (''USG'') (each, a ''Partnership,'' and collectively, the ''Partnerships'') pursuant to Amex Rules 1500–AEMI and 1501 through 1505. On August 16, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. On December 20, 2007, the Exchange submitted Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 3, 2008 for a 15-day comment period.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57042 (December 26, 2007), 73 FR 514 (''Notice'').

II. Description of Proposal

The Exchange proposes to list and trade Units issued by USHO and USG pursuant to Amex Rules 1500–AEMI and 1501 through 1505.[4] The Exchange has represented that the Units will conform to the initial and continued listing criteria under Rule 1502,[5] specialist prohibitions under Rule 1503, and the obligations of specialists under Rule 1504.

Each Unit represents ownership of a fractional undivided beneficial interest in the net assets of USHO and USG.[6] The net assets of each Partnership will consist primarily of investments in futures contracts for heating oil, gasoline, crude oil, and other petroleum-based fuels that are traded on the New York Mercantile Exchange (''NYMEX''), Intercontinental Exchange (''ICE Futures'') or other U.S. and foreign exchanges (collectively, ''Futures Contracts''). In the case of USHO, the predominant investments are expected to be based on, or related to, heating oil. The predominant investments of USG are expected to be based on, or related to, gasoline.

USHO may also invest in other heating-oil-related investments such as cash-settled options on Futures Contracts, forward contracts for heating oil, and over-the-counter (''OTC'') contracts that are based on the price of heating oil, oil and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (collectively, ''Other Heating Oil Related Investments''). Futures Contracts and Other Heating Oil Related Investments collectively are referred to as ''Heating Oil Interests.''

Similarly, USG may also invest in other gasoline-related investments such as cash-settled options on Futures Contracts, forward contracts for gasoline, and OTC transactions based on the price of gasoline, oil, and other petroleum-based fuels, Futures Contracts, and indices based on the

[4] Amex Rule 1500–AEMI provides for the listing of Partnership Units, which are defined as securities, that are: (a) issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or securities; and (b) that are issued and redeemed daily in specified aggregate amounts at net asset value. *See* Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (approving Amex Rules 1500–AEMI and 1501 through 1505 in conjunction with the listing and trading of Units of the United States Oil Fund, LP).

[5] The Amex stated that it will require a minimum of 100,000 Units to be outstanding at the start of trading and expects that the initial price of a Unit will be $50.00.

[6] Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange.

foregoing (collectively, ''Other Gasoline-Related Investments''). Futures Contracts and Other Gasoline-Related Investments collectively are referred to as ''Gasoline Interests.''

Each of USHO and USG will invest in Heating Oil Interests and Gasoline Interests, respectively, to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or collateral obligations. In pursuing this objective, the primary focus of USHO's and USG's investment manager, Victoria Bay Asset Management, LLC (''Victoria Bay'' or ''General Partner''), will be investment in Futures Contracts and the management of Partnership investments in short-term obligations of the United States of two years or less (''Treasuries''), and cash and cash equivalents (collectively, ''Cash'') for margining purposes and as collateral. Each Partnership seeks to track price changes in percentage terms of an underlying commodity as measured by a benchmark defined to be the price of a specified futures contract. Each Partnership seeks to track price changes in percentage terms of an underlying commodity as measured by a benchmark defined to be the price of a specified futures contract.[7]

Accordingly, the investment objective of USHO is for the changes in percentage terms of a Unit's net asset value (''NAV'') to reflect the changes in percentage terms of a specified price of heating oil (also known as No. 2 fuel) delivered at the New York harbor, as measured by the changes in the price of the heating oil futures contract traded on the NYMEX (the ''Heating Oil Benchmark Futures Contract''), less USHO's expenses. Similarly, the investment objective of USG is for changes in percentage terms of a Unit's NAV to reflect the changes in percentage terms of the price of unleaded gasoline (also known as reformulated gasoline blendstock for oxygen blending or ''RBOB''), for delivery to New York harbor, as measured by the changes in the price of a specified unleaded gasoline futures contract traded on the NYMEX (the ''Gasoline Benchmark Futures Contract''), less USG's expenses. The Heating Oil Benchmark Futures Contract and Gasoline Benchmark Futures Contract employed are, in each case, the near month expiration contract, except when the near month contract is within two weeks of expiration, in which case it will invest in the next expiration month.[8]

The General Partner will attempt to place USHO's trades in Heating Oil Interests and otherwise manage USHO's investments so that ''A'' will be within plus/minus 10% of ''B'', where:

- A is the average daily change in USHO's NAV for any period of 30 successive valuation days, *i.e.*, any day as of which USHO calculates its NAV, and
- B is the average daily change in the price of the Benchmark Futures Contract over the same period.

The General Partner will attempt to place USG's trades in Gasoline Interests and otherwise manage USG's investments so that ''A'' will be within plus/minus 10% of ''B'', where:

- A is the average daily change in USG's NAV for any period of 30 successive valuation days, *i.e.*, any day as of which USG calculates its NAV, and
- B is the average daily change in the price of the Benchmark Futures Contract over the same period.

The General Partner believes that market arbitrage opportunities should cause USHO's and USG's Unit prices to closely track each Partnership's per-Unit NAV, which are targeted at the current Heating Oil Benchmark Futures Contract and Gasoline Benchmark Futures Contract, respectively.

III. Commission Findings and Accelerated Approval

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that an exchange have rules designed, among other things, 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, and, in general to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange. The Commission notes that it previously approved the original listing and trading of certain partnership units similar to the Units.[11]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[12] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Amex will disseminate for each Partnership every 15 seconds throughout Amex's trading day by means of the Consolidated Tape Association/Consolidated Quote High Speed Lines information with respect to the indicative partnership value (''IPV''). The Exchange will also make available on its Web site daily trading volume, the closing prices, and the NAV. Web site disclosure of portfolio holdings for both Partnerships will be made daily and will include, as applicable, the specific types, the name and value of each Heating Oil or Gasoline Interest, the specific types of Heating Oil or Gasoline Interests and characteristics of such interests, Treasuries, and amount of Cash held in the portfolio of the Partnerships. In addition, Amex represented that quotations and last-sale information regarding the Futures Contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange

[7] A detailed discussion of the underlying benchmark for each Partnership, dissemination of the values thereof, investment objective of the Partnership, portfolio investment methodology, investment techniques, availability of information and key values, creation and redemption of Units, arbitrage, dividends and distributions, Amex's initial and continued listing standards, Amex trading rules and trading halts, information circular to Exchange members, and other related information regarding the Partnership can be found in the Notice. *See supra* note 3.

[8] The Heating Oil Benchmark Futures Contract and Gasoline Benchmark Futures Contract will be changed or ''rolled'' over a four-day period by selling the near month contract that expires the following month.

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Securities Exchange Act Release Nos. 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR–Amex–2007–98) (approving listing and trading of units of the United States 12 Month Oil Fund, LP and the United States 12 Month Natural Gas Fund, LP); 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (approving Amex Rules 1500–AEMI and 1501 through 1505 in conjunction with the listing and trading of units of the United States Oil Fund, LP) (''Amex 2005–127 Order''); and 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR–Amex–2006–112) (approving the listing and trading of shares of the United States Natural Gas Fund, LP) (''Amex 2006–112 Order'').

[12] 15 U.S.C. 78k–1(a)(1)(C)(iii).

further represented that real-time futures data is available by subscription from Reuters and Bloomberg.

Furthermore, the Commission believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Units when transparency is impaired. Trading in the Units will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. If the IPV or the underlying benchmark futures contract of a Partnership is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination occurs. If the interruption to the dissemination of the IPV or the underlying benchmark futures contract persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[13] In addition, the Exchange has represented that, if it learns or becomes aware that a Partnership fails to disseminate its NAV to all market participants at the same time, trading of such Partnership Units will be halted.[14]

The Commission further believes that the trading rules and procedures to which the Units will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Units will be traded on the Exchange similar to other equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange will obtain a representation from each Partnership, prior to listing, that the NAV per Unit for USHO and USG will be calculated daily and made available to all market participants at the same time. In addition, the Exchange represents that disclosure of the portfolio composition for each Partnership will be made to all market participants at the same time.

(2) The Exchange's surveillance procedures are adequate to deter and detect violations of Exchange rules relating to trading of the Units. Specifically, the surveillance procedures will be similar to those used for units of the United States Oil Fund, LP and the United States Natural Gas Fund, LP [15] as well as other commodity-based trusts, trust issued receipts, and exchange-traded funds. In addition, the surveillance procedures will incorporate and rely upon existing Amex surveillance procedures governing options and equities. The Exchange currently has in place a comprehensive surveillance sharing agreement with each of NYMEX and ICE Futures for the purpose of providing information in connection with trading in, or related to, futures contracts traded on NYMEX and ICE Futures, respectively. To the extent that a Partnership invests in Heating Oil Interests or Gasoline Interests traded on other exchanges, the Amex will enter into comprehensive surveillance sharing agreements with those particular exchanges. The Exchange has represented that each of the Partnerships will only invest in futures contracts on markets where the Exchange has entered into the appropriate comprehensive surveillance sharing agreements.

(3) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular. The Information Circular will discuss the special characteristics, and risks, of trading in the Units. Specifically, the Information Circular, among other things, will discuss what the Units are, how a basket of Units is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Units prior to, or concurrently with, the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the per-Unit IPV, trading information, and applicable suitability rules. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and describe the regulatory framework relating to the trading of heating oil and gasoline based futures contracts and related options. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

(4) The Trust is required to comply with Rule 10A–3 under the Act [16] for the initial and continued listing of the Units.

This approval order is based on the Exchange's representations.

IV. Acceleration

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[17] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the present proposal is similar to prior proposals that the Commission has approved,[18] is consistent with current Amex listing requirements, and received no comments following publication in the **Federal Register**. The Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from these additional investment choices without delay.

Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[19] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Amex–2007–70), as amended, be, and is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1613 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[13] E-mail from Jeffrey P. Burns, Vice President & Associate General Counsel, Exchange, to Michou Nguyen, Special Counsel, Division of Trading and Markets, Commission, on January 22, 2008; *see also* Amex Rule 1502(b)(ii)–(iii).

[14] E-mail from Jeffrey P. Burns, Vice President & Associate General Counsel, Exchange, to Brian Trackman, Special Counsel, Division of Trading and Markets, Commission, on January 17, 2008.

[15] *See* Amex 2005–127 Order and Amex 2006–112 Order, *supra* note 11.

[16] 17 CFR 240.10A–3.

[17] 15 U.S.C. 78s(b)(2).

[18] *See supra*, note 11.

[19] 15 U.S.C. 78s(b)(5).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57195; File No. SR–BSE–2008–04]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Effective Date of a Previous Rule Change Relating to Information Contained in a Directed Order on the Boston Options Exchange

January 24, 2008.

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 January 18, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the BSE. The BSE filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effective date of the amended rule governing the Exchange's Directed Order process on the Boston Options Exchange (''BOX'') from January 31, 2008, to January 31, 2009. The text of the proposed rule change is available on BSE's Web site at *http://www.bostonoptions.com*, at BSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE 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 BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 14, 2006, the BSE proposed an amendment to its rules governing its Directed Order[5] process on BOX.[6] The rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant (''EP'') the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006, (''Pilot Program'') while the Commission considered a corresponding Exchange proposal[7] to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

On June 20, 2006, the Exchange proposed extending the effective date of the rule governing its Directed Order process on BOX from June 30, 2006 to September 30, 2006,[8] while the Commission continued to consider the corresponding Exchange proposal.

On September 11, 2006, January 16, 2007, and July 2, 2007, the Exchange proposed extending the effective date of the amended rule governing the Directed Order process on the BOX from September 30, 2006 until January 31, 2007,[9] from January 31, 2007 until July 31, 2007,[10] and from July 31, 2007 until January 31, 2008,[11] respectively, while the Commission considered the corresponding Exchange proposal to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

This filing from the Exchange again proposes extending the effective date of the amended rule governing its Directed Order process on BOX, from January 31, 2008 to January 31, 2009.[12] In the event the Commission reaches a decision with respect to the corresponding Exchange proposal to amend its rules before January 31, 2009, the amended rule governing the Exchange's Directed Order process on the BOX will cease to be effective at the time of that decision.

2. Statutory Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from January 31, 2008 to January 31, 2009. This extension will afford the Commission the necessary time to consider the Exchange's corresponding proposal to amend its rule to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that this proposal is consistent with the requirements of Section 6(b) of the Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change 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 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: (1) Does not significantly affect

[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] Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

[6] *See* Securities Exchange Act Release No. 53516 (March 20, 2006), 71 FR 15232 (March 27, 2006) (SR–BSE–2006–14).

[7] *See* Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR–BSE–2005–52).

[8] *See* Securities Exchange Act Release No. 54082 (June 30, 2006), 71 FR 38913 (July 10, 2006) (SR–BSE–2006–29).

[9] *See* Securities Exchange Act Release No. 54469 (September 19, 2006), 71 FR 56201 (September 26, 2006) (SR–BSE–2006–38).

[10] *See* Securities Exchange Act Release No. 55139 (January 19, 2007), 72 FR 3448 (January 25, 2007) (SR–BSE–2007–01).

[11] *See* Securities Exchange Act Release No. 56014 (July 5, 2007), 72 FR 38104 (July 12, 2007) (SR–BSE–2007–31).

[12] In the event that the issue of anonymity in the Directed Order process is not resolved by January 31, 2009, the Exchange will consider whether to submit another filing under Rule 19b–4(f)(6) extending this rule and system process.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [15] of the Act and Rule 19b–4(f)(6) thereunder.[16] As required under Rule 19b–4(f)(6)(iii),[17] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[20] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice and clarify that Directed Orders on BOX are not anonymous without interruption.[21] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2008–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2008–04. 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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–04 and should be submitted on or before February 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1598 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *Id.*

[21] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57191; File No. SR–CBOE–2007–150]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Exchange Fees for Fiscal Year 2008

January 24, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the CBOE. On January 10, 2008, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule to make various changes for Fiscal Year 2008. The text of the proposed rule change is available at the CBOE, on the Exchange's Web site at *http://www.cboe.org/legal*, and in 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, CBOE 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 purpose of this proposed rule change is to amend the CBOE Fees Schedule to make various fee changes. The proposed changes are the product of the Exchange's annual budget review. The fee changes were approved by the Exchange's Board of Directors pursuant to CBOE Rule 2.22 and will take effect on January 1, 2008.

The Exchange proposes to amend the following fees:

Liquidity Provider Sliding Scale

In January 2007, the Exchange adopted a ''Liquidity Provider Sliding Scale'' program, which reduces a Liquidity Provider's per contract transaction fee based on the number of contracts the Liquidity Provider trades in a month.[3] The sliding scale applies to all Liquidity Providers (CBOE Market-Maker, DPM, e-DPM, LMM and RMM) for transactions in all products.[4]

Under the current program, a Liquidity Provider's $.20 per contract transaction fee is reduced if the Liquidity Provider reaches the volume thresholds set forth in the sliding scale in a month. As a Liquidity Provider's monthly volume increases, its per contract transaction fee decreases. The first 50,000 contracts traded in a month (first tier) are assessed at $.20 per contract. The next 950,000 contracts traded (up to 1 million total contracts traded—second tier) are assessed at $.18 per contract. The next 1.5 million contracts traded (up to 2.5 million total contracts traded—third tier) are assessed at $.15 per contract and the next 1.5 million contracts traded (up to 4 million total contracts traded—fourth tier) are assessed at $.10 per contract. All contracts above 4 million contracts traded in a month (fifth tier) are assessed at $.02 per contract. The Exchange aggregates the trading activity of separate Liquidity Provider firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A.[5]

The Exchange proposes to increase the sliding scale volume thresholds for fiscal year 2008 due to increased volume on the Exchange. Specifically, the Exchange proposes to increase the first tier threshold from 50,000 contracts to 75,000 contracts, the second tier threshold from 950,000 contracts to 1,125,000 contracts (up to 1.2 million total contracts traded), the third tier threshold from 1.5 million contracts to 1.8 million contracts (up to 3 million total contracts traded), the fourth tier threshold from 1.5 million contracts to 1.8 million contracts (up to 4.8 million total contracts traded), and the fifth tier threshold from above 4 million contracts to above 4.8 million contracts. The Exchange also proposes to increase the fifth tier transaction fee rate from $.02 per contract to $.03 per contract.

Under the current program, the Exchange provides Liquidity Providers with two incentives to prepay annual transaction fees. First, in order to be eligible to participate in the sliding scale above 1 million contracts (*i.e.*, at the $.15 per contract rate and lower), a Liquidity Provider is required to prepay their transaction fees for the first two tiers of the sliding scale for the entire year (*i.e.*, $2.172 million). Second, if a Liquidity Provider prepays annual fees for the first four tiers of the sliding scale, the Liquidity Provider receives a $500,000 prepayment discount (total amount of the prepayment would be $6.172 million instead of $6.672 million). As a result of increasing the volume thresholds as described above, the $2.172 million prepayment amount would be revised to $2.61 million. The Exchange proposes to increase the discount for prepaying the first four tiers of the sliding scale from $500,000 to $600,000 (total amount of the prepayment would be $7.41 million instead of $8.01 million).

Member Firm Proprietary and Firm Facilitation Fee Cap

Pursuant to Section 20 of the CBOE Fees Schedule, the Exchange caps member firm proprietary fees at $125,000 per month per firm (''Member Firm Fee Cap''). The Exchange proposes to eliminate the Member Firm Fee Cap program and replace it with a sliding scale program (''Member Firm Proprietary Sliding Scale'') similar in operation to the Liquidity Provider Sliding Scale.

The proposed Member Firm Proprietary Sliding Scale would reduce the standard member firm proprietary per contract transaction fee (currently $.20 per contract) based on the number of contracts the member firm trades in a month, based on the following sliding scale:

Tiers	Contracts per month	Rate (cents)
First	First 400,000	20
Second	Next 200,000	15
Third	Next 150,000	10
Fourth	Next 100,000	5
Fifth	Above 850,000	2

The sliding scale would apply to member firm proprietary orders (''F'' origin code) in all products, except for orders of joint back-office (''JBO'') participants.[6]

A member firm's $.20 per contract transaction fee would be reduced if the member firm reaches the volume thresholds set forth in the sliding scale in a month. As a member firm's monthly volume increases, its per contract transaction fee would decrease. Under the proposed sliding scale, the first 400,000 contracts traded in a month would be assessed at $.20 per contract. The next 200,000 contracts traded (up to 600,000 total contracts traded) would be assessed at $.15 per contract. The next 150,000 contracts traded (up to 750,000 total contracts traded) would be assessed at $.10 per contract and the next 100,000 contracts traded (up to 850,000 contracts traded) would be assessed at $.05 per contract. All contracts above 850,000 contracts traded in a month would be assessed at $.02 per contract.

Due to the Exchange's obligation to pay license fees on certain products, the Exchange would assess a $.10 per contract license fee (a total of 10 cents per contract less any surcharge fees already assessed) on all licensed products when a firm reaches the fifth tier of the sliding scale.

Surcharge Fees

The Exchange currently charges a $.04 per contract surcharge fee on transactions of all market participants in

[3] *See* Securities Exchange Act Release No. 55193 (January 30, 2007), 72 FR 5476 (February 6, 2007).

[4] Contract volume resulting from dividend, merger and short stock interest strategies as defined in Footnote 13 of the Fees Schedule does not apply towards reaching the sliding scale volume thresholds.

[5] A Liquidity Provider's monthly contract volume is determined at the firm affiliation level, *e.g.*, if five Liquidity Provider individuals are affiliated with member firm ABC as reflected by Exchange records for the entire month, all of the volume from those five individual Liquidity Providers count towards firm ABC's sliding scale transaction fees for that month.

[6] A JBO participant is a member or member organization that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. JBO participant orders are excluded from the sliding scale due to the fact that the Exchange is unable to differentiate orders of the JBO participant from orders of its JBO Broker and so is unable to aggregate the JBO participant's orders for purposes of the sliding scale.

options on the S&P 100 Index (OEX and XEO), S&P 500 Index (SPX) and options on volatility indexes (*e.g.*, VIX) excluding public customer orders and including linkage orders.[7] The Exchange proposes to increase the surcharge fee to $.06 per contract in these products. The surcharge fee is assessed to help the Exchange recoup license fees the Exchange pays to index licensors for the right to list these products for trading.

SPX Customer Transaction Fee

The Exchange currently charges customers trading SPX options $.44 per contract if the premium is greater than or equal to $1 and $.27 per contract if the premium is less than $1. The Exchange proposes to increase the transaction fee rate if the premium is less than $1 from $.27 per contract to $.35 per contract.

Membership Application Fees

Membership application fees are set forth in Section 11 of the CBOE Fees Schedule as well as in a regulatory circular (''Membership Fees Circular''). These fees have not changed in approximately four years. The Exchange proposes several changes to the membership application fees as reflected in the Fees Schedule and Membership Fees Circular included as Exhibit 5. The proposed changes would simplify the membership application fees schedule by consolidating certain fees. In addition, certain fees are proposed to be increased, certain fees are proposed to be eliminated, and one new fee is proposed to be established (Seat Transfer Fee).[8]

The Exchange notes that while the proposed $4,000 Trading Firm Application Fee is significantly higher than the current firm application fee ($275), unlike the current fee the proposed new fee will encompass several other fees related to a firm's membership application,[9] thereby potentially resulting in an overall fee reduction for some firm applicants. For example, under the current membership fee structure, a firm applicant would pay the $275 firm application fee, the $2,200 individual application fee for each of its nominees applying for individual membership, the $275 fee for each of its associated persons (*e.g.*, general partners, executive officers, LLC managers, etc.) and the $40 fingerprint processing fee for each of its associated persons, which fees when totaled could potentially equal or exceed $4,000.

Manual Appointment Change Request Fee

The Exchange provides members with access to an online appointment system that allows CBOE market-makers and remote market-makers to view and update their market-maker appointments as often as necessary. Market-makers are still allowed to request appointment changes via email, phone call or in-person visits to the Exchange. In order to encourage market-makers to use the online appointments system, the Exchange proposes to charge members $50 for each appointment change request that is not executed through the online appointment system.

Technology Fee Changes

The Exchange proposes to amend an existing fee and establish several new fees related to CBOE's electronic trading system (CBOEdirect) and its Hybrid Trading System. First, the Exchange provides certain hardware (*e.g.*, servers) and related maintenance services to third party vendors that provide members with quoting software used by members to trade on the Hybrid Trading System. Since 2003, the Exchange has charged these members $100 per month to help the Exchange recover its costs in facilitating the members' receipt of these third party services. Due to increased quoting, the Exchange's costs in upgrading and otherwise maintaining this hardware have increased. The Exchange proposes to increase the monthly fee from $100 to $150 to help the Exchange offset these increased costs.[10]

Second, the Exchange proposes to establish three new monthly charges related to connectivity to CBOEdirect. The Exchange provides member firms with server hardware that enable the firms to connect to CBOE's two Application Protocol Interfaces (''APIs''): CMI (CBOE Market Interface) and Financial Information Exchange (''FIX''). Currently, members do not pay for this service. The Exchange proposes to charge members a $40 per month ''CMI Application Server'' fee for this service. In addition, the Exchange proposes to charge members a $40 per month ''network access port'' charge and a $40 per month ''FIX port'' charge for network hardware the Exchange provides to members for access to the Exchange's network.

Lastly, the Exchange provides cabinet space in the CBOE data center for co-locating member firm network and quoting engine hardware, to help members meet their need for high performance processing and low latency. The Exchange proposes to charge a co-location fee of $10 per ''U'' of shelf space (which is equal to 1.75 inches).

Customer Large Trade Discount Program

The Exchange proposes to amend the Customer Large Trade Discount program. The Customer Large Trade Discount program provides a discount in the form of a cap on the quantity of customer contracts that are assessed transaction fees for CBOE index, ETF and HOLDRs options.[11] Currently, customer transaction fees are charged only up to the first 7,500 contracts per order in SPX options, only up to the first 5,000 contracts per order in other index options, and only up to the first 3,000 contracts per order in ETF and HOLDRs options. The Exchange proposes to: (i) Increase the SPX options cap to 10,000 contracts; and (ii) increase the cap for options on volatility indexes to 7,500 contracts from 5,000 contracts.

Miscellaneous, Non-substantive Changes

The Exchange proposes two non-substantive clean-up changes to its Fees Schedule, as reflected in Exhibit 5. The Exchange proposes to delete a sentence from Footnote 7 of the Fees Schedule relating to a cabinet fee as the Exchange recently eliminated that fee.[12] The Exchange also proposes to delete a sentence in Footnote 17 of the Fees Schedule relating to a fee waiver that is due to expire on December 31, 2007.[13]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(4)[15] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

[7] *See* CBOE Fees Schedule, Footnote 14.

[8] The $500 Seat Transfer Fee is capped at $2000 for a seat transfer request covering multiple seats. *See* Amendment No. 1.

[9] The Trading Firm Application Fee would encompass a firm's membership application, one Individual Application Fee (Nominee) associated with the firm's membership application and Associated Person Fees for all associated persons that are part of the firm's membership application.

[10] The fee is located in Section 17 of the Fees Schedule and is currently named ''Actant Computing User Fee''. The Exchange proposes to rename the fee ''Quoting Infrastructure User Fee.''

[11] *See* CBOE Fees Schedule, Section 18.

[12] *See* Securities Exchange Act Release No. 56937 (December 10, 2007), 72 FR 71465 (December 17, 2007).

[13] *See* Securities Exchange Act Release No. 56852 (November 28, 2007), 72 FR 68226 (December 4, 2007).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

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 [16] and subparagraph (f)(2) of Rule 19b–4 [17] thereunder. 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.[18]

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–CBOE–2007–150 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–150. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–150 and should be submitted on or before February 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1596 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 10, 2008, the date CBOE filed Amendment No. 1.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57193; File No. SR–DTC–2007–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fee Schedule

January 24, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 31, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise DTC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise fees for certain services provided by DTC.

These changes include: [3]

(1) Decreases to Settlement Services fees to realign fees with costs incurred in providing the services.

(2) Increases in Securities Processing, Custody, and Asset Servicing fees to realign fees with costs scaled to reflect processing complexity.

(3) Elimination of certain Participant Output Services fees.

In addition, DTC is implementing certain disincentive fees to discourage activities which increase industry inefficiencies. These disincentive fees include:

(1) A disincentive fee related to underwritings of non-conforming structured securities (*i.e.*, issues with structural elements that prevent agents from making timely announcements on income distributions) as compensation for the additional costs to DTC in processing them. The effective date for this fee will be announced by DTC via Important Notice upon the Commission's approval of proposed rule change SR–DTC–2007–11.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The specific changes to DTC's fee schedule are attached as an exhibit to the filing.

[4] Notice of filing was published for comment on November 26, 2007. Securities Exchange Act Release No. 56795 (November 15, 2007), 72 FR 66009.

(2) A disincentive fee for underwriters that submit incomplete information.

(3) Additional disincentive fees related to rejects and exceptions for Custody and Deposits.

DTC is introducing associated fees for new capabilities in Tax Services and Securities Processing. DTC is also introducing new Underwriting fees for the New Issue Information Dissemination Service (NIIDS). The effective date for the new Underwriting fees will be announced by DTC through an Important Notice upon the Commission's approval proposed rule change SR–DTC–2007–10.[5]

These proposed fee revisions are consistent with DTC's overall pricing philosophy to align service fees with underlying costs, to discourage manual and exception processing, and to encourage immobilization and dematerialization of securities. Except as noted, the effective date for these fee adjustments was January 2, 2008.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act[6] and the rules and regulations thereunder applicable to DTC because it provides for the equitable allocation of reasonable dues, fees, and other charges among DTC's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder because the proposed rule change establishes or changes a due, fee, or other charge applicable only to a participant. At any time within sixty 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–DTC–2007–17 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–DTC–2007–17. 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 Section, 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 DTC and on DTC's Web site at *http://login.dtcc.com/dtcorg/.* 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–DTC–2007–17 and should be submitted on or before February 20, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1615 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[5] Notice of filing was published for comment on October 3, 2007. Securities Exchange Act Release No. 56552 (September 27, 2007), 72 FR 56407.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57196; File No. SR–ISE–2008–08]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program for Directed Orders

January 24, 2008.

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 January 22, 2008, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. The proposed rule change has been filed by the ISE as effecting a change in an existing order-entry or trading system pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend the pilot period for the system change that identifies to a Directed Market Maker (''DMM'') the identity of the firm entering a Directed Order until January 31, 2009.

[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)(5).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 5, 2006, the ISE initiated a system change to identify to a DMM the identity of the firm entering a Directed Order. The ISE filed this system change on a pilot basis under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(5) thereunder [5] so that it would be effective while the Commission considered a separate proposed rule change filed under Section 19(b)(2) of the Act to amend the ISE's rules to reflect the system change on a permanent basis (the ''Permanent Rule Change'').[6] The current pilot expires on January 31, 2008,[7] but the Commission has not yet taken action with respect to the Permanent Rule Change. Accordingly, the Exchange proposes to extend the pilot until January 31, 2009, so that the system change will remain in effect while the Commission continues to evaluate the Permanent Rule Change.[8]

2. Statutory Basis

The Exchange believes that the basis under the Act is found in Section 6(b)(5), in that the propose rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Extension of the pilot program will allow the Exchange to continue operating the pilot while the Commission considers the Permanent Rule Change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change effects a change in an existing order entry or trading system that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(5) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–08. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–08 and should be submitted on or before February 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1599 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Securities Exchange Act Release No. 53104 (January 11, 2006), 71 FR 3142 (January 19, 2006) (Notice of Filing and Immediate Effectiveness for SR–ISE–2006–02).

[6] *See* Securities Exchange Act Release No. 53103 (January 11, 2006), 71 FR 3144 (January 19, 2006) (Notice of Filing for SR–ISE–2006–01).

[7] *See* Securities Exchange Act Release No. 56155 (July 27, 2007), 72 FR 43306 (August 3, 2007) (Notice of Filing and Immediate Effectiveness for SR–ISE–2007–67).

[8] The ISE anticipated that extension of the pilot might be necessary and included this in the filing for the initial pilot. *See supra* note 5, at footnote 5.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 19b–4(f)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57194; File No. SR–NSCC–2007–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 To Provide Clarification With Respect to the Correspondent Clearing Service and To Make Technical Changes to the Rules and Procedures Relative to Trade Recording and Special Representative Services

January 24, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 2007, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 15, 2008, and on January 22, 2008, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to: (1) Clarify the appropriate use of NSCC's Correspondent Clearing Service and (2) make technical corrections, clarification, and organizational changes relative to its Trade Recording and Special Representative Services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to: (1) Clarify the appropriate use of NSCC's Correspondent Clearing Service and (2) make technical corrections, clarification, and organizational changes relative to its Trade Recording and Special Representative Services.

1. Clarification of Correspondent Clearing Service

NSCC is modifying its Procedure IV (Special Representative Service) to clarify the appropriate use of the Correspondent Clearing Service.

The Correspondent Clearing Service is designed to provide an automated vehicle by which a Member, acting as a Special Representative, may move a position that it has in the process of clearance at NSCC to the account of another Member (its correspondent) on whose behalf the original trade was executed. The Correspondent Clearing Service is not a mechanism for original trade submission.[3] For example, Member A that sold securities for Member B (its correspondent) on the NYSE would have the sell side of the transaction submitted by the NYSE in the normal Trade Recording Operation thereby incurring a CNS obligation to deliver the shares sold. Acting as Special Representative for its correspondent Member B, Member A would submit transaction data showing itself as the buyer of those securities and its correspondent Member B as the seller. As a result, Member A would net out in the CNS System (its sell side netting against its buy side) and its correspondent Member B would incur a CNS obligation to deliver. In other words, the service provides for the correspondent's obligation to be substituted for that of the Special Representative.

The Correspondent Clearing Service was not designed as a mechanism to permit a Special Representative, acting as a Qualified Special Representative (''QSR''), to submit original locked-in trade data, and it should not be used as such. A QSR is a Member that either (i) operates an automated execution system where it is always the contra-side of every trade, (ii) is the parent or affiliate of an entity operating such an automated system, where it is the contra-side of every trade, or (iii) clears for a broker-dealer that operates such a system, and the subscribers to the system acknowledge the clearing Member's role in the clearance and settlement of these trades.

Accordingly, the proposed revisions provide that the Correspondent Clearing Service may only be used in the following situations: (1) To accommodate a Member with multiple affiliate accounts that wishes to move a position resulting from an ''original trade'' in the process of clearance from one affiliate account to another and (2) to accommodate a Member that relies on its Special Representative to execute a trade in a market that the Member is precluded from due either to membership requirements (*e.g.*, membership requirement for access to markets) or applicable regulation, in order that the resulting position be moved from the Special Representative to that Member (including direct market access offsets).

2. Technical Corrections

At this time, as part of updating its Rules and Procedures relative to the Trade Recording and Special Representative Services, NSCC is making certain technical corrections, clarifications, and organizational changes to:

(1) Rule 7, including moving the definitions of ''Special Representative,'' ''Qualified Special Representative,'' and ''Index Receipt Agent'' from Rule 39 (where they currently appear) to Rule 7 (where these terms are first used) and renumbering the rules accordingly; and

(2) Procedure II (Trade Comparison and Recording Service) to (i) add clarifying language to the introductory paragraph to describe the procedure used by NSCC to confirm locked-in trade data and (ii) add back language relating to receipt of locked-in trade data from QSRs that was inadvertently deleted in error in rule change SR–NSCC SR–2003–12.[4]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[5] and the rules and regulations thereunder applicable to NSCC because it should better enable NSCC to facilitate the prompt and accurate clearance and settlement of securities transactions by clarifying the purpose of its Correspondent Clearing Service and by making needed changes to its Trade

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The term ''original trade'' is used here solely to distinguish between a trade executed in the marketplace by the Special Representative and a transaction booked for accounting purposes to accommodate the movement of positions between Members as permitted in Procedure IV (Special Representative Service).

[4] Securities Exchange Act Release No. 48141 (July 8, 2003), 68 FR 42153 [File No. SR–NSCC–2003–12].

[5] 15 U.S.C. 78q–1.

Recording and Special Representative Services.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act [6] and Rule 19b–4(f)(1) [7] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of the proposed rule changes, the Commission may summarily abrogate such rule changes 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.[8]

IV. 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 Number SR–NSCC–2007–16 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–NSCC–2007–16. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, 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 office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal/.* 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–NSCC–2007–16 and should be submitted on or before February 20, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1597 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 22, 2008, the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

[9] 17 cfr 200.30√3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57192; File No. SR–OCC–2007–17]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Clearing Fee Schedule

January 24, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 7, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act [2] and Rule 19b-4(f)(2) thereunder [3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would implement a new discounted fee schedule and continue the market maker scratch fee discount with all changes being effective January 1, 2008.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Effective May 1, 2007, OCC adopted a new permanent reduced clearing fee schedule for (i) securities options and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified the text of the summaries prepared by OCC.

(ii) security futures where at least one side of the trade is cleared by an OCC clearing member.[5] Simultaneous with the adoption of the new standard clearing fee schedule, OCC additionally discounted clearing fees. Effective September 1 through December 31, 2007, OCC further reduced its discounted clearing fees and halved the market-maker scratch fee.[6] Effective January 1, 2008, OCC will implement a new discounted clearing fee schedule that will replace the May 1 discounted fees and will continue the discounted market-maker scratch fee of $0.01 per side. The following chart sets forth the new discounted clearing fee schedule.

Contracts/trade	Current permanent standard fee schedule, effective May 1, 2007	Discounted standard fee schedule, effective January 1, 2008
1–500	$0.05/contract	$0.03/contract.
501–1,000	$0.04/contract	$0.024/contract.
1,001–2,000	$0.03/contract	$18.00 (capped).
>2,000	$55.00 (capped)	$18.00 (capped).

The discounted clearing fee schedule and market maker scratch fee will remain in effect until further action by OCC's Board of Directors.

The adoption of the new discounted fee schedule reflects the strong contract volume experienced by OCC in 2007. OCC believes that these discounted fees will financially benefit clearing members and other market participants without adversely affecting OCC's ability to meet its expenses and maintain an acceptable level of retained earnings.

The proposed rule change is consistent with the requirements of section 17A of the Act[7] and the rules and regulations thereunder applicable to OCC because it benefits clearing members and other market participants by discounting fees and allocating them in a fair and equitable manner. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such 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–OCC–2007–17 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–OCC–2007–17. 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. The text of the proposed rule change is available at OCC, the Commission's Public Reference Room, and *http://www.theocc.com/publications/rules/proposed_changes/sr_occ_ 07_17.pdf.* 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–OCC–2007–17 and should be submitted on or before February 20, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1614 Filed 1–29–08; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended New System of Records and Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

[5] Securities Exchange Act Release No. 55709 (May 4, 2007), 72 FR 26669 (May 10, 2007) [File No. SR–OCC–2007–05].

[6] Securities Exchange Act Release No. 56386 (September 11, 2007), 72 FR 53273 (September 18, 2007) [File No. SR–OCC–2007–09]. In addition, OCC permanently adopted the standard fee schedule for commodity futures and eliminated the alternative fee schedule previously offered to futures markets.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

ACTION: Proposed New System of Records and Proposed Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled, *Social Security Administration Unified Measurement System/Managerial Cost Accountability System (SUMS/MCAS) 60–0371*, and routine uses applicable to this system of records. *SUMS/MCAS* will consist of information related to five interrelated Agency initiatives: (1) Workload counts, (2) performance measures, (3) time allocation, (4) customer service records, and (5) managerial cost accountability. We invite public comments on this proposal.

DATES: We filed a report of *SUMS/MCAS* and its applicable routine uses with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 23, 2008. *SUMS/MCAS* and its routine uses will become effective on March 3, 2008, unless we receive comments warranting that they not become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Earlene Whitworth Hill, Social Insurance Specialist, Disclosure Policy Development and Services Division 1, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone at (410) 965–1817, or e-mail: *earlene.whitworth.hill@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of *SUMS/MCAS*

A. General Background

SUMS/MCAS will support SSA and the State Disability Determination Services (DDS) management and management information (MI) analysts in analyzing workloads, planning resources, performing cost allocation activities, improving access to MI, and improving work-power allocation, which in turn will help us improve customer service and reduce manual work. *SUMS/MCAS* will provide a single source of data, collected in a consistent manner, which will improve the quality, consistency, and access to information used throughout SSA and DDS. It will also produce detailed reports that will assist us in assessing office, unit, and employee performance. *SUMS/MCAS* will enable us to manage and account for resources through one uniform source of MI, combining five interrelated initiatives:

- Workload Counts.
- Performance Measure.
- Time Allocation.
- Customer Service Record.
- Managerial Cost Accountability.

B. Collection and Maintenance of the Data for SUMS/MCAS

SSA will collect and maintain information in *SUMS/MCAS* that is derived from SSA's mainframe and web-based computer usage files (log files), payroll and human resource databases, security files (including the Internet verification files and Internet enterprise security interface), and programmatic work measurement data collected from all SSA processing locations.

The information maintained in *SUMS/MCAS* will be maintained in paper and electronic formats. Specifically, it will contain some, or all, of the following information about our clients and visitors to any SSA facility: name, Social Security number (SSN), age, address, and date of birth (DOB), along with related claims processing information. The system will contain some, or all, of the following information about our employees, contractor employees, and DDS employees: personal identification number (PIN); position; function and office codes; access and exit times when logging-on to any SSA system; and names and locations of the systems (log files). We will retrieve information from the system via online analytical processing (OLAP) tools using any of the data elements that the system contains. Standardized reports will be created from the data. Thus, *SUMS/MCAS* will constitute a system of records under the Privacy Act.

II. Proposed Routine Use Disclosures of Data Maintained in *SUMS/MCAS*

A. Proposed Routine Use Disclosures

We are proposing to establish routine uses of information that will be maintained in *SUMS/MCAS* as discussed below.

1. *To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.*

We will disclose information under this routine use only in situations in which an individual contacts the Office of the President, seeking that Office's assistance in a matter relating to information contained in *SUMS/MCAS*. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. *To a congressional office in response to an inquiry from that office made at the request of the subject of a record.*

We will disclose information under this routine use only in situations in which an individual asks his or her congressional representative to intercede in a matter relating to information contained in *SUMS/MCAS*. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. *To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:*

(a) *SSA, or any component thereof; or*

(b) *Any SSA employee in his/her official capacity; or*

(c) *Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or*

(d) *The United States or any agency thereof where SSA determines that the litigation is likely to affect the operation of SSA or any of its components,*

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees, in litigation involving *SUMS/MCAS* and/or to ensure that courts and other tribunals have appropriate information.

4. *To the Equal Employment Opportunity Commissioner (EEOC) when requesting information in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by*

Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

We will disclose information about our employees to the EEOC, as necessary, to assist in reassessing individuals' requests for reasonable accommodations; to assist in investigations into alleged or possible discriminatory practices in the Federal sector; to combat and prevent fraud, waste, and abuse under the Rehabilitation Act of 1973; and to assist the Commission in carrying out its other functions.

5. *To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with investigations of allegations of unfair practices or of other matters before an arbitrator or the Federal Service Impasses Panel.*

We will disclose information about our employees under this routine use, as necessary, to the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, and the Federal Service Impasses Panel or an arbitrator, in which all or part of the allegations involve *SUMS/MCAS.*

6. *To the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be authorized by law.*

We will disclose information about our employees under this routine use, as necessary, to the Merit Systems Protection Board or the Office of the Special Counsel, in which all or part of the allegations in the appeal or action involve *SUMS/MCAS.*

7. *To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to SUMS/MCAS.*

We will disclose information under this routine use only in situations where SSA enters into a contractual agreement or similar agreement with a third party to assist in accomplishing an Agency function relating to *SUMS/MCAS.*

8. *To student volunteers, individuals who are working under a personal service contract, and other individuals performing functions for SSA, but technically not having the status of Agency employees, if they need access to the records in order to perform their assigned Agency functions.*

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment, and community service programs. Examples of such statutes and programs include 5 U.S.C. 3111, which pertain to student volunteers, and 42 U.S.C. 2753, which pertain to the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned Agency duties.

9. *To General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. § 2904 and § 2906, as amended by NARA Act of 1984, information which is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.*

The Administrator of GSA and the Archivist of NARA are authorized by 44 U.S.C. 2904, as amended, to promulgate standards, procedures and guidelines regarding record management and conducting records management studies. GSA and NARA are authorized to inspect Federal agencies' records, for records management purposes, and agencies are expected to cooperate with GSA and NARA (44 U.S.C. 2906). In such instances, the routine use will allow disclosure.

10. *To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:*

- *To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, or the operation of SSA facilities, or*
- *To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.*

We will disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of SSA customers, employees, or workplaces, or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating Federal, State, or local law in connection with such activities.

11. *To the Secretary of Health and Human Services (HHS) or to any State, we will disclose any record or information requested in writing by the Secretary for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations, and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.*

We will disclose information under this routine use as directed in section 704(e)(1)(B) of the Social Security Independence and Program Improvements Act of 1994, which mandates certain disclosures to HHS components.

12. *To appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine 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 of SSA that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.*

This routine use specifically permits the disclosure of SSA information in connection with response and remediation efforts in the event of an unintentional release of Agency information, otherwise known as a ''data security breach.'' This routine use serves to protect the interests of the person whose information is at risk by allowing us to take appropriate steps to facilitate a timely and effective response to a data breach. It will also help us to improve our ability to prevent, minimize, or remedy any harm that may result from a compromise of data maintained in this system of records.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published notice of

routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of our regulations permits us to disclose information under a routine use where necessary to carry out SSA programs. Section 401.120 provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 8, and 10 and 11 above, will ensure we efficiently administer *SUMS/MCAS*. The disclosure that would be made under routine uses number 9 and 12 are required by Federal law. Thus, all routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Records Storage Medium and Safeguards for the Information Maintained in SUMS/MCAS

We will maintain information in *SUMS/MCAS* in paper and electronic form. Only authorized SSA, DDS, and contractor personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. We keep paper records in locked cabinets or in otherwise secure areas.

DDS and contractor personnel having access to data in *SUMS/MCAS* will be required to adhere to SSA rules concerning safeguards, access, and use of the data.

SSA, DDS, and contractor personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to, or disclosure of, information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

IV. Effect of SUMS/MCAS on the Rights of Individuals

SUMS/MCAS will maintain only information that is necessary to carry out our official functions under the Social Security Act and other applicable Federal statutes. We will use security measures that protect access to, and preclude unauthorized disclosure of, records in *SUMS/MCAS*. Our maintenance and use of the information are in accordance with the provisions of the Privacy Act (5 U.S.C. § 552a) and SSA's disclosure regulations (20 CFR Part 401). We employ safeguards to protect all personal information in our possession as well as the confidentiality of the information. We will disclose information under the routine uses discussed above only as necessary to accomplish the stated purpose(s). Thus, we do not anticipate that *SUMS/MCAS* and its routine use disclosures will have an unwarranted adverse effect on the rights of the individuals to whom they pertain.

Dated: January 23, 2008.

Michael J. Astrue,

Commissioner.

Social Security Administration (SSA) Notice of System of Records Required by the Privacy Act of 1974; as Amended

SYSTEM NUMBER:

60–0371.

SYSTEM NAME:

Social Security Administration Unified Measurement System/ Managerial Cost Accountability (SUMS/ MCAS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Systems, SSA, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SSA employees, individuals who do business with SSA (e.g., Social Security claimants, beneficiaries, attorney or non-attorney representatives, and representative payees), the State Disability Determination Services (DDS) employees and contractors who assist the Agency in administering the Agency's programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

We collect records maintained in *SUMS/MCAS* for management information (MI) in administering the Agency's programs to improve customer service and to produce detailed reports that will assist us in assessing office, unit, and employee performance. Specifically, it will contain some or all of the following information about individuals who do business with SSA: Name, Social Security number (SSN), age, address, and date of birth (DOB), along with other claims related processing information. The system will contain some or all of the following information about our employees, DDS employees, and contractor employees: Name; SSN; personal identification number (PIN); position; function and office codes; access and exit times when logging on any SSA system; and names and locations of the systems (log files).

The records will consist of information from SSA's mainframe and web-based computer usage files (log files); payroll and human resource databases; security files including the Internet verification file and Internet enterprise security interface; and programmatic work measurement data collected from all SSA processing locations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 205(a) of the Social Security Act (42 U.S.C. 405(a)).

Chief Financial Officers (CFO) Act (1990)—Provides for the integration and modernization of Federal financial systems and requires development of reporting of cost information.

Government Performance and Results Act (GPRA) (1993)—GPRA requires development of Agency strategic plans and performance goals, measurement and reporting on actual performance compared to goals, computation of costs and unit costs as key performance indicators, and comparison of costs with outputs and outcomes.

Government Management Reform Act (GMRA) (1994)—Requires an agency-wide performance and financial statement, an audited statement, and cost information.

Federal Financial Management Improvement Act (FFMIA) (1996)—Mandates that agencies establish financial management systems that comply with Federal standards and requirements. It directs auditors to report on compliance as part of the review of agency financial statements.

Office of Management and Budget (OMB) Standards—Require SSA to implement a modern managerial cost accounting system that satisfies all needs at all managerial decision levels.

PURPOSE(S):

SUMS/MCAS includes five interrelated Agency initiatives: (1) Workload Counts; (2) Performance Measures; (3) Time Allocation; (4) Customer Service Record; and (5) Managerial Cost Accountability, which will provide a single source for data, collected in a consistent manner to improve the quality, consistency, and accessibility of MI. *SUMS/MCAS* will enable the Agency to:

- Improve customer service and enhance the Agency's ability to monitor customer service;
- Create a unified work measurement and work power (i.e., the amount of time it takes to do one piece of work) identification system providing simpler access to information for reporting data;
- Produce detailed reports that will assist us in assessing office, unit, and employee performance;

• Consolidate the Agency workload structure and provide data at any office level, down to a specific employee;

• Allocate work-time usage information consistently for all components, workload activities, and the time that it takes to perform work and calculate productivity;

• Accommodate new workloads in a flexible work-measurement system by shifting work to locations where capacity exists, improving customer service;

• Ensure an accurate cost allocation of work performed by SSA;

• Manage and account for resources through one uniform source of MI;

• Measure outcomes, determine full costs, control resources, assess performance and provide timely feedback to managers to enhance the Agency's accountability and customer service; and

• Satisfy government-wide managerial cost accounting regulations and enable the Agency to link resource expenditures with performance, as required by legislation and other government-wide requirements stated in:

1. CFO Act of 1990;
2. GPRA Act of 1993;
3. GMRA Act of 1994;
4. FFMIA Act of 1996; and
5. OMB Standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made for routine uses as indicated below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

a. SSA, or any component thereof; or

b. Any SSA employee in his or her official capacity; or

c. Any SSA employee in his or her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. To the Equal Employment Opportunity Commission when requesting information in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

5. To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with the investigations of allegations of unfair practices or of other matters before an arbitrator or the Federal Impasses Panel.

6. To the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be authorized by law.

7. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

8. To student volunteers, individuals working under a personal service contract, and other workers who technically do not have the status of Federal employees, when they are performing work for the SSA, as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

9. To General Services Administration and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, information which is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.

10. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

• To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, or the operation of SSA facilities, or

• To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

11. To the Secretary of Health and Human Services or to any State, we will disclose any record or information requested in writing by the Secretary for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations, and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

12. To appropriate Federal, State, and local agencies, entities, and persons when (1) We suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine 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 of SSA that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain and store records in *SUMS/MCAS* in electronic and paper form. We keep paper records in locked cabinets or in otherwise secure areas.

RETRIEVABILITY:

We retrieve records in *SUMS/MCAS* by the name, SSN, age, address, and DOB of individuals who do business with SSA (e.g., Social Security claimants, beneficiaries, attorney or non-attorney representatives, and representative payees). We retrieve records in *SUMS/MCAS* by the name, SSN, PIN, position code, function or office location codes of employees, DDS employees and contractors.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system that maintains the data; computerized records will be stored in secured areas that are accessible only to employees who require the information in performing their official duties. All paper records will be kept in locked cabinets or in otherwise secure areas. SSA and DDS employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system. *See* 5 U.S.C. 552a(i)(1).

Contractor personnel having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access, and use of the data.

RETENTION AND DISPOSAL:

The project will adhere to NARA record retention standards as outlined in the *SUMS/MCAS* Global Requirements document. Specific retention periods follow NC–47–75–7 as shown below:

(1) Data source extract records housed in the *SUMS/MCAS* active data warehouse will be retained for 2 full fiscal years plus the current fiscal year.

(2) Active detail records and corresponding summary records housed in the *SUMS/MCAS* active data warehouse will be retained for 9 full fiscal years plus the current fiscal year.

(3) Long term offline archive of summary data housed in the *SUMS/MCAS* long term offline archive database will be retained for a total of 50 years or 40 additional years from the time it moves from the active data warehouse.

(4) MI housed in the Operational Data Stores (ODS) will be retained for a maximum of 5 years.

(5) Reference data housed in reference tables within the active data warehouse will be maintained in the active data warehouse for 50 years.

SYSTEM MANAGER(S) AND ADDRESS:

SUMS/MCAS Program Manager, Office of Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

NOTIFICATION PROCEDURE(S):

An individual may determine if this system contains a record about him or her by writing to the systems manager(s) at the above address and providing his or her name, SSN, or other information that may be in the system of records that will identify him or her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license, or some other means of identification. If an individual does not have any identification documents sufficient to establish his or her identity, the individual must certify in writing that he or she is the person he or she claims to be and that he or she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his or her identity by providing identifying information that parallels the record to which notification is being requested. The individual will be required to submit a request in writing or in person, if we determine that the identifying information provided by telephone is insufficient. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name) and ask for his or her permission to provide the information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his or her identity or must certify in the request that he or she is the person he or she claims to be and that he or she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURE(S):

Same as Notification procedures. Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA regulations (20 CFR 401.40).

CONTESTING RECORD PROCEDURE(S):

Same as Notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

The information that SSA will collect and maintain in *SUMS/MCAS* will consist of information from SSA's mainframe customer information control system, system management facility transaction logs, visitor intake process data extracts, payroll operations data store, position codes, report office table, Internet verification file, electronic disability collect system and related applications, customer help and information programs, Medicare application processing system, Internet enterprise security interface log files, travel manager, processing center, work measurement transaction database, district office weekly report, SSA web-based applications, programmatic processes, and operational data stores.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E8–1674 Filed 1–29–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6076]

Advisory Committee on Transformational Diplomacy Notice of Report Finalization and Submission

The Department of State announces that the Secretary of State's Advisory Committee on Transformational Diplomacy (''Committee'') will submit its report of recommendations on Tuesday, January 29, 2008, from 1:15 p.m. to 1:45 p.m., at the Department of State, 2201 C Street, Washington, DC in the Treaty Room. This event will not be a meeting of the Committee.

The Committee is composed of persons from the private sector and academia who provide advice on the Department's worldwide management operations, including structuring, leading and managing large global enterprises, communicating governmental missions and policies to relevant publics, and better use of information technology. The report is comprised of committee findings and recommendations to the Department that support transformational diplomacy in the areas including budgets, integration of foreign affairs and national security efforts, personnel recruiting and fortification, public private partnerships, upgrades to technological infrastructure, as well as tracking and measuring efforts. The

report will be available to the public at *http://fido.gov/facadatabase/* This presentation will be open to the public as capacity allows.

Entry to the building is controlled and will be facilitated by advance clearance. Members of the public (including government employees and Department of State employees) who wish to attend the event should provide by no later than January 28, 2008, their name; date of birth; citizenship (country); ID number from one of the following—Driver's License Number and State of issue; Passport Number; U.S. Government ID; U.S. Military ID; as well as their professional affiliation, address and telephone number to the office of the Executive Director of the Committee at 202–647–2652 or fax to 202–647–2529.

One of the following valid photo IDs will be required for admittance to the State Department building: U.S. driver's license, U.S. passport, or U.S. Government Agency ID. Members of the public must use the ''C'' Street entrance, after going through the exterior screening facilities. Members of the public will be escorted to the event and therefore should arrive in time to be cleared into the building no later than 12:45 p.m. For additional information, contact the Office of the Executive Director of the Committee, Henrietta Holsman Fore, 202–647–2652.

Dated: January 24, 2008.

Henrietta H. Fore,

Executive Director and Director of Foreign Assistance, Department of State.

[FR Doc. E8–1671 Filed 1–29–08; 8:45 am]

BILLING CODE 4710–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Cancellation of Environmental Impact Statement; Galveston County, TX

AGENCY: Federal Highway Administration (FHWA), TxDOT.

ACTION: Cancellation of Bolivar Bridge EIS.

SUMMARY: In Vol. 7, No. 28/Friday, February 10, 2006/Notices, FHWA issued a Notice of Intent to advise the public that an Environmental Impact Statement (EIS) would be prepared for a proposed SH Highway (SH 87) bridge connecting Galveston Island and Bolivar Peninsula in Galveston County, Texas. The project is now cancelled; therefore, no further project activities will occur.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Davis, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701, Telephone (512) 536–5960.

Issued on: January 17, 2008.

Donald Davis,

District Engineer, FHWA Texas Division.

[FR Doc. 08–385 Filed 1–29–08; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement on Transit Improvements in the North-South Corridor of Kansas City, MO

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Kansas City Area Transportation Authority (KCATA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) to assess the environmental and community impacts of transit improvements proposed by KCATA and the City of Kansas City, Missouri in a 12-mile North/South travel corridor in the Kansas City metropolitan area. Because KCATA may decide to seek FTA New Starts funding for transit improvements in the corridor, this work will also satisfy the FTA requirement for an Alternatives Analysis through the development of a combined Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS).

Possible transit improvements in the corridor are intended to improve access to the major employment center located in the central portion of the region, especially for that segment of the population that does not have access to the auto-oriented transportation system. Additionally, new transit facilities would support sustainable development patterns in the corridor. Alternatives proposed to be considered for accomplishing these purposes include (1) The Future No-Build Alternative, (2) a Transportation System Management (TSM) alternative that includes improvements to bus services, and (3) various fixed-guideway transit alternatives, including the light rail transit (LRT) line developed by the Citizens' Light Rail Task Force.

Scoping of the EIS will be accomplished through meetings and correspondence with interested individuals, organizations, Federal, State, and local governmental agencies, and Native American tribes.

DATES: *Comment Due Date:* Written comments on the scope of the EIS, including the purpose and need for action and the alternatives and impacts to be considered should be sent to Dick Jarrold of KCATA by March 17, 2008. See **ADDRESSES** below for his address.

Public Scoping Meetings: A Public scoping meeting will be held at the Mohart Community Center at 3200 Wayne, Kansas City, Missouri 64109 on Wednesday, February 27, 2008 from 5 p.m. to 8 p.m. Presentations summarizing the project and the Scoping process will be held at 5:30 p.m. and 7:30 p.m. The scoping meeting site is accessible to mobility-impaired individuals. If you wish to participate and need an interpreter, materials in alternate formats, or other accommodations, please contact Dick Jarrold at KCATA, (816) 346–0200 or *djarrold@kcata.org*. Please do so at least 48 hours prior to the meeting so that the proper arrangements can be made.

Interagency Coordination: An interagency scoping meeting will be held at 1 p.m. on Wednesday, February 27, 2008 at the KCATA administration building, 1200 East 18th Street, Kansas City, Missouri 64108.

ADDRESSES: Send written comments on the EIS scope to Dick Jarrold, KCATA Project Manager, 1200 E. 18th St., Kansas City, MO 64108.

FOR FURTHER INFORMATION CONTACT: Joan Roeseler, Federal Transit Administration, Region VII at (816) 329–3920 or by e-mail at *joan.roeseler@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and KCATA invite all interested individuals, organizations, businesses, and Federal, state, and local agencies to comment on the scope of the EIS, including the project's purpose and need, the alternative transit actions to be considered, and the impacts to be evaluated. During the scoping process, comments should focus on the purpose and need for a project, identifying specific transportation problems to be evaluated, or on proposing transportation alternatives that may be less costly, more effective, and have fewer environmental impacts while improving mobility in the corridor. Scoping information is available in hardcopy by request from Dick Jarrold as indicated above under **DATES** and on the project Web site at *http://www.kcata.org/lightrail.htm*.

During the scoping process, KCATA and FTA will extend an invitation to

other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies'' in accordance with Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). Scoping materials will accompany the invitation to become a participating agency or, if appropriate, a cooperating agency. KCATA and FTA may not be able to identify all Federal and non-Federal agencies and Native American tribes that may have an interest in the project. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency prior to February 20, 2008 should notify Dick Jarrold of KCATA at (816) 346–0200 or *djarrold@kcata.org*.

During the scoping process, KCATA will develop, in accordance with Section 6002 of SAFETEA–LU, a coordination plan that identifies milestones and details the lead agencies' expectations for review and comment by the participating agencies at those milestones. The coordination plan will also detail how the public outreach activities with interested parties or groups will continue throughout the duration of work on the EIS. The coordination plan will be posted on the project Web site, *http://www.kcata.org/lightrail.htm,* which will be updated periodically to reflect the status of the project and to provide additional project-related materials. Additional opportunities for public participation will also be announced through mailings, notices, and press releases and on the Web site. Those individuals wishing to be placed on the project mailing list may do so by contacting Manya Tackett at (816) 346–0200 or *ManyaT@kcata.org.*

II. Description of the Study Area and Project's Purpose and Need

The study area extends from approximately the intersection of I–29 with North Oak Trafficway and US–169 in the northern portion of Kansas City, Missouri south through the City of North Kansas City, across the Missouri River and into downtown Kansas City, Missouri and continuing south to the Country Club Plaza and Prospect Avenue areas in Kansas City, Missouri. The corridor is in the center of the metropolitan region and includes Kansas City's most concentrated employment and residential areas and many of the region's significant institutional and cultural attractions, including the North Kansas City business district, downtown Central Business District, Crown Center, Country Club Plaza, Penn Valley Park, and Union Station. Existing transit service in the portion of the corridor south of the Missouri River includes both regular bus routes and the MAX bus rapid transit (BRT) line. North of the Missouri River, only limited bus service is available and there are limited transit connections across the river.

Mobility is restricted due to the multiple employment and activity concentrations spread throughout the corridor, limited mobility connections over the Missouri River, and difficulty connecting lower income areas on the east side of Kansas City with the disbursed employment centers in the corridor. The primary purpose of an investment in transit in the North/South Corridor is to provide improved transit connections between the disbursed employment and activity centers, connect residential concentrations particularly low income centers on the east side to these centers, improve mobility and connections between the north and south parts of Kansas City that are separated by the Missouri River, promote desirable development along a fixed guideway in the center of the region and preserve the city center's economic competitiveness with fringe areas.

The growing mobility challenges, coupled with limited opportunity for highway capacity expansion, make an investment in expanding existing transit service and extending transit into new markets throughout the corridor a potentially promising solution.

The Study Area includes a substantial amount of the city's low income and minority areas. As employment and activity centers disperse, lower income residents without ready access to automobiles have reduced access to employment opportunities. A high capacity transit investment would enhance access to, and retain employment opportunities in the study area.

In addition to the employment concentrations, a transit investment in the North/South corridor offers a unique opportunity to provide seamless access to some of the city's premier cultural attractions in the corridor, including River Market, Crown Center, Union Station, Country Club Plaza and the University of Missouri-Kansas City. A high capacity, user friendly transit system would be attractive to visitors and increase accessibility to cultural and recreation centers to a wider range of patrons.

III. Alternatives

In November 2006, the voters of Kansas City approved a ballot initiative that provided a funding mechanism and specified in detail a light rail line in Kansas City. In November 2007, the City Council of Kansas City, Missouri, repealed that ballot initiative and committed the City to continued work with KCATA to consider transit alternatives, including rail options, and identify reasonable transit improvements for the corridor.

Phase I of this work included a technical review of the November 2006 initiative and the early identification and screening of conceptual alternatives; it has been completed. Phase II is the preparation of an AA/DEIS that will evaluate the Future No Build, Transportation System Management (TSM), and Build alternatives described herein, and any additional reasonable alternatives that emerge from the scoping process.

The Future No Build Alternative will include existing transportation facilities and services and committed and funded transportation services, facilities, and system management improvements. These are included in the metropolitan transportation plan of the Mid-America Regional Council (MARC).

The Transportation System Management (TSM) Alternative will include operational and low-cost capital investments to the existing transit services in the corridor that go beyond the Future No Build in attempting to address the purpose and need for transit improvements in the corridor. The TSM alternative will include consideration of both improvements in regular bus service and extensions of the MAX BRT service.

The Build Alternatives will consist of street-running rail alternatives, including but not limited to the Citizens' Task Force November 2007 recommendation of a 12-mile light rail or streetcar line starting north of the Missouri River and extending south of the river to the Country Club Plaza area with an eastward line to Prospect Avenue. Additional reasonable alternatives emerging from the scoping process, if any, will also be considered. An information packet including the Citizens' Task Force recommendations and an initial purpose and need statement are available from KCATA and are posted on the project Web site.

IV. Potential Impacts for Analysis

The EIS will evaluate the impacts of all reasonable alternatives emerging from the scoping process. The project team anticipates that issues of particular

focus will include land use and economic development impacts and benefits, transit, parking and traffic operations impacts, service to environmental justice populations, cultural resource impacts and impacts associated with a potentially new Missouri River crossing.

The EIS will take into account both short-term construction-related impacts and long-term impacts associated with operation of the transit system. The EIS will identify measures to avoid or mitigate adverse environmental and community impacts.

To ensure that all significant issues related to this proposed action are identified and addressed, comments and suggestions are invited from all interested parties on the impact areas to be studied and the methodologies. Comments and questions should be directed to KCATA as noted in the **ADDRESSES** section above.

V. FTA Procedures

KCATA is seeking FTA financial assistance provided by 49 United States Code (U.S.C.) § 5309 to construct the proposed project and will, therefore, be subject to the regulation at 49 Code of Federal Regulations (CFR) part 611 related to such New Starts projects. The New Starts regulation requires that an Alternatives Analysis be conducted to support a local decision on the preferred alternative that is then incorporated into the official metropolitan transportation plan adopted by MARC. KCATA and FTA propose to perform the Alternatives Analysis (AA) and preparation of the draft EIS together and produce an AA/DEIS document. The AA/DEIS will be distributed for public and agency review and a public hearing will be held. KCATA and MARC will select a locally preferred alternative based on the AA/DEIS and the public and agency comments received. Following selection of the locally preferred alternative and its adoption by MARC into the transportation plan, KCATA will seek FTA approval to initiate preliminary engineering (PE) of that alternative. The NEPA review will be completed during PE with publication of the final EIS.

The EIS will be prepared in accordance with the NEPA implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, KCATA and FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project to the maximum extent possible during the environmental review process. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5323(b) and 5324(b)); the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93); the section 404(b)(1) guidelines of EPA (40 CFR part 230); the regulation implementing section 106 of the National Historic Preservation Act (36 CFR part 800); the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402); section 4(f) of the Department of Transportation Act (23 CFR 771.135); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on protection of wetlands.

Mokhtee Ahmad,

Regional Administrator.

[FR Doc. E8–1510 Filed 1–29–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 15, 2007 [Vol. 72 FR 64275].

DATES: Comments must be submitted on or before February 22, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Simmons at the National Highway Traffic Safety Administration, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Simmons can be contacted at (202)366–2315. Please identify the relevant collection of information by referring to its OMB Control Number.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

SUPPLEMENTARY INFORMATION: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

Agency: National Highway Traffic Safety Administration.

Title: Reporting of Information and Documents About Potential Defects. OMB Number: 2127–0616.

OMB Number: 2127–0616.

Type of Request: Extension of currently approved collection.

Abstract: Under Chapter 301 of Title 49 of the United States Code, manufacturers of motor vehicles and items of motor vehicle equipment are periodically required to submit certain information to NHTSA, including information about claims and notices about deaths and serious injury, property damage data, communications to customers and others, and information on incidents resulting in fatalities or serious injuries from possible defects in vehicles or equipment in the United States or in identical or substantially similar vehicles or equipment in foreign countries. The statute also authorizes NHTSA to require the submission of other data that may assist in the identification of safety-related defects in vehicles and equipment. Information and documents submitted are intended to provide NHTSA with ''early warning'' of potential safety related defects in motor vehicles and motor vehicle equipment. NHTSA relies on the information provided (as well as other relevant information) in deciding whether to open safety defect investigations. Please note that the currently approved ICR, ''Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects'' (OMB Control Number 2127–0620) is incorporated with this request for collections.

Affected Public: Manufacturers of motor vehicles and motor vehicle equipment sold in the U.S.

Estimated Total Annual Burden: The annual burden is estimated to be 82,381 hours. The estimated annual cost is $8,916,602.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503. Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 24, 2008.

Kathleen C. DeMeter,

Director, Office of Defects Investigation.

[FR Doc. 08–377 Filed 1–29–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Agency Information Collection Activities; Comment Request of the Proposed Renewal Without Change of the Report of Foreign Bank and Financial Accounts and Other Recordkeeping and Reporting Requirements of the Bank Secrecy Act

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN, a bureau of the U.S. Department of the Treasury, invites all interested parties to comment on its continuing collection of information requirements in 31 CFR 103.22–103.29, 103.32–103.38, 103.64, 103.81–103.87, and Form TD F 90–22.1, Report of Foreign Bank and Financial Accounts. This request for comments is made pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Written comments should be received on or before March 31, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, U.S. Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention: PRA Comments—31 CFR part 103. Comments also may be submitted by electronic mail to the following Internet address: ''*regcomments@fincen.gov*'' with the caption in the body of the text, ''Attention: PRA Comments—31 CFR part 103.''

Inspection of Comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732. A searchable guide to the Code of Federal Regulations can be found on the Internet at: *http://www.access.gpo.gov/nara/cfr*. A copy of Form TD F 90–22.1 may be obtained by calling the above number or accessed on-line at *http://www.fincen.gov/forms/f9022-1_fbar.pdf*.

SUPPLEMENTARY INFORMATION: *Abstract:* The information collected and retained under the regulations addressed in this notice and the information collected on Form TD F 90–22.1 (as well as other Bank Secrecy Act reporting and recordkeeping requirements that are not the subject of this notice) assist federal, state and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, the financing of terrorism, tax evasion, narcotics trafficking, organized crime, fraud, embezzlement and other crimes. The information also assists in tax collection and examination and other regulatory matters.[1]

1. *Title:* Reports of transactions in currency (31 CFR 103.22(b)(1), 103.27(a), 103.27(d) and 103.28).

OMB Number: 1506–0009.

Abstract: Financial institutions must report transactions in currency that exceed $10,000 (31 CFR 103.22(b)(1)).[2] Before concluding any transaction with respect to which a report must be filed under section 103.22(b)(1), a financial institution must verify and record the name and address of the individual presenting the transaction and must record certain information about any person on whose behalf the transaction is conducted (31 CFR 103.28). Records of reports must be maintained for 5 years (31 CFR 103.27(a)).

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for FinCEN Form 104. The estimated number of respondents is 19,000. The estimated annual number of responses is 15,000,000, with a reporting average of 19 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total for the annual burden hours is 6,000,000.

2. *Title:* Reports of transactions in currency (31 CFR 103.22(b)(2), 103.27(a), 102.27(d), and 103.28).

OMB Number: 1506–0009.

Abstract: Casinos (and card clubs) must report transactions in currency that exceed $10,000 in one business day (31 CFR 103.22(b)(2)). Before concluding any transaction with respect to which a report must be filed under section 103.22(b)(1), a casino must verify and record the name and address of the individual presenting the transaction and must record certain information about any person on whose behalf the transaction is conducted (31 CFR 103.28). Records of reports must be maintained for 5 years (31 CFR 103.27(a)).

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for FinCEN Form 103. The estimated number of respondents is 715. The estimated number of responses is 418,866, with a reporting average of 19 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total for the annual burden hours is 167,546.

3. *Title:* Transactions of exempt person (31 CFR 103.22(d), 103.27(a) and 103.27(d)).

OMB Number: 1506–0009.

Abstract: Banks and other depository institutions (''banks'') may exempt from reporting under 31 CFR 103.22(b)(1) currency transactions exceeding $10,000

[1] The information collections addressed in this notice are currently covered by one OMB Control Number–1506–0009. FinCEN intends to ask OMB to assign specific control numbers to the various information collections so that the administration of the information collections will be simpler in the future.

[2] As explained below, 31 CFR 103.22(b)(2) requires casinos (and card clubs) to report these transactions.

by certain customers referred to as eligible persons (31 CFR 103.22(d)). Banks exempt these customers by filing a form designating them as exempt persons and maintaining certain records necessary to document the basis for the exemption and compliance with the exemption procedures of section 103.22(d). For two categories of eligible persons—non-listed businesses and payroll customers—the exemption must be renewed every two years by certifying the application of the bank's suspicious activity reporting program to those customers and recording any changes in control of those customers on a newly filed designation form. Records must be maintained for five years.

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for FinCEN Form 110. The estimated number of respondents is 19,000. The estimated number of responses is 85,000 with a combined reporting and recordkeeping average of 70 minutes per response. The estimated total for annual burden hours is 99,166.

4. *Title:* Reports of transportation of currency or monetary instruments (31 CFR 103.23 and 103.27).

OMB Number: 1506–0009.

Abstract: A person must file a report with Treasury if the person knowingly transports currency or monetary instruments of more than $10,000 at one time into or out of the United States, or receives currency or monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States (31 CFR 103.23 and 103.27).

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for FinCEN Form 105. The estimated number of responses is 280,000, with a reporting average of 11 minutes per response. The estimated total for the annual burden hours is 51,333.

5. *Title:* Reports of foreign financial accounts (31 CFR 103.24, 103.27(d), 103.32) and Form TD F 90–22.1, Report of Foreign Bank and Financial Accounts.

OMB Number: 1506–0009.

Form Number: TD F 90–22.1.

Abstract: Every person having a financial interest in, or signature authority over, a foreign account over $10,000 must file a report of the account (31 CFR 103.24, 103.27(d)) and must maintain records that contain the name in which the account is maintained, the number of the account, the name and address of the foreign bank, and the type of account and maximum value of the account (31 CFR 103.32).

Current Action: There is no change to the existing regulations or the form.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or other for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for Form TD F 90–22.1. The estimated number of respondents is 205,000. The estimated number of responses is 205,000, with a reporting average of 10 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total annual burden hours are 51,250.

6. *Title:* Reports of transactions with foreign financial agencies (31 CFR 103.25).

OMB Number: 1506–0009.

Abstract: Treasury may, by regulation, require specified financial institutions to report transactions by persons with designated foreign financial agencies.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of respondents per year is 1. The estimated number of responses is 1, with a reporting burden of 1 hour per respondent, for a total annual burden of 1 hour.[3]

7. *Title:* Reports of certain domestic coin and currency transactions (31 CFR 103.26 and 103.33(d)).

OMB Number: 1506–0009.

Abstract: Upon a finding that additional reporting or recordkeeping is necessary to carry out the purposes, or prevent the evasion, of the Bank Secrecy Act, Treasury may issue an order requiring financial institutions or groups of financial institutions in certain geographic locations to report certain transactions in prescribed amounts for a limited period of time (31 CFR 103.26). Financial institutions subject to a geographic targeting order must maintain records for such period of time as the order requires but not more than 5 years (31 CFR 103.33(d)).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of respondents per year is 3,200. The estimated number of responses is 17,000, with a reporting burden of 19 minutes per response and a recordkeeping burden of 5 minutes per response. The total estimated annual burden is 6,800 hours.[4]

8. *Title:* Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks (31 CFR 103.29 and 31 CFR 103.38).

OMB Number: 1506–0009.

Abstract: Financial institutions must maintain records of certain information related to the sale of bank checks and drafts, cashier's checks, money orders, or traveler's checks when the sale involves currency between $3,000–$10,000. The records must be maintained for a period of five years and made available to Treasury upon request.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of recordkeepers is 60,900. The average burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 456,750 hours.

9. *Title:* Records to be made and retained by financial institutions (31 CFR 103.33 and 103.38).

OMB Number: 1506–0009.

Abstract: Each financial institution must retain an original or copy of records related to extensions of credit in

[3] Should FinCEN issue regulations under this authority, it will provide a burden estimate specific to those regulations.

[4] Although the burden is stated as an annual burden in accordance with the Paperwork Reduction Act, the estimated annual burden is not intended to indicate that there is a geographic targeting order in effect throughout a year or in each year.

excess of $10,000 (other than those secured by real property), and records related to transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than $10,000 to or from the United States (31 CFR 103.33(a)–(c)). Banks and non-bank financial institutions must also maintain records related to, and include certain information as part of funds transfers or transmittals of funds involving more than $3,000 (31 CFR 103.33(e)–(f), and 103.33(g)). The required records must be maintained for five years (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: 31 CFR 103.33(a)–(c). The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 50 hours, for a total estimated annual recordkeeping burden of 1,145,000 hours.

31 CFR 103.33(e)–(f). The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 568,000.

31 CFR 103.33(g). The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 12 hours, for a total estimated annual recordkeeping burden of 426,000.

10. *Title:* Additional records to be made and retained by banks (31 CFR 103.34 and 103.38).

OMB Number: 1506–0009.

Abstract: A bank must retain an original or copy of certain documents, as specified in section 103.34. The required records must be maintained for five years.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 100 hours for a total annual recordkeeping burden of 2,290,000 hours.

11. *Title:* Additional records to be made and retained by brokers or dealers in securities (31 CFR 103.35 and 103.38).

OMB Number: 1506–0009.

Abstract: A broker or dealer in securities must retain an original or copy of certain documents, as specified in section 103.35. The required records must be maintained for five years (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 8,300. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 83,000 hours.

12. *Title:* Additional records to be made and retained by casinos (31 CFR 103.36 and 103.38).

OMB Number: 1506–0009.

Abstract: Casinos (and card clubs) must make and retain a record of the name, permanent address and taxpayer identification number of each person who deposits funds with the casino, opens an account at the casino, or to whom the casino extends a line of credit (and maintain a list, available to the Secretary upon request, of the names and addresses of persons who do not furnish a taxpayer identification number), and must retain the original or a copy of certain documents, as specified in section 103.36 (31 CFR 103.36(a)&(b)(1)–(8)). Casinos must also maintain a list of transactions with customers involving certain instruments (31 CFR 103.36(b)(9)). Card clubs must maintain records of currency transactions by customers and records of activity at cages (31 CFR 103.36(b)(11)). Casinos that input, store, or retain required records on computer disk, tape or other machine readable media must maintain the records on such media (31 CFR 103.36(c)). Required records must be maintained for five years. (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: 31 CFR 103.36(a)&(b)(1)–(8). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 48,000.

31 CFR 103.36(b)(9). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 3,600 hours.

31 CFR 103.36(b)(11). The estimated number of recordkeepers is 62. The estimated number of transactions is 215,000 annually and the total estimated annual recordkeeping burden is 686 hours.

31 CFR 103.36(c). The estimated number of respondents is 480. The estimated annual recordkeeping burden per recordkeeper is 4 hours, for a total estimated annual recordkeeping burden of 1,920 hours.

13. *Title:* Additional records to be made and retained by currency dealers or exchangers (31 CFR 103.37 and 103.38).

OMB Number: 1506–0009.

Abstract: A currency dealer or exchanger must make and maintain a record of the taxpayer identification number of certain persons for whom a transaction account is opened or a line of credit is extended, and must maintain a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such information. A currency dealer or exchanger must retain the original or a copy of certain documents, as specified in section 103.37. The required records must be maintained for five years (31 CFR 103.38).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 2,300. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 368,000 hours.

14. *Title:* Nature of records and retention period (31 CFR 103.38).

OMB Number: 1506–0009.

Abstract: Records required to be retained by a financial institution under 31 CFR part 103 must be retained for 5 years, except for records or reports required under section 103.26 which shall be retained for the period of time specified in the targeting order imposing the recordkeeping or reporting requirement to which the particular retention period relates.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for this regulation is reflected in the reporting and recordkeeping provisions of 31 CFR part 103.

15. *Title:* Special rules for casinos (31 CFR 103.64, 103.36(b)(10), and 103.38).

OMB Number: 1506–0009.

Abstract: This section provides special rules for casinos, including the requirement that casinos maintain a written compliance program.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 100, for a total estimated annual recordkeeping burden of 48,000 hours.

16. *Title:* Administrative rulings (31 CFR 103.81–87).

OMB Number: 1506–0009.

Abstract: These sections address administrative rulings under the Bank Secrecy Act. They explain how to submit a ruling request (103.81), how non-conforming requests are handled (103.82), how oral communications are treated (103.83), how rulings are issued (103.85), how rulings are modified or rescinded (103.86), and how information in connection with a ruling may be disclosed (103.87).

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of responses is 60 annually, with a burden of 1 hour per submission, for a total annual burden of 60 hours.

The following paragraph applies to all the collections of information addressed in this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 22, 2008.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E8–1563 Filed 1–29–08; 8:45 am]

BILLING CODE 4810–02–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—February 27, 2008, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Larry Wortzel, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on ''the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China.''

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 27, 2008 to address ''China's Views of Sovereignty and Methods of Access Control.''

Background

This event is the second in a series of public hearings the Commission will hold during its 2008 report cycle to collect input from leading academic, industry, and government experts on the impact of the economic and national security implications of the U.S. bilateral trade and economic relationship with China. The February 27 hearing is being conducted to obtain testimony on China's views of sovereignty, arguments given for its views, how they differ from U.S. views of sovereignty, and the security implications that follow from these differences. Chinese internal ministerial differences on issues of sovereignty, as well as the ways in which China might use sovereignty claims to expand its territory and its influence through military and non-military means will also be examined. Other topics covered will include China's growing naval presence and ways that China may be influencing the development of international sovereignty laws and norms in space and cyberspace.

The February 27 hearing will address ''China's Views of Sovereignty and Methods of Access Control.'' and will be Co-chaired by Commissioners Mark Esper and Jeffrey Fiedler.

Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web Site *http://www.uscc.gov.*

Copies of the hearing agenda will be made available on the Commission's Web Site *http://www.uscc.gov* as soon as available. Any interested party may file a written statement by February 27, 2007, by mailing to the contact below. On February 27, the hearing will be held in two sessions, one in the morning and one in the afternoon. There will be a question and answer period between the Commissioners and the witnesses.

DATE AND TIME: Wednesday, February 27, 2008, 8:30 a.m. to 5 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web Site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated

Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: January 25, 2008.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E8–1644 Filed 1–29–08; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Wednesday,
January 30, 2008

Part II

Federal Communications Commission

47 CFR Parts 15, 73 and 76

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 73 and 76

[MB Docket No. 07–91; FCC 07–228]

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document issues the final rules in the third periodic review of the transition of the nation's broadcast television system from analog to digital television. It provides a progress report on the DTV transition and issues the procedures and rule changes necessary to ensure that broadcasters timely complete their transitions. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals. The rules in this document establish deadlines for broadcasters to complete construction of their final, post-transition (digital) facilities.

DATES: Effective January 30, 2008, except for Sections 73.682(d), 73.8000(b)(2) and (4), and 73.9000(k), which are effective May 29, 2008 and, except for the following sections which contain information collection requirements that have not been approved by OMB: Sections 73.624(g) and 73.1201(b). The Commission will publish a document in the **Federal Register** announcing the effective date for these sections. The incorporation by reference of certain publications listed in Sections 73.616(e)(1) and 73.8000(d) is approved by the Director of the Federal Register, as of January 30, 2008. The incorporation by reference of certain publications listed in Sections 73.682(d), 73.8000(b)(2) and (4), and 73.9000(k), is approved by the Director of the Federal Register, as of May 29, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Evan Baranoff, *Evan.Baranoff@fcc.gov,* Eloise Gore, *Eloise.Gore@fcc.gov,* Kim Matthews, *Kim.Matthews@fcc.gov,* or Maureen McCarthy, *Maureen.McCarthy@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120; John Gabrysch, *John.Gabrysch@fcc.gov,* or Gordon Godfrey, *Gordon.Godfrey@fcc.gov,* of the Engineering Division, Media Bureau at (202) 418–7000; or Shaun Maher, *Shaun.Maher@fcc.gov,* or Nazifa Sawez, *Nazifa.Sawez@fcc.gov,* of the Media Bureau, Video Division, (202) 418–1600.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams on (202) 418–2918, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 07–228, adopted on December 22, 2007, and released on December 31, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Paperwork Reduction Act (''PRA'') Analysis

This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), and contains new and modified information collection requirements for full-power television broadcast stations, including the following: (1) Stations must file forms no later than February 18, 2008 detailing their transition plans and status (using FCC Form 387) and must update this form as events warrant and by October 20, 2008 if they have not completed construction; (2) Stations without a construction permit for their final, post-transition (DTV) facility must file an application to construct or modify that facility (using FCC Forms 301 and 340), stations without a license for their final, post-transition (DTV) facility must file an application for a license to cover that facility (using FCC Form 302 DTV), and stations may request authority to transition early to their post-transition channel (also using FCC Forms 301 and 340); (3) Stations with a construction deadline on or before February 17, 2009 may file a request for an extension of time to construct their final, post-transition (DTV) facility (using FCC Form 337); (4) Stations with a construction deadline occurring February 18, 2009 or later may file a notification of an event that would toll their deadline to construct their final, post-transition (DTV) facility (using FCC Informal Application Form); (5) Stations may file a request for STA approval to temporarily remain on their in-core pre-transition DTV channel after the transition date (using FCC Informal Application Form); (6) Stations may file a request for STA approval to build less than full, authorized post-transition facility by the transition date (using FCC Informal Application Form); (7) Stations may file a notification pursuant to section 73.1615 to temporarily reduce or cease existing analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities (using FCC Informal Application Form); (8) Stations may file a request for STA approval to permanently reduce or terminate analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities (using FCC Informal Application Form); (9) Stations may file a notification to permanently reduce or terminate analog or pre-transition DTV service within 90 days of the transition date (using FCC Informal Application Form); (10) Stations must comply with the PSIP requirement to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available; (11) Stations must comply with the station identification rules that require a DTV station which chooses to identify a licensee that it is transmitting on one of its multicast streams to follow a specific format for making such a station identification announcement; (12) Stations must comply with a viewer notification requirement (*i.e.*, stations must notify viewers about their planned service reduction or termination) if: (a) They will permanently reduce or terminate analog or pre-transition digital

service before the transition date, or (b) they will not serve at least the same population that receives their current analog TV and DTV service on February 18, 2009; (13) Stations claiming a ''unique technical challenge'' warranting a February 17, 2009 construction deadline must file a notification to document their status (using FCC Informal Application Form), if they do not file, or do not include such information in, an application for post-transition facilities (Forms 301 or 340); and (14) DTV stations that are permittees must comply with the requirements for feeable ancillary or supplementary services in 47 CFR 73.624(g) (using FCC Form 317).

The Commission, as part of its continuing effort to reduce paperwork burdens, invited the Office of Management and Budget (''OMB'') and the general public to comment on the information collection requirements contained in the *Third DTV Periodic Review NPRM*. On June 22, 2007, the Commission submitted the proposed information collection requirements to OMB for review under section 3507(d) of the PRA. On July 9, 2007, the Commission published a **Federal Register** notice addressing the burdens contained in the proposed information collection requirements and seeking comments from the public. On August 15, 2007, OMB issued a Notice of Action and filed comments to each of these proposed information collection requirements. No other comments were filed with respect to these proposed collections. We note that some of the collections remain unchanged from when they were previously published in the **Federal Register** and submitted to OMB, while others that were submitted have been slightly revised, with such changes being largely procedural in nature (*e.g.*, filing date change, method of filing, etc.). In addition to the collections proposed in the *Third DTV Periodic Review NPRM*, this Report and Order also contains additional new or modified information collection requirements. Finally, we also note that, pursuant to the Small Business Paperwork Relief Act of 2002 (''SBPRA''), the Commission sought specific comment in the *Third DTV Periodic Review NPRM* on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We received no comment on this issue.

The information collection requirements adopted in this Report and Order will be submitted to OMB for final review under section 3507(d) of the PRA, and OMB and the public will be afforded an opportunity to file comments on these final information collections. The Commission will seek emergency approval from OMB for Items 1–3 (noted above in paragraph 193) based, in part, on the prior submission for OMB approval of these information collection requirements. The Commission will publish a **Federal Register** notice addressing the burdens contained in each final information collection adopted in this proceeding. The Commission will also publish a separate notice seeking comments from the public and OMB on the final information collection requirements.

Summary of the Report and Order

I. Introduction

1. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals and may no longer transmit analog signals. (*See* Digital Television and Public Safety Act of 2005 (''DTV Act''), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, 120 Stat. 4 (2006) (''DRA'') (*codified at* 47 U.S.C. 309(j)(14) and 337(e)). DTV Act Section 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. 309(j)(14)(A). DTV Act Section 3002(b) directs the Commission to ''take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, * * * all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).'' 47 U.S.C.A 309 Note. DTV Act Section 3005(a) also created a coupon program to subsidize the purchase of digital-to-analog (''D-to-A'') converter boxes.) With this Report and Order in our third periodic review, we resolve issues necessary to complete the conversion of the nation's broadcast television system from analog to digital television (''DTV''). We conduct these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. (The Commission has conducted two prior periodic reviews: the first in MM Docket No. 00–39 and the second in MB Docket No. 03–15.) In the Notice of Proposed Rulemaking in this third periodic review (*Third DTV Periodic Review NPRM*, 72 FR 37310, July 9, 2007), we sought comment on several issues necessary to ensure that broadcasters meet the statutory transition deadline and complete construction of their final, post-transition (digital) facilities. We received 125 comments, 22 reply comments, and numerous *ex parte* filings in response to the *Third DTV Periodic Review NPRM*.

2. With the DTV transition deadline less than 14 months away, our focus is now on overseeing broadcasters' construction of facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog. Specifically, this Report and Order adopts rules to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels upon expiration of the February 17, 2009 transition deadline. We want to ensure that no consumers are left behind in the DTV transition. We recognize that the transition is a complex undertaking presenting many challenges to the broadcast industry and that some disruption of television service may be unavoidable leading up to the analog turn-off. Therefore, we adopt rules to offer broadcasters regulatory flexibility, while at the same time requiring broadcasters to maintain the best possible television service to the public and meet viewers' over-the-air reception expectations after the transition date. (We note that the statutory transition deadline applies only to full-power stations. The transition timing for low power, translator and Class A stations will be addressed in a separate proceeding.)

II. Executive Summary

3. In this Report and Order in our third periodic review, we (1) provide a progress report on the transition; (2) describe the status and readiness of stations to complete their transition; (3) adopt procedures and rule changes necessary to ensure that broadcasters meet the statutory transition deadline and complete construction of their final, post-transition facilities while maintaining the best possible television service to their viewers; and (4) address other issues related to the transition. Stations face many challenges in order to be ready to make their transition by the February 17, 2009 statutory transition deadline. Stations must focus their full attention on constructing their final digital facilities before they must

cease analog operations. In this Report and Order, we take the following actions to facilitate the completion of the transition for full-power television stations:

• We establish February 17, 2009 as the construction deadline for stations building digital facilities based on a new channel allotment in the post-transition DTV Table of Allotments (''DTV Table'') and accompanying Appendix B (''DTV Table Appendix B''), i.e., stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations. These stations will not be required to construct a digital facility on their pre-transition DTV channel and will be permitted to forego further construction to the extent such a facility has been partially built. (The details of each station's channel assignment, including technical facilities and predicted service and interference information, are set forth in the DTV Table Appendix B. 47 CFR 73.622(i) codifies the post-transition DTV Table). The Commission proposed channel assignments and reference facilities for stations' post-transition operations in a 2006 Notice of Proposed Rule Making in MB Docket No. 87–268.

• We establish May 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities.

• We establish August 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but which do not have a construction permit that matches their post-transition (DTV Table Appendix B) facilities.

• We establish February 17, 2009 as the construction deadline for stations demonstrating that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities.

• We establish stricter standards for granting extensions of time to construct digital facilities for all construction deadlines on or before February 17, 2009. In addition, for construction deadlines occurring February 18, 2009 or later, we will consider such requests under the tolling standard set forth in section 73.3598(b) of the rules. We adopt our revised FCC Form 337, as proposed.

• We adopt FCC Form 387 and require all full-power television stations to file it by February 18, 2008, detailing their current transition status, additional steps necessary for digital-only operation upon expiration of the February 17, 2009 transition deadline, and a timeline for making those steps. Stations must update the form as events warrant and by October 20, 2008 if they have not completed construction.

• We will permit stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided: (1) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (2) they do not cause impermissible interference to other stations or prevent other stations from making their transition.

• We will permit stations to operate their post-transition facilities, pursuant to special temporary authority (''STA''), at less than their full, authorized facilities, provided: (1) They demonstrate a unique technical challenge (as defined in section V.B.5., infra) and they can serve at least 85 percent of the same population that receives their current analog TV and DTV service; or (2) a significant technical impediment to the construction of their full, authorized facilities that would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted herein and they serve at least 100 percent of the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. In addition, stations must demonstrate that they do not cause impermissible interference to other stations or prevent other stations from making their transition. Finally, stations that cannot serve at least 100 percent of the same population that receives their current analog TV and DTV service must comply with a viewer notification requirement.

• We clarify that, under existing rules, a station may temporarily reduce or cease service on their pre-transition analog or digital channel for a period of 30 days or less, upon notification to the Commission and without prior approval, when necessary to complete construction of the post-transition digital facility.

• We will provide stations with the flexibility to permanently reduce or terminate their analog or pre-transition digital service before the transition date, provided the station satisfies the following two requirements: (1) The station demonstrates that its service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and (2) the station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station.

• To provide additional flexibility within 90 days of the February 17, 2009 transition date (*i.e.*, beginning on or after November 19, 2008), we will allow stations to permanently reduce or terminate their analog or pre-transition digital service without prior approval upon notification to the Commission 30 days prior to the planned permanent service reduction or termination. The station must still comply with a viewer notification requirement.

• We will permit stations that are moving to a different DTV channel for post-transition operations to cease operations on their pre-transition digital channels and begin operating on their new channels before the transition date, provided: (1) The early transitioning stations will not cause impermissible interference to another station; and (2) the early transitioning stations continue to serve their existing viewers for the remainder of the transition and commence their full, authorized post-transition operations upon expiration of the February 17, 2009 transition deadline.

• We will offer expedited processing of stations' applications to build their post-transition facilities, provided that their application: (1) Does not seek to expand the station's facilities beyond its final DTV Table Appendix B facilities; (2) specifies facilities that are no more than five percent smaller than those specified in the post-transition DTV Table Appendix B (with respect to predicted population); and (3) is filed within 45 days of the effective date of this Report and Order. We adopt our revised FCC Forms 301 and 340, as proposed.

• We announce our intent to lift the freeze on the filing of maximization applications on August 17, 2008, the date by which we expect to have completed processing stations' applications to build their post-transition facilities. Until this date, we will maintain our freeze and will not accept maximization applications to expand facilities.

• We adopt a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that will not use their pre-transition DTV channel for post-transition operation. This policy will allow added flexibility for stations that wish to use their existing analog channel antenna, which provides

benefits for the successful completion of the transition by reducing the demands on equipment suppliers and installation crews during a critical time as the transition date nears.

- We adopt a 0.5 percent new interference standard (*i.e.*, only considering interference in addition to that contained in the post-transition DTV Table Appendix B) to apply to applications for post-transition facilities and also to future maximization applications and applications to implement new allotments.
- We update the Commission's rules to reflect the latest revisions to the ATSC standards concerning DTV transmission and PSIP.
- We revise section 73.624(g) to require DTV stations that are permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions to file FCC Form 317 and pay fees on any revenue derived from feeable ancillary or supplementary services in the same way required of DTV licensees.
- We clarify our station identification requirements for digital stations in situations where one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station, or another programming source.
- We discuss MVPDs' obligations with respect to carriage of digital stations after the transition.

III. Background

4. Congress specifically requires the Commission to periodically evaluate the progress of the nation's transition to DTV. The Commission initiated this third DTV periodic review in April 2007. The previous two DTV periodic reviews began in March 2000 and January 2003, respectively. In addition to these periodic reviews, the Commission conducts the ongoing DTV proceeding, in which we recently established the DTV Table of Allotments for stations' post-transition operations (''post-transition DTV Table''). (*See* 47 CFR 73.622(i), which codifies the post-transition DTV Table. The Commission proposed the post-transition DTV Table in the October 2006 *of Proposed Rulemaking (Seventh FNPRM).* The Commission established the initial DTV Table of Allotments in 1997. The details of each station's channel assignment under the initial DTV Table, including technical facilities and predicted service and interference information, were set forth in the initial Appendix B of the Sixth Report and Order (''initial Appendix B''). *See Sixth Report and Order.* The initial Appendix B was amended in 1998. Simultaneous with the adoption of the Sixth Report and Order, the Commission announced DTV channel assignments for eligible licensees in the *Fifth Report and Order* in the same docket.).

A. DTV Transition

5. In early 2006, Congress enacted significant statutory changes to the DTV transition in the DTV Act. Most importantly, it set February 17, 2009, as the date certain for the end of the DTV transition, at which time all full-power television broadcast stations must cease their analog transmissions. (*See* 47 U.S.C. 309(j)(14) (''A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009.''). *See also* 47 U.S.C. 337(e).) The DTV Act does not provide for waivers or extensions of this deadline for cessation of analog broadcasts. (Previously, 47 U.S.C. 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline under several market-by-market criteria. 47 U.S.C. 309(j)(14)(B) (2005). Congress eliminated the statutory provisions authorizing market-specific extensions of the DTV transition, including the 85 percent benchmark for DTV reception. This new hard deadline obviates the need for any further discussion of how to interpret and implement the former Section 309(j)(14)(B) of the Act, an issue previously deferred by the *Second DTV Periodic Report and Order,* 69 FR 59500, October 4, 2004.) The DTV Act also requires broadcast licensees to cease operations outside the core spectrum after February 17, 2009 in order to make that spectrum available for public safety and commercial wireless uses. All full-power TV broadcast stations must be operating inside the core TV spectrum and only in digital at the end of the transition on February 17, 2009.

6. In April 2007, the Commission initiated this third periodic review of the nation's conversion from analog to DTV broadcasting. The Commission sought comment on a range of proposals intended to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels upon expiration of the February 17, 2009 transition deadline. The Commission made a number of proposals regarding the procedures and standards applicants must follow in filing applications for facilities specified in the final, post-transition DTV Table of Allotments (''DTV Table'').

7. *Development of DTV Table.* In the 2004 *Second DTV Periodic Report and Order,* the Commission established a three-round channel-election process through which eligible broadcast licensees and permittees (collectively, ''licensees'') selected their post-transition channels inside the core TV spectrum (*i.e.*, channels 2–51). (The Commission received 11 petitions for reconsideration of the *Second DTV Periodic Report and Order,* raising a number of issues, most of which have been rendered moot by the completion of the channel election process.) At the start of this process, licensees proposed their post-transition facilities. (In November 2004, licensees filed certifications via FCC Form 381 in order to define their proposed post-transition facilities. In these certifications, licensees chose whether to (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility). Stations that did not submit certification forms by the deadline were evaluated based on replication facilities. After each channel election round, the Commission announced proposed post-transition channels—called tentative channel designations (''TCDs''). In order to facilitate the development of a final, post-transition DTV Table, the Media Bureau announced a freeze on the filing of certain requests for allotment or service area changes. (The freeze, which was imposed on August 3, 2004—prior to the commencement of the channel election process, precludes parties from filing the following items: (i) Petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. The freeze does not prevent the processing of pending applications.) The Commission has maintained the filing freeze to ensure that each station has an opportunity to apply for and construct its authorized facility. (In the *Seventh Report and Order,* 72 FR 54720, September 26, 2007, we denied seven requests of stations seeking a waiver of the filing freeze, except for one station which demonstrated unique circumstances.)

8. The channel election process culminated in the adoption of the post-

transition DTV Table in the August 2007 *Seventh Report and Order.* (Approximately 123 stations have filed petitions for reconsideration of the *Seventh Report and Order,* which remain pending. Most of the Petitions request changes to facilities previously certified. These requests will be addressed in a separate Order of Reconsideration after the conclusion of the period for oppositions and responses. In the *Eighth Further Notice of Proposed Rulemaking (Eighth FNPRM)* 72 FR 54720, September 26, 2007, which accompanied the *Seventh Report and Order,* the Commission announced TCDs for three new permittees that recently attained permittee status and also considered requests for substantive modifications to the post-transition DTV Table which were made after the close of the comment period for the *Seventh FNPRM.* Comments on these proposed changes to DTV Table in the *Eighth FNPRM* were due Oct. 10, 2007 and replies were due Oct. 25, 2007). The post-transition DTV Table provides eligible stations channels for post-transition operations inside the core TV spectrum and is the result of informed decisions made by eligible licensees during the Commission's channel election process, as well as the Commission's efforts to promote overall spectrum efficiency and ensure that broadcasters provide the best possible service to the public, including service to local communities. The post-transition DTV Table will ultimately replace the current (pre-transition) DTV Table at the end of the transition; however, we note that, in certain defined circumstances, stations may be permitted to temporarily remain on their pre-transition DTV channel after the transition date. (As explained below in Section V.B.7.a., some stations will be permitted to use their pre-transition DTV channel, temporarily, after the February 17, 2009 transition date. The current NTSC Table, which is contained in 47 CFR 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease. We anticipate initiating another proceeding to address these and other ''clean-up'' changes to our rules to eliminate outdated references to analog and out-of-core operations.)

9. Approximately 123 Petitions for Reconsideration of the *Seventh Report and Order* were filed by October 26, 2007, the close of the pleading cycle, representing approximately 200 stations, most of them requesting changes to their Appendix B facilities to accommodate their preference to use their existing analog antenna when they return to their analog channel for post-transition digital operation. (We addressed and resolved 30 similar requests that were raised during the comment period for the *Seventh Report and Order,* and we will address these additional requests on reconsideration.) In addition, we have received several Petitions for Reconsideration filed after the 30-day statutory deadline. Moreover, we recognize that not all stations that may want to revise their Appendix B facilities to assure that they will be permitted to continue serving their analog viewers with their post-transition digital facility have filed Petitions for Reconsideration, and that not all of those stations that have failed to file petitions can be, alternatively, fully addressed through the application process adopted in this Report and Order. Therefore, in light of the urgent need to finalize post-transition facilities so that all full power stations can complete the transition by February 17, 2009, we delegate to the Media Bureau the authority to amend the DTV Table of Allotments and Appendix B to the DTV Table of Allotments as needed up to the full power transition deadline. Such proceedings at the Bureau level may be expedited as necessary, including being conducted without notice and comment where good cause is found because the requested change does not adversely affect any other station's post-transition operations. (*See* 5 U.S.C. 553(b)(3)(B) (allowing for implementation without notice and comment if good cause exists where ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest''). Where any requested change to the Table or Appendix may affect another station's operations, we expect the Bureau to issue an NPRM and provide an opportunity for public comment. Stations should file in Docket No. 87–268 when seeking a correction to Appendix B.)

10. *Reclamation of the 700 MHz Bands.* As a result of the DTV transition, 108 megahertz of spectrum in the 700 MHz Band (TV Channels 52–69) will be made available for critically important public safety needs and new wireless services. In passing the DTV Act, Congress directed the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008, and deposit the proceeds of the auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. Accordingly, in April 2007, we made changes to the 700 MHz band plan to enable public safety entities to use wireless broadband technology and prepare for the auction of the remaining spectrum in that band. Furthermore, in July 2007, we specifically redesignated 10 megahertz of public safety 700 MHz spectrum (763–768/793–798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. The Wireless Telecommunications Bureau has scheduled the auction of the remaining commercial spectrum of the 700 MHz Band on January 24, 2008.

11. Prior to the DTV Act, the Commission reallocated the 700 MHz Band in separate proceedings, first for the 60 megahertz covering TV Channels 60–69 (''Upper 700 MHz Band'') and then for the 48 megahertz covering TV Channels 52–59 (''Lower 700 MHz Band''). In the Balanced Budget Act of 1997 (''Balanced Budget Act''), Congress specifically directed that the allocation of the Upper 700 MHz Band include 24 megahertz of spectrum for public safety and 36 megahertz for commercial services. Accordingly, the Commission divided the Upper 700 MHz Band to include a 24-megahertz allocation for public safety use, and a 36-megahertz allocation for commercial use, of which 6 megahertz comprised the Guard Bands spectrum. With regard to the Lower 700 MHz Band, Congress also directed that the Commission ''reclaim and organize'' spectrum beyond that in the Upper 700 MHz Band, ''in a manner consistent with the objectives'' of Section 309(j)(3) of the Act. While Congress did not direct the amount of spectrum to be reclaimed, the Commission determined that all broadcasters using digital transmission systems could be accommodated in the core TV spectrum (*i.e.,* TV Channels 2–51). As a result, the 48 megahertz of spectrum in the Lower 700 MHz Band (698–746 MHz) would become available for new services through competitive bidding. (The Commission stated that expanding the DTV core spectrum would permit recovery of 108 megahertz of spectrum at the end of the DTV transition period.)

B. DTV Construction Deadlines

12. In 1997, the Commission adopted a DTV construction schedule that provided for varying construction deadlines based on the size of the market and type of station, with all stations required to construct by May 1, 2003. (Under this schedule, television stations in the 10 largest TV markets and affiliated with the top four television networks (ABC, CBS, Fox, and NBC) were required to build DTV facilities by May 1, 1999. Stations affiliated with those networks in

television markets 11 through 30 were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations were to have constructed their DTV facilities by May 1, 2003. 47 CFR 73.624(d)(1).) In the 2004 *Second DTV Periodic Report and Order*, the Commission established two deadlines by which stations were expected to either replicate or maximize DTV service on their current (pre-transition) DTV channel or lose interference protection to the unserved areas on that channel. By July 1, 2005, top-four network affiliates in the top 100 markets were required to fully replicate or maximize if they will remain on their DTV channel after the transition. If these stations were to move to another channel post-transition, they were required to serve at least 100 percent of their replication service population by July 1, 2005. By July 1, 2006, all other stations were required to fully replicate and maximize if they were to remain on their current DTV channel after the transition. If they were to move to another channel post-transition, they were required to serve at least 80 percent of their replication service population by July 1, 2006. The Commission stated that stations that met the applicable ''use-or-lose'' deadline and that are going to move to a different channel after the transition would be permitted to carry over their authorized maximized areas to their new channels. In addition, these ''use-or-lose'' replication/maximization deadlines became the new deadlines for stations operating temporary DTV facilities pursuant to STA to complete construction of their licensed DTV facilities. (In 2001, the Commission temporarily deferred (until the *Second DTV Periodic Review*) the establishment of construction deadlines for these stations, provided they constructed initial DTV facilities designed to serve at least their communities of license.) Approximately 80 percent of the stations in each of these categories met their respective deadlines.

13. In the *Second DTV Periodic Report and Order*, the Commission also noted that certain stations had not yet been granted an initial DTV construction permit. The Commission required that, by August 4, 2005, all such stations construct and operate ''checklist'' facilities that conform to the parameters of the DTV Table and other key processing requirements. The Commission stated that it would consider requests for waiver of the August 4, 2005 deadline on a case-by-case basis, using the criteria for extension of DTV construction deadlines. (''Checklist'' facilities have power and antenna height equal to or less than those specified in the DTV Table and are located within a specified minimum distance from the reference coordinates specified in the DTV Table. Because these facilities comply with the interference requirements specified in the rules, no further consideration of interference is required. In addition, because the DTV Table was coordinated with Canada and Mexico, ''checklist'' facilities generally did not require further international coordination.)

14. In 2007, the Commission in the *Construction Deadline Extension Order* and the *Use or Lose Order* addressed applications filed by stations for extensions of time to construct DTV facilities and/or waivers of the deadline by which stations must build DTV facilities in order to retain the ability to carry over interference protection to their post-transition channel (so-called ''use or lose'' waivers). In the *Construction Deadline Extension Order*, the Commission considered 145 requests for an extension of time to construct a DTV facility. (The Commission granted 140 of these extension requests, 110 of which were to stations remaining on their current DTV channel for post-transition use.) For 107 stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these applications and gave these stations until November 18, 2007, in which to complete construction. For 29 stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these applications and gave these stations until 30 days after the effective date of the amendments to section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction. (As discussed in the *Third DTV Periodic Review NPRM*, at para. 73, the Commission also granted CP extensions until February 17, 2009 to four stations, facing unique technical challenges (*e.g.*, side-mounted/top-mounted antenna-related issues) preventing them from completing construction of their DTV facilities. As discussed in the *Third DTV Periodic Review NPRM* at para. 77, the Commission denied the extension requests of five stations: Two of which met their DTV construction obligations and were permitted to continue to operate their licensed facilities, while the other three stations were admonished for failing to meet their DTV construction obligations. In the *Use or Lose Order*, the Commission considered 192 requests for waiver of the ''use or lose'' deadlines. The Commission granted 185 of these ''use-or-lose'' waiver requests, 130 of which were to stations remaining on their current DTV channel for post-transition use. The *Use or Lose Order* was adopted simultaneously with the *Construction Deadline Extension Order*.) For 102 stations whose pre-transition DTV channel is the same as the station's post-transition DTV channel, the Commission granted these stations a waiver and gave them until November 18, 2007, to meet the ''use or lose'' deadline. (The Commission granted these applications an additional six months from the release date of the *Use or Lose Order* in which to complete construction.) For 38 stations whose pre-transition DTV channel is different from the station's post-transition channel, the Commission granted these stations a waiver and gave them until 30 days after the effective date of the amendments to section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction. (As discussed in the *Third DTV Periodic Review NPRM*, at para. 73, the Commission also granted 45 stations, facing unique technical challenges (*e.g.,* side-mounted antenna-related issues) preventing them from meeting the applicable replication/maximization requirements, ''use or lose'' waivers and CP extensions until February 17, 2009. As discussed in the *Third DTV Periodic Review NPRM*, at para. 78, the Commission denied the ''use or lose'' waiver requests of seven stations. As discussed in the *Third DTV Periodic Review NPRM,* para. 75, the Commission granted 10 stations their requests for waiver of the ''checklist'' deadline (the August 4, 2005 deadline established for all television stations to construct and operate ''checklist'' DTV facilities).) In both of these orders, the Commission reminded stations that the hard deadline for termination of analog TV service prevents consideration of any request for extension of full-power analog TV service beyond that date. The Commission advised stations given an extension or waiver to utilize this time to take all steps possible to complete construction as further extension or waiver requests may be evaluated under a more stringent standard. Those stations that have a construction permit for which the original time to complete construction has not yet expired or that had their original construction permit

extended to a date that has not yet expired were not addressed in the *Construction Deadline Extension Order* or *Use-or-Lose Order*. These stations were directed to continue to follow existing rules and procedures (*i.e.,* continue to build their current DTV construction permit and, if that construction permit will expire before they can complete construction, file a request to obtain Commission approval for extension of the construction permit). (*Third DTV Periodic Review NPRM,* at para. 57. Since the release of the *Construction Deadline Extension* and *Use-or-Lose* orders, 83 stations have filed extension requests and 69 stations have filed for use-or-lose waivers. These numbers include requests for additional time as well as new requests filed with respect to deadlines that occurred after the Orders were drafted. The *Third DTV Periodic Review NPRM* did not require the usual reporting and progress requirements for some stations according to the rules of the *Construction Deadline Extension Order*, in light of the ongoing consideration of this Report and Order. *Third DTV Periodic Review NPRM*, at para. 77 n. 142. Similarly, the *Third DTV Periodic Review NPRM* withheld admonishment of some stations under the *Use or Lose Order* pending adoption of rules in this proceeding. *Third DTV Periodic Review NPRM*, at para. 78.)

IV. Progress Report

15. The transition to DTV is a complex undertaking, affecting virtually every segment of the television industry and every American who watches television. The Commission has been facilitating the transition to DTV by adopting a standard for digital broadcasting, creating an initial and post-transition DTV Table, awarding DTV licenses, establishing operating rules for the new service, monitoring the physical build-out of DTV broadcast stations, and helping to educate consumers about the transition. At the end of the transition, television broadcast operations will be limited to the core TV spectrum. (The ''core spectrum'' is comprised of low-VHF channels 2 to 4 (54–72 MHz) and 5 to 6 (76–88 MHz), high-VHF channels 7 to 13 (174–216 MHz) and UHF channels 14–51 (470–698 MHz), but does not include TV channel 37 (608–614 MHz), which is used for radio astronomy research. *See* 47 CFR 73.603(c).) This will enable the recovery of a total of 108 MHz of spectrum (*i.e.*, TV channels 52–69) for critically important public safety needs and new wireless services.

A. DTV Operations

16. As of December 17, 2007, 1,706 television stations in all markets (representing approximately 99 percent of all stations) have been granted a DTV construction permit (''CP'') or license. A total of 1,635 stations are now broadcasting a digital signal. Of these, 1,396 stations have authorized licensed facilities or program test authority and 239 stations are operating pursuant to STA or experimental DTV authority.

17. In the top 30 television markets, all 119 top-four network-affiliated television stations are on the air in digital; 113 are licensed DTV facilities or program test authority and six have STAs. In markets 1–10, all 40 top-four network affiliated stations are providing digital service, 38 with licensed DTV facilities and two with STAs. In markets 11–30, all 79 top-four network affiliated stations are providing DTV service, 75 with licensed DTV facilities and four with STAs.

18. Approximately 1,230 commercial television stations were due to commence digital broadcasts by May 1, 2002. As of December 17, 2007, 1,157 of these stations (94 percent) are broadcasting a digital signal. In addition, approximately 373 NCE television stations were required to commence digital operations by May 1, 2003. As of December 17, 2007, 359 (96 percent) of these stations are broadcasting a digital signal.

B. Consumer Capability To Receive DTV Signals

19. *Over-the-Air Viewer Reception.* As of January 1, 2007, Nielsen estimates that 36.6 million people or 13 percent of people in the United States relied only on over-the-air television. In addition Nielsen estimates that 15.2 million households, or 14 percent of television households, watched television via an over-the-air signal only. Nielsen predicts that by January 1, 2008, fewer people, specifically 33.6 million, or 12 percent of people in the United States, will watch television via an over-the-air signal only. In terms of households, Nielsen estimates much fewer, 13 percent of all television households, or 14.3 million households, will be over-the-air only.

20. The demand for DTV sets has grown with increased availability of DTV programming and receiving equipment and a steady drop in the price of such equipment. The Consumer Electronics Association (''CEA'') reports that the consumer electronics industry has invested $66.7 billion in DTV products since 1998. Moreover, CEA reports more than $75 billion in consumer investment in DTV products. According to CEA, 23.9 million DTV sets and monitors were sold in 2006. CEA predicts that 29.2 million DTV products will be sold in 2007, 33.4 million in 2008, 35.2 million in 2009 and 36.4 million in 2010. CEA estimates that total digital display unit sales will increase by 30 percent in 2007, as compared to 2006. Sales of high-definition television sets are expected to increase to 20.7 million in 2007, a significant increase from 17.3 million sold the previous year.

21. To promote the availability of reception equipment and protect consumers by ensuring that their television sets continue to work in the digital world just as they do today, the Commission established a DTV tuner mandate, which required that all television receiver equipment (*e.g.*, TV sets (all sizes), VCRs, digital video recorders, and any other TV receiving devices) shipped in interstate commerce or imported into the United States, for sale or resale to the public, must be capable of receiving the signals of DTV broadcast stations over-the-air by March 1, 2007. (See 47 CFR 15.117(a). In 2002, the Commission initiated the DTV tuner mandate, with a phase-in period based on screen size to minimize the cost impact on consumers. In 2005, the Commission accelerated the implementation of the DTV tuner mandate to become effective on March 1, 2007 and expanded the mandate to include television sets less than 13 inches.)

22. In another consumer protection effort, the Commission adopted an order in April 2007, to require that, as of May 25, 2007, retailers that continue to sell analog-only television equipment provide consumers with information regarding the February 17, 2009 transition date at the point of sale of DTV television receiving equipment. Specifically, the Commission now requires sellers of television receiving equipment that does not include a digital tuner to disclose at the point-of-sale that such devices include only an analog tuner and, therefore, will require a converter box to receive over-the-air broadcast television after the February 17, 2009 transition date. (Specifically, the *Labeling Order* (72 FR 26554, May 10, 2007) requires that anyone that sells or offers for sale or rent television receiving equipment that does not contain a DTV tuner must display the following consumer alert, in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label, at the point of sale: ''*CONSUMER ALERT:* This

television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1–888–225–5322 (TTY: 1–888–835–5322) or visit the Commission's digital television Web site at: *www.dtv.gov*.'' This requirement applies to the sale or rent of such equipment via direct mail, catalog, or electronic means (*e.g.*, the Internet).) As we noted in this order, consumers expect that DTV television receiving equipment for sale today that is capable of receiving television is and will continue to be able to receive over-the-air broadcast signals, and, if not, then such material information should be disclosed prior to purchase. The successful completion of the DTV transition depends upon satisfaction of this basic consumer expectation.

23. We also note that subsidized digital-to-analog (''D-to-A'') converter boxes will be available to eligible consumers starting January 2008, further promoting access to digital reception equipment. (47 U.S.C.A. Section 309 Note. 47 CFR part 301. Starting January 1, 2008, all U.S. households will be eligible to request up to two $40 coupons to be used toward the purchase of up to two D-to-A converter boxes, while the initial $990 million allocated for the program is available. 47 CFR 301.3–4. If the initial funds are used up and the additional funds (up to $510 million) are authorized, eligibility for the coupons will be limited to over-the-air-only television households. Eligible consumers will have until March 31, 2009, to make a request for these coupons.) This subsidy program, which was created by the DTV Act, will allow consumers with analog-only TV sets to receive over-the-air broadcast programming after the February 17, 2009, transition date, when analog broadcasting ends. Congress directed the National Telecommunications and Information Administration (''NTIA'') of the U.S. Department of Commerce to administer this subsidy program. (The DTV Act Section 3005(a)(1) directs the Assistant Secretary for Communications and Information to ''implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes.'' The purpose of the program is to enable consumers to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service.) In March 2007, NTIA issued final rules to implement the program, which subsidizes the purchase of D-to-A converter boxes. (NTIA established rules for the coupon program in 47 CFR part 301. The rules became effective April 16, 2007.) The Commission is working with NTIA to test the D-to-A converters for eligibility to be certified for the coupon program.

24. The Commission has also taken action to ensure that all cable subscribers, including those with analog TV sets, can view broadcast television after the DTV transition. Approximately 35 percent of all television homes, or approximately 40 million households, are analog-only cable subscribers.

25. In September 2007, the Commission adopted rules ensuring that the 98 million TV viewers retain the same access to their local stations after the transition as they do today. The rules will require cable operators to comply with the statutory viewability requirement by choosing to either: (1) Carry digital signals in analog format, or (2) for all-digital systems, carry the signals only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content. The viewability requirements will be in force from the date of the transition through February 2012 subject to review by the Commission during the last year of this period.

26. The Commission also reaffirmed the existing material degradation standard for cable carriage of digital signals, including the requirement that cable systems carry high definition (''HD'') broadcast signals in HD format. In addition, the Commission has taken several actions to increase consumer awareness about the impending DTV transition. Successful completion of the DTV transition depends upon government and industry working together to promote consumer awareness and minimize the burdens borne by consumers. In July 2007, the Commission adopted a Notice of Proposed Rulemaking for the Commission's Digital Television Consumer Education Initiative (*''DTV Consumer Education NPRM''* 72 FR 46014, August 16, 2007), which requested comment on several proposals relating to consumer education about the DTV transition, including considering the best means of creating a coordinated, national DTV consumer education campaign. (Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.) We proposed to require television broadcast licensees to conduct on-air consumer education efforts and to require ''broadcast licensees and permittees to report, every 90 days, their consumer education efforts, including the time, frequency, and content of public service announcements aired by each station in a market, with civil penalties for noncompliance.'' (Comments were due September 17, 2007 and reply comments were due October 1, 2007. An order addressing the proposals in this docket was circulated on October 16, 2007. *See* Written Statement of the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, Before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives (dated October 17, 2007); *http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-277414A1.doc.v*). It also sought comment on proposals about notices in MVPD customer billing statements, notices from consumer electronics manufacturers, and consumer electronics retailer training and education, among others.

27. In addition, on September 26, 2007, the Commission held the first in a series of Commission Digital Television Consumer Education Workshops. (The workshops will focus on communities that have been identified as being likely to be disproportionately impacted by the transition and least aware of it. These communities include, for example, seniors, minorities and non-English speakers, people with disabilities, low-income earners, and those living in rural areas. On November 8, 2007, the Commission hosted a workshop that addressed issues related to ensuring that seniors are prepared for the DTV transition. On December 4, 2007, the Commission hosted a workshop that addressed issues related to ensuring that minority and non-English-speaking consumers are prepared for the DTV transition.) These workshops provide an opportunity for all interested parties to jointly discuss the challenges associated with the upcoming transition and explore ways to develop coordinated consumer education activities. The Commission invites organizations representing a broad range of consumers and other stakeholders to participate, including those who represent senior citizens, low-income consumers, non-English speakers, people with disabilities, tribes, and public interest organizations working on behalf of

underserved customers or those living in rural areas.

V. Final DTV Transition Rules

28. By statute, full-power television broadcast stations must cease analog operations by 11:59 p.m. on February 17, 2009. Accordingly, our focus is now on overseeing broadcasters' construction of facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog. Specifically, this Report and Order adopts rules to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels by the expiration of the transition deadline on February 17, 2009. We take seriously our goal to ensure that consumers who have diligently prepared for the transition by obtaining the necessary DTV receiver equipment are able to, at a minimum, continue to watch their existing television programming after the transition date. In order to make this transition as smooth as possible for consumers, stations must have their digital facilities in place and ready to commence operations no later than 12:00 a.m. on February 18, 2009. We recognize that the transition is a complex undertaking presenting many challenges to the broadcast industry and that some disruption of television service may be unavoidable leading up to the analog turn-off. Accordingly, we adopt rules, where possible, to offer broadcasters some regulatory flexibility. At the same time, however, we must still ensure that DTV broadcasters will at least reach the audiences that they have been serving with their analog service and that, after the transition date, viewers will continue to have access to the stations that they are accustomed to receiving over the air.

29. Stations are reminded that their authority to operate on a pre-transition channel, whether analog or digital, ends on February 17, 2009. Continued operation of analog or pre-transition digital facilities after that date is operation without a license and will result in the imposition of sanctions for unauthorized operations. Only stations that have applied for and been granted specific authority to remain on a pre-transition digital channel may continue operating on that channel. As noted in the *Third DTV Periodic Review NPRM*, we recognize that there may be some situations where a station's ability to commence its post-transition operations will be dependent on another station's construction and operating plans. For example, station A may need to begin testing its digital facility on its post-transition channel in order to be ready to operate after the transition date, but station B is currently using the channel for pre-transition (analog or digital) service. In such situations, close cooperation will be needed between these stations. We expect that broadcasters will make all possible accommodations to ensure that all stations will be able to provide digital service on their post-transition channels at the transition date.

30. We begin by, first, adopting our proposal to gather information about each station's transition status and plan to meet the deadline. Second, we adopt our proposed deadlines for the construction and operation of stations' final digital facilities. Third, we adopt our proposed stricter standards for granting stations extensions of time to construct digital facilities. Fourth, we adopt our proposals to permit qualifying stations to make a ''phased transition'' in an effort to afford regulatory relief without undermining the expectations of over-the-air viewers. Fifth, we adopt flexible rules allowing stations to reduce and/or terminate their analog and pre-transition digital television service before the transition deadline if doing so is necessary to achieve their transition. Sixth, we adopt our proposal to permit qualifying stations to transition early. Seventh, we address the rules, procedures and interference standards for stations to file applications for construction permits to build their final, post-transition facilities and to request authorization to maximize their facilities. Finally, we address a variety of other issues related to the DTV transition. (We note the Commission's rules for full-power television will need to be updated to eliminate outdated references to analog and out-of-core television service and clarify engineering issues that differ for digital transmission and analog transmission. Such housekeeping matters will be addressed in a separate rulemaking in the DTV proceeding, MB Docket No. 87–268.)

A. Broadcasters' Transition Status

31. Stations are responsible for meeting the statutory deadline for the DTV transition. The Commission has no discretion to waive or change this transition date. Full-power broadcast stations not ready to commence digital operations upon expiration of the deadline for the transition on February 17, 2009, must go dark on their analog channel and risk losing their authorizations to operate after the transition date.

32. We have finalized post-transition channel assignments for every eligible station. (*See* 47 CFR 73.622(i). These post-transition channel assignments largely were based on the choices made by licensees during the channel-election process. Eligibility for a proposed post-transition channel assignment was limited to existing Commission licensees and permittees.) In the post-transition DTV Table, 1,812 stations received post-transition DTV channels. (This total includes 1,806 stations announced in Appendix A to the *Seventh FNPRM* and six additional stations announced in a subsequent public notice. Additional new permittees may also be announced before the transition deadline.) Of these, 1,178 stations received the DTV channel on which they are currently authorized, 517 stations received the NTSC channel on which they are currently authorized, and 117 stations received a different channel from which they are currently authorized. In addition, we have proposed post-transition channel assignments for 13 stations that became eligible after the channel election process.

33. The process of transitioning the entire TV broadcast industry to digital-only operation on each station's final channels will be complex. Accordingly, most stations should have their plans in place for their transition to digital-only service on their post-transition channel. Some stations may now be ready, or very close to ready, to make their transition. Other stations, however, will need to take significant steps to accomplish their transition. Stations' situations will vary based on their final channel assignments in the new DTV Table and whether they must change their transmission facilities to operate on their post-transition channels.

1. Transition Status Reports (Form 387) Adopted

34. We adopt our proposal in the *Third DTV Periodic Review NPRM* to require all full-power television stations to file a form detailing (1) their current transition status, (2) any additional steps needed to commence their full, digital operations, and (3) their timeline to meet the February 17, 2009 transition deadline. The record supports adoption of this form. (Form 387 attached hereto as Appendix C). We agree with commenters and find that these forms will assist the Commission, industry, and the public in assessing progress and making plans for the transition date. We note, however, that these forms are not a substitute for active coordination efforts that may be necessary between and among broadcasters. Stations' forms will be made publicly available on the Commission's Web site.

35. We will require stations to file these forms no later than February 18, 2008. (Although the Commission originally proposed December 1, 2007 as the date broadcasters must file their forms, in response to the comments, we instead adopt February 18, 2008 as that date. We expect that, by February 18, 2008, this Report and Order will have been published in the **Federal Register** and have become effective and also that the Commission will have obtained the necessary OMB approval for this information collection. *See* OMB Control No. 3060–1105. The Media Bureau will announce when OMB approval has been obtained and will confirm the February 18, 2008 filing deadline for when broadcasters must file the form.) In addition, stations must update their forms, as necessary, until they report the completion of their transition—specifically, that they have begun operating their full facility as authorized by the post-transition DTV Table Appendix B. As proposed, each station is responsible for the continuing accuracy and completeness of the information furnished in their form. (This requirement is consistent with 47 CFR 1.65(a).) Whenever the information furnished in their form is no longer substantially accurate and complete in all significant respects, the station must file an updated form as promptly as possible and in any event within 30 days to furnish such additional or corrected information as is appropriate. Examples of a significant change would include a change in a station's (1) transition plans, (2) construction or operational status or (3) existing service (*e.g.*, reduction or termination of analog or pre-transition digital service). Stations must continue to file updates until construction of fully authorized post-transition facilities is complete and the station has begun operating its full post-transition DTV Table Appendix B facility. Commenters express concern that some stations may not be able to set a detailed timeline by the due date because some of their transition logistics (*e.g.*, details about equipment and tower crews) are beyond their control. We recognize that some stations may need to update their forms several times as they progress through their transitions. At a minimum, stations that have not completed construction of their post-transition facility and applied for a license to cover by October 20, 2008, must update their form to report their current status as of that date. Stations unable to answer questions on the form on the initial filing date must explain their reasons for not providing an answer and indicate when they expect to update the form to provide an appropriate response. We delegate authority to the Media Bureau to follow up with stations that do not file or update their forms. We intend to use these forms to identify stations that are not communicating their progress and may need to contact stations directly to assess and discuss the station's transition status. In addition, the Media Bureau will prepare a comprehensive summary report of the information provided in the Form 387 no later than August 18, 2008 (six months prior to the February 17, 2009 transition deadline). This report will enable us to assess progress toward completing the transition and to make any mid-transition adjustments in time for the February 17, 2009 deadline.

2. Stations Identified as Ready To Commence Post-Transition Operations

36. There are more than 800 stations that have built their post-transition facility. (This number is increasing as stations complete construction of their post-transition facilities and file for licenses to cover.) These stations have built and licensed or applied to license their full authorized DTV facilities as defined in the post-transition DTV Table Appendix B (*i.e.*, their post-transition channel is the same as their pre-transition DTV channel). We note that in the *Third DTV Periodic Review NPRM,* we listed 752 stations on Appendix D. In response to comments, we have now added approximately 50 stations and removed approximately three stations from this list. We have also added other stations to this list that we have identified as having become ready to make their transition because they have filed for a license to cover their post transition (DTV Table Appendix B) facilities since the close of the comment cycle in this proceeding. The stations listed in Appendix D, however, must still file a transition status report, FCC Form 387, to confirm their operational status and indicate their timing for terminating their analog service.

B. Construction Deadlines for Full, Authorized DTV Facilities

37. We establish the following deadlines for full-power television broadcast stations to construct their full, authorized post-transition (digital) facilities (as defined in the post-transition DTV Table Appendix B):

- February 17, 2009 will be the construction deadline for stations building digital facilities based on a new channel allotment in the post-transition DTV Table, *i.e.*, stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations. These stations will not be required to construct a digital facility on their pre-transition DTV channel and will be permitted to forego further construction to the extent such a facility has been partially built.
- February 17, 2009 will also be the construction deadline for stations demonstrating that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities.
- May 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities.
- August 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but do not have a license or construction permit that matches their post-transition (DTV Table Appendix B) facilities.

As discussed in more detail below, we establish particular deadlines and procedures for stations falling into specific defined circumstances. Stations using their pre-transition DTV channel for post-transition operations that do not have a construction permit that matches their post-transition facilities, should apply now for a new or modified construction permit. Stations that have a construction permit that has not yet expired remain subject to that expiration date. For stations granted ''checklist'' waivers and denied extensions or ''use or lose'' waivers, their deadline will depend upon whether a station's pre-transition DTV channel is the same or different from its post-transition channel. Finally, we adopt a stricter standard for stations to obtain an extension of time to construct their post-transition facilities, but offer flexibility to certain stations if they can build facilities that would serve at least the same population that is served by their current television service and would not cause impermissible interference to other stations.

38. Commenters generally disagreed with our proposed deadlines and sought more time to complete construction of their full, authorized post-transition facilities. Many commenters noted that Congress did not expressly mandate the date by which broadcasters must operate at full, authorized facilities on their post-transition channel, only that stations must operate in digital and inside the TV core spectrum. Thus, several commenters argued for

significant flexibility to achieve their construction deadline, with some seeking the discretion to take up to one year, or more, after the transition date to complete their full, authorized facilities, while stations are providing digital service only to their communities of license. In addition, other commenters argued that the Commission should view the final DTV Table Appendix B as setting forth the maximum coverage contour in which a station may operate, rather than the exact parameters on which they must operate.

39. We find that compliance with our construction deadlines is necessary to ensure that consumers are not left behind in the transition. (As discussed further below, we will afford regulatory flexibility to stations where doing so would not cause existing viewers to lose service.) Viewers who have prepared for the DTV transition should be able to receive television service when analog transmissions cease on February 17, 2009. To achieve this goal, it is imperative that all stations finalize construction of their post-transition facilities and operate at full, authorized facilities by the deadline. Given the February 17, 2009 deadline established by Congress for full-power stations to end analog service, stations' primary goal must now be to ensure that DTV stations will be operating at their full, authorized facilities on their final, post-transition channels by that date. Previously, our efforts had been to facilitate the initiation of DTV service to the public during the transition. This approach was designed, in part, to accomplish the goal of completing the transition by the original December 31, 2006 deadline established by Congress, a deadline that could have been extended under several circumstances. We recognize, as noted by some commenters, that strict compliance with our DTV construction deadlines would require some stations to reduce or terminate their analog service before the transition date. In those cases in which the potential impact of the loss of service prior to the transition would be more disruptive than the effect of reduced coverage area for a limited period of time after the transition, we are providing for flexibility. However, in other cases, the loss of a station's analog service to some viewers pre-transition, will be necessary to enable construction of post-transition facilities and can be preferable to viewers losing all television service from that station after the transition date if DTV facilities are not ready and analog service must cease. To ensure that this flexibility serves the public interest, we are requiring that stations that choose either pre-transition service reduction or post-transition phase-in must inform their viewers of what to expect and the options for continuing to have service.

40. We reject commenters' arguments that we should provide blanket authority for stations to operate at less than full, authorized post-transition facilities after the transition date. Commenters offered several reasons why they may need more time to build their final DTV facilities, which reasons include the following: (1) Stations may need to make ''complicated technical changes'' to their facilities to achieve their transition (*e.g.,* those returning to their analog channel and intending to reuse their analog antenna); (2) there may be a shortage of equipment and qualified tower crews needed to implement final DTV construction; (3) winter weather may prevent some stations from constructing their final facilities; or (4) a single deadline for many stations may cause delays in the processing of needed construction permit applications. We appreciate these specific concerns, but find that giving blanket authority for an industry-wide, staggered deadline beyond the transition date would leave a significant number of over-the-air viewers without television service on and after the transition date, as analog service will have ceased, but some stations would not yet have been required to complete DTV facilities. Only by requiring that full, post-transition facilities are operating on the transition date can we ensure a successful DTV transition; namely, the continued availability of television service.

41. While we set strict construction deadlines in this Report and Order, we also adopt flexible rules and procedures that will address the specific concerns raised by commenters, such as those noted above. For example, we are affording stations facing unique technical challenges, such as the need to reposition their side-mount antennas, until the transition date to construct their full, authorized post-transition facilities, and we anticipate that many of these stations may also qualify for extensions—even under our stricter extension criteria, as well as for the provisions for a ''phased transition.'' We also expect that these stations will benefit from the new flexible rules for service reduction and termination in advance of the transition date. Similarly, while we generally will not consider extension requests by stations on the basis of weather or a shortage of equipment and qualified tower crews, our new extension rules will still allow consideration of requests from those stations with demonstrable and genuine difficulties because of weather or equipment problems. Furthermore, we expect that many stations will transition early and begin operating their final post-transition facilities in advance of the deadline and the onset of the winter months. Finally, we adopt rules for the expedited processing of stations' post-transition construction permit applications to address commenters' concerns about the potential for delays in obtaining the necessary Commission authorizations to construct their final DTV facilities. (Stations that apply for the facilities to which they certified in 2004 and, thus, are now specified for them in the post-transition DTV Table Appendix B will have this opportunity for expedited processing.) In addition, our processing rules address commenters' concerns that stations may not be able to use their existing analog channel antennas because the antenna patterns of those antennas may not match the antenna patterns specified for them in the post-transition DTV Table Appendix B. In sum, we find that the rules and policies we adopt in this Report and Order will ensure that stations have sufficient time to complete construction of their final DTV facilities by their respective deadlines.

1. Stations Whose Post-Transition Channel Is Different From Their Pre-Transition DTV Channel

42. For stations whose pre-transition DTV channel is different from their post-transition channel (*i.e.,* stations returning to their analog channel or moving to a new channel for post-transition operations; this number includes 517 stations returning to their analog channel post-transition and 117 moving to a new channel for post-transition operations. We note, however, that some of these stations may have a documented unique technical challenge and, therefore, would fall into category three.), we adopt our proposals in the *Third DTV Periodic Review NPRM* to:

(1) Establish February 17, 2009 as the deadline by which these stations must complete their post-transition (DTV Table Appendix B) facilities; and

(2) Permit these stations to forego construction of their pre-transition DTV channel.

Approximately 634 stations fall into this category. We find that these stations face a greater challenge than stations that will remain on the same DTV channel for post-transition operations. Stations moving to a new channel must apply for a construction permit on that channel and build new facilities based on the channel allotments in the post-transition DTV Table Appendix B. We

find that stations facing the challenges associated with moving to a new DTV channel should be afforded the maximum possible time to complete their post-transition facilities before analog transmissions must cease. As discussed above, we disagree with commenters that seek a blanket extension for additional time beyond the transition date because that would leave a significant number of viewers without any television service. However, as discussed above, we adopt flexible rules and procedures to assist stations with specific transition challenges and anticipate that those stations that genuinely need additional time to complete construction of their final, post-transition facilities may seek an extension of time pursuant to our revised rules or may avail themselves of our provisions for a ''phased transition.''

43. We also find that these stations may terminate further construction of their pre-transition DTV channel facilities in order to focus their efforts on constructing their permanent DTV facilities on their post-transition channel. Our examination of the record strongly favors affording stations whose pre-transition DTV channels are different from their post-transition channels the flexibility to stop construction of their pre-transition DTV channel facilities. We agree with commenters that argue in favor of such flexibility and find that requiring stations to build or expand facilities that would only be operated until the end of the transition—*i.e.*, for less than 14 months—potentially could undermine the more important public interest objective of ensuring a timely transition to digital broadcasting by diverting limited resources from the construction of final, post-transition facilities. Accordingly, we adopt our proposal to change our ''use or lose'' policy for these stations to allow them to retain interference protection to their full, authorized post-transition facilities. We discuss below the options available to these stations based on their individual circumstances.

44. We recognize that many of these stations (whose pre-transition DTV channels are different from their post-transition channels) have been diligent in meeting the deadlines established by the Commission for completing construction of their pre-transition facilities in order to provide DTV service to the public and to be permitted to carry over interference protection to their permanent DTV channel. We do not intend to treat these stations unfairly or reward stations that have been less diligent in providing DTV service during the transition. We note that many stations that have not built their transitional facilities have faced impediments to doing so. In addition, most stations that have applied for an extension of time to construct and/or a waiver of the applicable use-or-lose deadline have had those requests granted, indicating that we found they have a valid reason for not meeting the applicable deadline. Finally, we find that we must permit stations to cease investing time and resources in completing pre-transition DTV facilities to ensure that stations are focused on finalizing their post-transition facilities so that viewers will continue to receive television service when analog service ends.

45. *Pre-Transition DTV Channel Unbuilt or Not in Operation.* We will permit a station that has not constructed an operational pre-transition DTV facility to elect simply to return its construction permit for that facility to the Commission and focus its efforts on construction of its post-transition facility. As stations in this situation are not currently providing digital service to the public, we find it is appropriate at this stage in the transition to allow these channels to be returned. Stations choosing this approach will be able to carry over interference protection to their post-transition channel.

46. *Pre-Transition DTV Channel in Operation.* We will offer a station with an operational DTV facility on a pre-transition channel several options that would allow it to carry over interference protection to its post-transition channel. First, the station may discontinue further construction on its pre-transition DTV facility and operate that partially-built facility during the remainder of the transition, while it focuses on building its permanent DTV facility. A station choosing this option must file an application to modify its existing construction permit to match its partially-built pre-transition DTV facility. The station would then continue operation of the facility for the remainder of the transition without devoting resources to further build-out of that facility. Second, the station may cease operating its pre-transition DTV facility in certain circumstances, which are discussed below. Third, the station may decide to continue construction of its pre-transition DTV facility. We do not want to deny a station in this third category the opportunity to continue to build its pre-transition DTV facility and to provide service on this facility for the remainder of the transition; however, we find it is appropriate to require that these facilities be completed expeditiously. Therefore, we adopt our proposal in the *Third DTV Periodic Review NPRM* to require that such a facility be completed by the station's current (pre-transition) DTV construction deadline. The station will not be eligible for any further extensions to build its pre-transition DTV facility.

2. Stations Whose Post-Transition Channel Is the Same as Their Pre-Transition DTV Channel

47. For stations whose post-transition channel is the same as their pre-transition DTV channel (*i.e.*, stations remaining on their current DTV channel for post-transition operations), we adopt construction deadlines based on whether a station has an existing license or construction permit that matches its facility defined in the post-transition DTV Table Appendix B. Approximately 1,178 stations fall into this category. (We note, however, that some of these stations may have a documented unique technical challenge and, therefore, would fall into category three.)

(1) May 18, 2008 will be the construction deadline for stations in this category that already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities.

(2) August 18, 2008 will be the construction deadline for stations in this category, but which do not have a license or construction permit that matches their post-transition (DTV Table Appendix B) facilities and, therefore, need to apply for a new or modified construction permit.

Although we are moving back the deadline we proposed in the *Third DTV Periodic Review NPRM,* which would have required stations in this category to have completed construction of their final post-transition (DTV Table Appendix B) facilities by November 18, 2007 we find that it is appropriate to require stations in this category to complete construction prior to February 17, 2009. (November 18, 2007 is the deadline established for theses stations in both the *Construction Deadline Extension Order* and the *Use-or-Lose Order.*) These stations have already had a significant period of time in which to build digital facilities on their post-transition channels and, indeed, should already have constructed these facilities by their previously established DTV construction deadline, which for many stations was November 18, 2007. (Approximately 83 stations have filed requests for an extension of time of this deadline.) Unlike stations that will be moving to a different DTV channel for post-transition use, these stations have generally had the advantage of being able to plan for and commence construction of their post-transition

facilities for more than 10 years. In contrast, stations moving to a different channel for post-transition operations have only recently been assigned their new channel and, thus, are only now able to apply for a construction permit for this channel and commence construction of their final digital facilities. (Approximately 855 stations, listed in Appendix D, have satisfied their build-out requirements and are ready to complete their transition.) Furthermore, we note that more than 800 of the 1,178 stations in this category have been licensed, or have filed for a license, to operate authorized post-transition facilities. We recognize that some stations in this category may face unique technical challenges, such as the need to reposition their side-mount antenna, or other issues that may prevent them from constructing full, authorized post-transition facilities by the deadlines we establish. As discussed below, these stations that are facing unique technical challenges will receive a construction deadline of February 17, 2009 and those that legitimately need additional time to complete construction of their full, authorized post-transition facilities may seek an extension of time pursuant to our revised rules or may avail themselves of the provisions for a ''phased transition'' discussed below.

48. *Stations With CPs That Match Facilities in DTV Table Appendix B.* We establish May 18, 2008 as the construction deadline for stations in this category (*i.e.*, stations whose post-transition channel is the same as their pre-transition DTV channel) that already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. There are more than 250 stations with CPs that conform to the facilities in DTV Table Appendix B. This number will fluctuate as stations file modification applications or file license applications. (Some stations have filed Petitions for Reconsideration of the *Seventh Report and Order* requesting adjustments to Appendix B, and therefore are not included in this group, while others may choose to make adjustments at the application stage.) While most stations in this group have built and licensed their construction permit, and are now operating at full, authorized post-transition facilities, some stations in this group still have not built their existing construction permit. These stations include (1) those that received an extension of time until November 18, 2007, in either the *Construction Deadline Extension Order* or the *Use-or-Lose Order,* and that have an extension request of that deadline pending as of the date this Report and Order is adopted (Approximately 32 stations that received extensions in May have constructed and filed their license applications; 46 stations that received waivers in May constructed and filed their license applications.); and (2) those that have a construction permit that expired after adoption of the *Construction Deadline Extension Order* (*i.e.*, May 17, 2007) and that have an extension request of that deadline pending as of the date this Report and Order is adopted. By adopting May 18, 2008 as the construction deadline for these stations, we are hereby granting the relief sought in the pending extension requests of these stations and will afford them an extension until that date. (We also grant any requests for use-or-lose waivers by these stations that are pending as of the date this Report and Order is adopted.) We expect that these stations will finally be able to complete construction of their digital facilities and warn these stations that future requests for an extension of the deadline will be reviewed under the stricter standard adopted below. The stations in this group (*i.e.*, stations with a construction permit that matches their DTV Table Appendix B facilities) also include those that have a construction permit that has not yet expired, but based on the fact that most stations in this group have succeeded in timely building their permitted post-transition facilities, we expect that these stations will be able to meet their existing CP deadlines and will not need the additional time.

49. *Stations With an Unbuilt CP That Does Not Match Facilities in DTV Table Appendix B.* (This includes stations with an unbuilt CP that may be operating a reduced digital facility pursuant to STA.) We establish August 18, 2008 as the construction deadline for stations in this category (*i.e.*, stations whose post-transition channel is the same as their pre-transition DTV channel) that have an unbuilt construction permit for facilities that for some reason do not match those specified for them in the post-transition DTV Table Appendix B. There are roughly 60 stations with a CP they have not built and whose CP does not closely match facilities in the DTV Table Appendix B. These stations would therefore need either to modify either their CP to match Appendix B or request that we revise the facility listed for them on Appendix B. Similar to the previous group (*i.e.*, stations with a construction permit that matches their DTV Table Appendix B facilities), these stations include (1) those that received an extension of time until November 18, 2007, in either the *Construction Deadline Extension Order* or the *Use-or-Lose Order,* and that have an extension request of that deadline pending as of the date this Report and Order is adopted; and (2) those that have a construction permit that expired after adoption of the Construction Deadline Extension Order (*i.e.*, May 17, 2007) and that have an extension request of that deadline pending as of the date this Report and Order is adopted. By adopting August 18, 2008 as the construction deadline for these stations, we are hereby granting the relief sought in the pending extension requests of these stations and will afford them an extension until that date. (We also grant any requests for use-or-lose waivers by these stations that are pending as of the date this Report and Order is adopted.) We expect that these stations will finally be able to complete construction of their digital facilities and warn these stations that future requests for an extension of the deadline will be reviewed under the stricter standard adopted below. The stations in this group (*i.e.*, stations with an unbuilt construction permit that for some reason does not match the facilities specified for them in the post-transition DTV Table Appendix B) also include those that have a construction permit that has not yet expired, but we expect that these stations will be able to meet their existing CP deadlines and will not presume that these stations will need the additional time. We recognize that some stations in this group may also include stations that intend to build their CP and not their DTV Table Appendix B facilities. These stations should file their applications now to indicate their intent to do this.

50. We find that the stations in this group (*i.e.*, stations with an unbuilt construction permit that for some reason do not match those facilities specified for them in the post-transition DTV Table Appendix B) warrant additional construction time than that afforded to the stations in the previous group (that is, stations with a construction permit that matches their DTV Table Appendix B facilities) because these stations need to file an application for a new or modified construction permit to conform their existing construction permit to those facilities specified for them in the post-transition DTV Table Appendix B. (In the *Third DTV Periodic Review NPRM,* we recognized that stations that needed to apply for a new or modified CP because that CP did not match the facilities specified for them in the post-transition DTV Table Appendix

B may need more time to construct. *See Third DTV Periodic Review NPRM,* at para. 71.) We expect, however, that the actual construction of the different DTV Table Appendix B facilities should not otherwise cause delay, particularly because these stations never built their existing construction permit. Moreover, we note that these stations should have filed applications for such conforming facilities soon after the new post-transition DTV Table became effective on October 26, 2007, and should do so immediately if they have not done so already. We also note that changes made to these stations' construction permits since they made their certifications (via FCC Form 381) in 2004 were made pursuant to these stations' specific requests.

51. We recognize that some stations in this group cannot commence operations at their final DTV Table Appendix B facilities because doing so would cause impermissible interference to other current television operations. These stations must build and operate their currently authorized digital facilities reflected in their existing CP by the August 18, 2008 deadline and may seek an extension of time to February 17, 2009, at which time they could file their modification application to conform to those facilities specified in the post-transition DTV Table Appendix B. We expect, however, that these stations will apply now to modify their facilities to match the post-transition DTV Table Appendix B and will begin operations at full, authorized facilities as soon as the impermissible pre-transition interference concerns are resolved (*e.g.*, the affected pre-transition station moves to its post-transition channel).

52. *Stations With a License That Does Not Match Facilities in DTV Table Appendix B.* We establish August 18, 2008 as the construction deadline for stations in this category (*i.e.*, stations whose post-transition channel is the same as their pre-transition DTV channel) that have a license for facilities that for some reason do not match those specified for them in the post-transition DTV Table Appendix B. There are more than 300 stations with a licensed pre-transition facility that does not match facilities in DTV Table Appendix B, and therefore would need to apply for a CP for facilities that do match Appendix B or request that we revise the facility listed for them on Appendix B. We find that these stations generally should be treated like those stations with an unbuilt construction permit that for some reason does not match the post-transition DTV Table Appendix B facilities because they, too, need to file an application for a new or modified construction permit to conform their license to those facilities specified for them in the post-transition DTV Table Appendix B. We note, however, that unlike those stations with an unbuilt construction permit, these stations built a digital facility and met their previous DTV construction deadline. We will take this factor into consideration to the extent that such stations may request additional time to meet their post-transition facility deadline. For example, while we expect that these stations will not need to make significant modifications to conform their licensed facilities, we will consider granting requests from these stations if they can demonstrate that the modifications to conform their licensed facilities are, indeed, significant. We recognize that some stations in this group (*i.e.*, stations with licensed facilities that for some reason do not match those specified for them in the post-transition DTV Table Appendix B) may have constructed their intended facilities and do not intend to build their DTV Table Appendix B facilities. These stations should file their applications now to indicate their intent to do this.

3. Stations Facing Unique Technical Challenges

53. We adopt our proposal in *Third DTV Periodic Review NPRM* to establish February 17, 2009 as the deadline for stations facing ''unique technical challenges'' (as defined in the *Construction Deadline Extension Order* and the *Use or Lose Order*) preventing them from completing construction of their final, post-transition facilities. (February 17, 2009 was originally established as the deadline for these stations in the *Use or Lose Order* and *Construction Deadline Order*.) This category is limited to the types of situations described for stations facing ''unique technical challenges'' in the *Construction Deadline Extension Order* and the *Use or Lose Order.* Most of the stations are in this group because they need to reposition a top-mounted analog antenna with a side-mounted digital antenna. (Forty-five stations received a use-or-lose waiver and four stations received an extension in this category.) There may also be other stations in this group that met their previous DTV construction requirements but now face unique technical challenges in meeting their deadline to construct post-transition (DTV Table Appendix B) facilities. Such challenges include stations that have a side-mounted digital antenna and top-mounted analog antenna and will need to install a top-mounted antenna for post-transition digital use, but cannot do so before the end of the transition because the tower cannot support the additional weight of a third antenna, or face other circumstances in which the operation of a station's analog service prevents the completion of construction of the station's full, authorized post-transition facility, including stations whose local power company cannot provide sufficient electrical capacity to the tower site to power both analog and full power digital operations, and stations that do not have space at their antenna site for both analog and digital equipment. (Most of these stations proposed to install their DTV antenna on the top of the tower where their existing analog antenna currently is housed. In order to top-mount the DTV antenna, these stations would have to relocate the analog antenna to another position on the existing tower or to another location altogether, necessitating the purchase of a new analog antenna that would be usable for only a very short period of time.) Stations must document their status as a station facing a ''unique technical challenge'' and, thereby, obtain February 17, 2009 as their new construction deadline, by specifying such status in their application for post-transition facilities (Forms 301 or 340), if applicable, or by filing a notification electronically through the Commission's Consolidated Database System (''CDBS'') using the Informal Application filing form. Stations must also specify their status in their Transition Status Reports (Form 387). (Stations must check the appropriate box on Question (v)(3) in Section III (Next Steps) of the form, and must also detail their plans for repositioning their top-mounted/side-mounted antennas in Section V (DTV Transition Plan) of the form.) Although commenters did not support setting any firm deadline for these stations before the transition date, they did generally support our approach to provide these stations with more time to complete construction of their final DTV facilities than those stations without such unique technical challenges. We appreciate that these stations may need more time to complete construction of their final DTV facilities than other stations due to the challenge of configuring their station's post-transition facilities. Commenters have argued that stations with existing top-mounted analog and side-mounted digital antennas may face problems if they are forced to complete their final DTV facilities before the statutory analog shutdown. For example, a station with a side-mounted DTV antenna, a

top-mounted analog antenna and a top-mount DTV allotment risks significant analog service losses if it attempts to build-out its post-transition allotment before the analog shutdown. We, thus, conclude that imposing an earlier deadline for stations with unique technical challenges could create technical problems or the needless incurrence of extra engineering expenses. Therefore, we will continue to permit these stations the maximum amount of time—until the end of the transition—to complete the construction of their final DTV facilities.

54. However, as discussed above, we cannot give stations blanket authority for more construction time beyond the transition date without risking the availability of post-transition television service to viewers. We do agree with commenters, however, that our rules and policies must be flexible to enable stations with unique technical challenges to make a smooth transition. In particular, we expect that stations facing unique technical challenges will benefit from our provisions for a ''phased transition.'' (We note that not all of the stations granted a use or lose waiver in this category have the type of situation that is likely to warrant further time to complete construction after the transition date.) For example, Allbritton has requested that the Commission permit a station with a top-mounted analog antenna to delay the start of construction of top-mounted, post transition DTV facilities until after the analog shut-down, provided that station's existing DTV facility provides service to 100 percent of its replication area. We find that the ''phased transition'' alternative build-out policy that we adopt below will provide an avenue for the relief requested by Allbritton.

4. Other Situations

55. We adopt our proposals concerning the treatment of stations granted a waiver of the August 4, 2005 ''checklist'' deadline and stations denied an extension of time to construct a pre-transition DTV facility or a ''use or lose'' waiver request. (These stations sought a waiver of the August 4, 2005 deadline established for all television stations to construct and operate a ''checklist'' DTV facility.)

56. *Checklist Waiver Stations.* We adopt our proposal in *Third DTV Periodic Review NPRM* to set a construction deadline for the 10 stations granted a ''checklist'' waiver that is based upon whether their pre-transition DTV channel is the same as, or different from, their post-transition channel. We received no comments on this issue. We find that our original proposal is an appropriate method for setting the construction deadline for these stations. Accordingly, the six stations granted ''checklist'' waivers whose pre-transition DTV channel is different from their post-transition channel may forego construction of their pre-transition DTV facility and must complete construction of their post-transition facility by February 17, 2009. (This number will change from six to seven if our proposed channel change for station WPCW–DT, Jeannette, PA (from its DTV channel 49 to new channel 11) is adopted, giving the station a construction deadline of February 17, 2009. These stations will be treated like any other stations whose pre-transition DTV channel is different than their post-transition channel.) The four stations granted ''checklist'' waivers whose pre-transition DTV channel is the same as their post-transition channel, must complete their full, final post-transition facility by the deadline established for other stations whose pre-transition DTV channel is the same as their post-transition channel. (Station WSMH–DT, Flint, MI is the only one of these stations that has yet to apply for and build its post-transition DTV Table Appendix B facilities and, accordingly, has a construction deadline of August 18, 2008.)

57. *Stations Denied an Extension of Time to Construct.* Five stations were denied extensions in the *Construction Deadline Extension Order.* Three of these stations were admonished and made subject to remedial measures. One admonished station, whose pre-transition DTV channel is the same as its post-transition channel, was afforded six months from the release date of the Order to comply with the DTV construction rule. The other two admonished stations, whose pre-transition DTV channel is different from their post-transition channel, were afforded until 30 days after the effective date of the amendments to section 73.624(d) of the rules to be adopted in the Report and Order in this Third DTV Periodic Review proceeding. All three admonished stations were also made subject to the remedial measures for DTV construction adopted by the Commission. For the three admonished stations, we proposed in the *Third DTV Periodic Review NPRM* to not consider any future requests for extension of time to construct pre-transition facilities. As we stated in the *Third DTV Periodic Review NPRM*, we believe that admonished stations that have been denied an extension of their construction deadline and have been required to follow remedial procedures should be treated more strictly than stations that have been granted an extension of the construction deadline. We received no comments on this issue and will adopt our proposal.

58. Of the three stations that were denied an extension and admonished, only one station, WTVA–DT, channel 8, Tupelo, Mississippi, has still not built its pre-transition facility. (We note that the two other stations that were denied extensions and admonished have since reported the completion of their final DTV facility and, therefore, do not require further consideration. These stations are KJUD–DT, Juneau, Alaska and KECY–DT, El Centro, California. KECY–DT sought reconsideration of the Commission's admonishment of its failure to complete construction in a timely manner. That reconsideration will be addressed in a separate proceeding.) WTVA–DT has a post-transition channel that is different from its pre-transition DTV channel. We stated in the *Third DTV Periodic Review NPRM* that requiring such stations, even if denied an extension and admonished, to build their pre-transition channel would be inconsistent with our policy to shift our focus to construction of post-transition facilities. Accordingly, we proposed that we would not require these stations to construct their pre-transition facilities, but that these stations would remain admonished and would remain on a remedial program with respect to construction of their post-transition facilities. In light of the Commission's consideration of the issues raised in the *Third DTV Periodic Review NPRM*, the Commission decided in the *Construction Deadline Extension Order* to temporarily stay its reporting and progress requirements for admonished stations in the case of WTVA–DT. As WTVA–DT has a post-transition channel that is different from its pre-transition DTV channel, consistent with our decision in this Report and Order and as we proposed in the *Third DTV Periodic Review NPRM*, we hereby determine that this station will not be required to construct its pre-transition facility and will remain admonished and on a remedial program with respect to the construction of its post-transition facility. Station WTVA–DT must construct its post-transition facility no later than February 17, 2009, the deadline we have established in this Report and Order for all stations in this category. In addition, in accordance with our remedial program, WTVA–DT must report on its construction progress every 60 days following release of this Report and Order. If station WTVA–DT

fails to make progress, it will be subject to additional remedial measures and sanctions. These actions modify our prior remedial measures/admonishment order for WTVA–DT.

59. *Stations Denied Waiver of the Use or Lose Deadline.* For stations that were denied use or lose waivers in the *Use or Lose Order*, seven stations were denied use or lose waivers in the *Use or Lose Order* and, consequently, lost interference protection to the unused portion of the associated coverage area and lost the ability to ''carry over'' their interference protection to their unserved DTV service area on their post-transition channel. (These stations were unable to show that good cause existed to allow them additional time to meet their applicable ''use or lose'' deadline.) Two of the seven stations denied ''use-or-lose'' waiver requests, KAME and WCOV, are remaining on their current DTV channel for post-transition use. Neither of these stations filed petitions for reconsideration and their denial is final. They must file applications to modify their construction permit to specify their reduced DTV facilities and, upon grant of the construction permit, they must file a license application to cover this modification reflecting their now completed facility.) In the *Third DTV Periodic Review NPRM*, we invited comment on whether we should reevaluate the loss of interference protection for these stations with respect to their post-transition channel. We received no comments on this issue. We decline to change our decision in that order to remove interference protection for the parts of their service area that were not built by the deadline and for which these stations were unable to justify a waiver.

60. There is no reason to distinguish between stations that failed to complete construction of their pre-transition facility by the use-or-lose deadline based on whether or not the facility would also be used for post-transition operation. In this case, the required build-out was specifically to provide pre-transition service and the failure to provide that service without a valid justification cannot be excused. Accordingly, we will not reevaluate here our decision to remove interference protection for these stations. These stations will not lose their license and must comply with the relevant deadline for operation of their post-transition facility if it differs from their pre-transition facility. (The five stations whose pre-transition channel is not the same as their post-transition channel are required to complete construction of their post-transition facility by February 17, 2009, but have lost interference protection to that part of their service area that they failed to serve by the use-or-lose deadline. One of these stations, KUAM, did not file a petition for reconsideration and their denial is final. When KUAM applies for its construction permit, its application should reflect this modification.) We note that four of these stations have sought reconsideration of the denial of their use or lose waivers. (Stations KBDI–DT, Denver-Broomfield, Colorado, WDHS–DT, Iron Mountain, Michigan, WDTV–DT, Weston, WV, and WTXX–DT, Waterbury, Connecticut, all filed such petitions for reconsideration. If their petitions are denied, their applications for CP to construct their post-transition facilities must include the necessary modification to reflect the service area lost.) We will address these petitions for reconsiderations in a separate proceeding.

5. Extension/Waiver of DTV Construction Deadlines

61. In this section, we adopt our proposed revisions to section 73.624(d)(3) of the rules to tighten the standard for extension of DTV construction deadlines. However, we also clarify that we will consider, on a case by case basis in very limited circumstances, requests for an extension that do not meet our stricter criteria adopted herein where the station can show extraordinary circumstances that warrant providing additional time to complete construction. We also conclude that there will no longer be a separate treatment of ''use-or-lose'' deadlines, rather all requests for more time to complete construction of full authorized facilities will be dealt with as requests for CP extensions. In addition, we will require stations seeking an extension under section 73.624(d)(3) to comply with a viewer notification requirement (detailed below). Finally, as we proposed in the *Third DTV Periodic Review NPRM*, for all requests for additional time to construct DTV facilities for construction deadlines occurring on February 18, 2009 or later, we will consider such requests under the tolling standard set forth in section 73.3598(b) of our rules. (47 CFR 73.3598(b) provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (*e.g.,* floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review (*i.e.,* petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal), or construction is delayed by a cause of action pending in court related to requirements for construction or operation of the station (*i.e.,* zoning or environmental requirements).

62. Specifically, we take the following steps with respect to requests for additional time to construct post-transition facilities:

(1) Absent extraordinary circumstances we will no longer consider lack of equipment in the evaluation of whether to grant a request for extension of time to construct a DTV facility.

(2) We continue to consider circumstances beyond the licensee's control in evaluating requests for extension of time, including delays related to zoning issues or international coordination.

(3) We eliminate the existing four-part test for an extension of time on the grounds of financial hardship. Under the new test adopted herein, absent extraordinary circumstances, to obtain an extension on the grounds of financial hardship we will require that the station show that it is (a) the subject of a bankruptcy or receivership proceeding, or (b) experiencing severe financial hardship, as defined by negative cash flow for the past three years.

(4) Requests for extension must be received at least 60 days prior to the deadline for which the extension is requested to ensure review prior to the deadline.

(5) Beginning at least 30 days prior to the station's termination of analog service, stations must notify their viewers about any delays in completing construction that will prevent the station from providing post-transition digital service to all viewers. (The station must air such notifications on its analog channel.)

(6) For all requests for additional time to construct DTV facilities for construction deadlines occurring on February 18, 2009 or later, we will consider such requests under the tolling standard set forth in section 73.3598(b) of the rules. This rule provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (*e.g.,* floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review, or construction is delayed by a cause of action pending in court related to requirements for construction or operation of the station (*i.e.,* zoning or environmental requirements).

63. Stations that cannot finalize construction of their final DTV facilities by the February 17, 2009 deadline have

several options. First, they may apply for an extension of time to construct pursuant to the stricter extension criteria adopted herein. Alternatively, as discussed below in the phased transition section, stations that cannot finalize construction of their full, authorized post-transition facilities by the transition deadline and that do not meet the revised extension criteria adopted herein may request that they be permitted to stay on their pre-transition DTV channel for a period of time past the February 17, 2009 deadline to permit them to finalize construction provided they serve their existing viewers. As another option, also discussed in the phased transition section below, a station that cannot finalize its full, authorized post-transition facilities by February 17, 2009 and that cannot meet the revised extension criteria may also request that it be permitted to operate with less than full, authorized facilities for a period of time after the transition deadline provided it serves its existing viewers. Stations that cannot build post-transition facilities that serve their existing viewers by February 17, 2009 will not be eligible to take advantage of these phased transition options. Requests for more time to construct for any deadline of February 18, 2009 or later will be subject to the tolling standard, as discussed more fully below.

64. The stations that face the most significant amount of construction to finalize their post-transition facilities are those that are moving to a different channel for post-transition operation. It is important to note that in this Report and Order we provide these stations the maximum amount of time—*e.g.,* until February 17, 2009—to complete construction of these post-transition facilities. (We also permit stations that are moving to a new channel post-transition and whose pre-transition facility is unbuilt or nonoperational to cease efforts to construct the pre-transition facility and focus their efforts on constructing the final, post-transition facility.) As analog transmissions must cease by February 17, 2009, any extension of time to construct final DTV facilities granted beyond this date will result in the loss of service to over-the-air viewers. (Some stations may be permitted to continue to serve current viewers on their pre-transition DTV channel past the transition deadline.) Consequently, as discussed further below, we will provide extensions of time to construct final DTV facilities only in the most serious of situations.

65. Stations that have an earlier deadline to construct post-transition facilities generally do not have a significant amount of construction remaining to complete their final DTV facility. (Stations whose pre- and post-transition channels are the same have until May 18, 2008 to finalize construction of the post-transition facility.) In some cases, however, these stations do face genuine obstacles to completing construction, such as zoning issues or weather-related damages to facilities. For these stations, the revised standard we adopt herein will continue to consider these kinds of issues in evaluating extension requests. For stations moving to a new channel post-transition and that are subject to either the May 18, 2008 or August 18, 2008 construction deadline, those that need an extension and can satisfy the new criteria adopted herein will be granted an extension until February 18, 2009.

66. In general, at this stage in the transition it would be a disservice to the public to permit stations to continue to obtain extensions of time to construct due to equipment shortages associated with poor planning or a reluctance to commit financial resources to construction of full digital facilities. While most of the commenters that addressed our proposals to tighten the standards for grant of additional time to construct DTV facilities disagreed with our proposals, we believe it is necessary that these standards be tightened to ensure continued, necessary progress by stations toward completion of their post-transition facilities. Because we are close to the end of the transition—the ultimate deadline—we can no longer allow extensions except in the most serious, extraordinary, or truly unavoidable circumstances, such as bankruptcy or zoning or other impediments beyond the station's control. Stations that cannot satisfy these criteria and yet do not complete construction of their post-transition facility will be admonished, placed in remedial programs, subjected to forfeitures, will lose interference protection to their unbuilt service areas, and/or will not be permitted to apply for expanded facilities. These stations will also be required to notify their viewers that the station will not be serving some or all of these viewers beginning February 18, 2009.

67. We have determined that there is no further need for separate ''use or lose'' and construction deadlines at this point in the transition. Our ''use or lose'' deadlines were an effort to ensure that stations were operating full power pre-transition DTV facilities during the course of the DTV transition. As we are nearing the end of the DTV transition, stations must complete their final, post-transition facilities, and the less than full facilities that were permitted by the use-or-lose deadlines will no longer be sufficient. Therefore, from this point on, we will enforce only construction deadlines for all stations. Any station whose DTV facility is either unbuilt or built but operating at less than full power may submit an application for extension if it wants to retain protection to the authorized service area and would meet the new extension criteria. (We also note that stations that do not intend to build out to their full authorized facility should apply for a license to cover the facility they have built.)

68. *Background*. In the *Third DTV Periodic Review NPRM*, we tentatively concluded that we would revise section 73.624(d)(3) of the rules, which sets forth the standard for extension of DTV construction deadlines, to make that provision substantially stricter. We noted that the initial construction deadlines for DTV facilities passed several years ago and that the deadline for completion of the transition is rapidly approaching. It is critical at this stage in the transition that stations finalize their construction plans and implement them.

69. Under the current rules, the Media Bureau may grant a six-month extension of time to construct a DTV station if the licensee or permittee can show that the ''failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.'' The rules state: ''[s]uch circumstances shall include, but are not limited to (A) [i]nability to construct and place in operation a facility * * * because of delays in obtaining zoning or FAA approvals, or similar constraints; (B) the lack of equipment necessary to obtain a digital television signal; or (C) where the cost of meeting the minimum build-out requirements exceeds the station's financial resources.'' (*See* 47 CFR 73.624(d)(3)(ii). To qualify under the financial resources standard, the applicant must provide (1) an itemized estimate of the cost of meeting the minimum build-out requirements; (2) a detailed statement explaining why its financial condition precludes such an expenditure; (3) a detailed accounting of the applicant's good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing and an explanation why those efforts were unsuccessful; and (4) an indication when the applicant reasonably expects to complete construction. These rules apply to stations granted a paired license for analog and digital operation

during the transition. (DTV singleton stations are already subject to the tolling provisions in 47 CFR 73.3598(b). We did not propose, and do not make, any changes to our rules regarding DTV singletons.) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests must be referred to the Commission.

70. In the *Third DTV Periodic Review NPRM*, we proposed to eliminate section 73.624(d)(3)(ii)(B), which permits consideration of lack of equipment in the evaluation of whether to grant a request for extension of time to construct. Most stations have had ample time to order the equipment required to provide digital service. In addition, given the relatively short time remaining in the transition, we find that it is not appropriate to grant stations additional time to construct because of equipment delays, absent extraordinary circumstances. We also proposed to eliminate the existing four-part test for financial hardship, which permits consideration of circumstances where the cost of meeting build-out requirements exceeds the station's financial resources, and replace it with a new test. Specifically, in seeking a DTV extension for financial reasons, we proposed that the licensee/permittee of a station may show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. (Our proposed showing of three years of negative cash flow is similar to the showing considered in determining whether a station is a ''failed station'' for purposes of a waiver of our local TV ownership rules. However, we made clear in the *Third DTV Periodic Review NPRM* that we do not intend to use the failed station standard in its entirety as applied in the context of local TV ownership in determining whether a station should be granted an extension of time to construct under our revised extension standard. As proposed in the *Third DTV Periodic Review NPRM*, we will require that a station seeking a DTV extension for financial reasons to demonstrate that it is either in bankruptcy or receivership or has had negative cash flow for the past three years.)

71. *Equipment shortages.* Consistent with our proposal in the *Third DTV Periodic Review NPRM,* we eliminate section 73.624(d)(3)(ii)(B) of our rules, which permits consideration of circumstances related to ''the lack of equipment necessary to obtain a digital television signal'' in the evaluation of whether to grant a request for extension of time to construct. Going forward, absent extraordinary circumstances, we will no longer consider lack of equipment a valid ground for granting a request for extension of time to construct. Although the commenters that addressed this issue generally opposed our proposal to eliminate the equipment shortage justification for an extension, we find that at this relatively late stage in the transition it is no longer appropriate to signal to stations that they can obtain more time to construct their final DTV stations by citing general difficulties related to obtaining equipment. Stations must at this stage in the transition be submitting their equipment orders and arranging for delivery and installation in order to ensure that they meet the DTV construction deadlines established in this Report and Order. (While we recognize that some stations are still awaiting authorization of their final DTV facilities, the vast majority of stations have been assigned a channel and facility and have no legitimate cause for reluctance to order equipment. Moreover, most of the stations that have requested a change in their previously certified facilities in petitions for reconsideration of the *Seventh Report and Order* in the DTV table proceeding assert that their requested changes are needed to facilitate construction using existing antennas or other equipment. Therefore, these stations should not have need of additional time to construct based on equipment shortages. While stations may be eager to order equipment that will permit them to expand their facilities at a later date when such expansion may be permitted, stations cannot use this excuse to delay ordering now equipment that will permit them to finalize their current authorized facilities.)

72. While requests for an extension of time on the grounds of a lack of equipment will no longer generally be granted, we recognize that for some stations difficulties beyond their control in obtaining or installing equipment may still pose unavoidable delays in completing construction, either because of real equipment shortages, the lack of sufficient tower crews, or because of a delay in scheduling equipment installation due to weather. Therefore, while we adopt our proposal to eliminate the equipment shortage justification as a general ground for grant of an extension of time, and amend the rule accordingly, we will consider, on a case by case basis, requests for an extension where a station can demonstrate that, despite timely orders, there is a delay in delivery of equipment due to a shortage of supply or that there is a delay in installing equipment on hand or in completing tower construction due to a shortage of qualified tower crews. Only stations that can demonstrate that they placed their equipment orders and requested tower crews well in advance will be considered eligible for an extension on these grounds. In addition, we will also consider requests for an extension where the station can demonstrate that tower construction cannot be completed because of weather conditions or that equipment is on hand but that weather conditions have delayed installation. In each case, we will require the station to provide specific, detailed information and supporting documentation to demonstrate that grant of an extension of time to construct is warranted because of a genuine, specific, verifiable delay due to equipment or manpower shortages or weather. Such documentation could include, for example, proof that equipment was timely ordered together with a letter from the equipment supplier confirming a delay in filling orders and an estimated date by when the equipment will be delivered, or proof that equipment is on hand together with a letter from the equipment installer confirming a delay in scheduling installation and an estimated date for installation. With respect to delays due to weather, we will consider proof that the equipment is on hand or that tower construction has commenced or is ready to commence together with information confirming unsuitable weather conditions and an estimated date for finalizing tower construction and/or equipment installation. Stations must also note on FCC Form 387 the status of the station's transition and any delays related to delivery or installation of equipment and must update the form to keep the Commission apprised of changes or continuing delays.

73. This approach responds to the concerns raised by MSTV and NAB who specifically opposed our proposal to eliminate the equipment shortage justification for an extension of time. MSTV and NAB argued that eliminating the equipment shortage justification was inappropriate given the enormous anticipated demand for equipment and the relatively small number of manufacturers and installers, which could lead to very real shortages. We agree that there are instances in which stations may face legitimate delays in obtaining or installing equipment because of high demand or weather considerations and we will consider

extensions in these extraordinary circumstances. Apart from such extraordinary circumstances, however, we will no longer generally consider lack of equipment as grounds for an extension of time.

74. *Financial hardship.* We also hereby adopt our proposal to eliminate the existing four-part test for financial hardship, which permits consideration of circumstances where the cost of meeting build-out requirements exceeds the station's financial resources, and replace it with a new test. To obtain an extension on the grounds of financial hardship we will require that the station show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. Stations seeking an extension based upon financial considerations must either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations must also submit a schedule of when they expect to complete construction.

75. Our goal in adopting this stricter financial hardship standard is to limit extensions to situations where stations clearly are unable to make the financial commitment necessary to complete construction of their post-transition DTV facilities. While we recognize that a number of stations face financial obstacles to completing construction, at this relatively late stage in the transition it is imperative that stations devise and implement a plan to complete their final DTV facilities. Analog broadcasts must cease at midnight on February 17, 2009. In order to ensure that viewers continue to receive television service after the transition, stations must complete their post-transition facilities now. It is difficult to imagine a more compelling use of funds than to ensure continued service to the viewing public. Thus, only stations that can demonstrate no available funds or source of funding to complete construction may be granted an extension on this ground.

76. While we adopt our proposal to tighten our financial hardship standard, and amend the rule accordingly, we recognize that some stations, including some noncommercial educational stations and some smaller stations, face extraordinary financial circumstances that do not fit within the new financial hardship criteria but that nonetheless may warrant an extension of time to finalize construction. Therefore, we will consider, on a case by case basis, requests for an extension that do not meet our revised financial hardship criteria where a station can demonstrate extraordinary circumstances. In this regard, we will consider situations where the station can demonstrate, for example, that it is awaiting expected funding in the form of a station grant or similar funding together with a date by when such funding is expected to be received. We will also consider situations in which the station can show that it has a detailed, step-by-step plan for constructing its post-transition facilities by February 17, 2009 and that it is making and will continue to make timely progress in implementing this plan. We caution stations that extensions on the grounds of extraordinary circumstances will not be routinely granted.

77. We will require that all stations requesting an extension submit proof of the circumstances that warrant an extension of time, and provide a firm estimate of when construction will be completed. Stations will also be required to provide information on FCC Form 387 regarding the status of the station's transition and to update this information on a regular basis.

78. *Circumstances beyond the station's control.* As we proposed, we will continue to consider requests for extension of time where the station is awaiting action by the Commission or a court on a pending application or appeal or where action on an application is being delayed for other reasons beyond the station's control. We will consider delays due to international coordination where resolution of the international coordination issue is truly beyond the control of the station, such as where the failure to obtain coordination will not permit the station to construct facilities sufficient to replicate its analog coverage area. A station seeking to maximize that cannot obtain international coordination for such facilities may be required to construct facilities with a smaller coverage area. As we stated in the *Third DTV Periodic Review NPRM,* we will also continue to consider circumstances related to an act of God or terrorism in evaluating requests for an extension of time to construct.

79. *Application of revised extension standard.* Our stricter standard for grant of an extension of time to construct DTV facilities adopted herein will be applied to all pending and future requests for extension of construction deadlines occurring on or before February 17, 2009. While we proposed in the *Third DTV Periodic Review NPRM* to apply our stricter extension standard to construction deadlines occurring before—but not on—February 17, 2009, and to apply our proposed tolling standard to deadlines on or after that date, we now find it is appropriate to apply the revised, stricter extension standard to construction deadlines on or before February 17, 2009. While our revised extension standard is stricter than the current standard, it provides more flexibility to stations than the tolling standard. Thus, applying the revised extension standard rather than tolling to stations with a February 17, 2009 construction deadline will provide some relief to these stations that may face legitimate obstacles to completing their post-transition facilities. All requests for extension of time pursuant to section 73.624(d), as amended, must be filed electronically using the revised FCC Form 337. (Requests for extraordinary relief in the circumstances described herein should also be filed electronically using FCC Form 337. Such requests should indicate clearly the circumstances that the station claims warrants additional time to construct.) We remind parties that applications for extension must be filed ''no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.'' To ensure sufficient time for review of any such extension requests, the Bureau is instructed to apply this requirement strictly and to accept extension requests filed fewer than 60 days before the applicable construction deadline only if the party affirmatively and persuasively demonstrates that the extension is necessary due to an unforeseen development or event occurring within the 60 day timeframe. (We note that because any extensions would apply to the new deadlines adopted by this Report and Order, the Media Bureau has delegated authority to grant or deny extensions for up to six months. *See* 47 CFR 73.624(d)(3)(i), (iii).)

80. *Viewer Notification.* Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 must notify viewers on their analog channel about the station's planned delay in construction and operation of post-transition (DTV) service. (Population to be served should be based on the population the station is authorized to serve both before and after the transition. Population not previously served and population that will no longer be served by the station's authorized post-transition facility need not be counted. This applies to all calculations of population herein.) Therefore, stations seeking an extension

of time to construct post-transition facilities under revised section 73.624(d)(3) must notify viewers on their analog channel about their post-transition service limitations. Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-days prior to the station's termination of full, authorized analog service. These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received, or alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area; and (5) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our *DTV Consumer Education Initiative.*

81. *Tolling.* As we proposed in the *Third DTV Periodic Review NPRM,* post-transition we will return to the existing standard for analog facilities in considering requests for additional time to construct DTV facilities. For all requests for additional time to construct DTV facilities for construction deadlines occurring February 18, 2009 or later, we will consider such requests under the tolling standard set forth in section 73.3598(b) of the rules, which currently applies to DTV singletons and analog TV stations, as well as AM, FM, International Broadcast, low power TV, TV translator, TV booster, FM translator, FM booster, and LPFM stations. Section 73.3598(a) applies to construction permits for ''new TV'' stations or to make changes in existing stations, and we hereby clarify that this reference includes construction permits for new DTV stations, as well as to existing DTV stations, and that we will apply section 73.3598 to such stations beginning February 18, 2009. We also will require that notifications pursuant to section 73.3598 be filed electronically through the Commission's Consolidated Database System (''CDBS'') using the Informal Application filing form.

82. While the commenters that addressed the tolling issue generally opposed implementation of this approach, we find that once the transition to an all-digital broadcast service has occurred, it is appropriate to apply a stricter ''tolling'' approach to construction deadlines. Once DTV is the sole broadcast service, we find requests for additional time to construct should be treated as we now treat such requests for all analog stations and DTV singletons. Once the transition deadline has passed, stations will no longer be required to operate dual facilities and the demand for scarce resources by industry will level off. In the *Third DTV Periodic Review NPRM,* we proposed to apply tolling to construction deadlines occurring on February 17, 2009 or later. However, as noted above, we will instead apply the revised extension criteria to deadlines on or before February 17, 2009 and will apply tolling to deadlines occurring February 18, 2009 or later. This approach will provide some additional flexibility to stations by delaying implementation of the stricter tolling standard.

83. 47 CFR 73.3598 provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (*e.g.*, floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review, or construction is delayed by a cause of action pending in court related to requirements for construction or operation of the station (*i.e.*, zoning or environmental requirements). (Under the tolling standard, the filing of an application for modification of a construction permit does not serve as grounds for tolling of the construction deadline.) Beginning February 18, 2009, we will require that DTV permittees notify the Commission of any event covered under our tolling provision and provide supporting documentation in order to toll the construction deadline. Permittees will also be required to notify the Commission when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God automatically ceases six months from the date of the notification to the Commission unless the permittee submits additional notifications at six-month intervals detailing how the act of God continues to cause delays in construction and describing construction progress and the steps the permittee has taken and proposes to take to resolve any remaining impediments. Any construction permit for which construction has not been completed and for which an application for license has not been filed shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission. (The Commission has noted that there may be rare and exceptional circumstances, other than those delineated in its rules or decisions adopting the rules, that would warrant the tolling of construction time, *i.e.*, other circumstances in which a permittee is prevented from completing construction within the time specified on its original construction permit for reasons beyond its control such that the permittee would be entitled to tolling of the construction time under 47 U.S.C. 319(b). In these very limited circumstances, the Commission noted that it would entertain requests for waiver of its strict tolling provisions.)

84. As proposed in the *Third DTV Periodic Review NPRM*, delays due to international coordination will not generally be grounds for tolling of a DTV construction permit with two exceptions. First, the Commission will toll a construction permit for a DTV station where the station demonstrates that a request for international coordination has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received. Second, the Commission will toll a DTV construction permit where the station can demonstrate that the DTV facility approved by Canada or Mexico would not permit the station to serve the viewers currently served by the station's analog facility that would also be served by the station's digital facility approved by the Commission domestically. The tolling rule is amended accordingly.

6. Sanctions for Failure To Meet Construction Deadlines

85. We remind stations that they will be subject to sanctions if they fail to meet their deadline for the construction of their final, post-transition DTV facilities, fail to justify an extension of their deadline pursuant to the revised procedures and policies, or are otherwise unable to qualify for the ''phased transition'' provisions. For example, a station failing to meet its construction deadline may be subject to license revocation procedures, the issuance of forfeitures, loss of interference protection to unserved DTV service area, or other remedial measures, such as admonishment and the imposition of periodic reporting requirements. We also remind licensees that ''if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any

provision, term, or condition of the license to the contrary.'' (In addition, stations discontinuing operations must also be mindful of the Commission's rules. *See, e.g.*, 47 CFR 73.1615 (operation during modification of facilities), 73.1690 (modification of transmission systems), 73.1740 (minimum operating schedule) and 73.1750 (discontinuance of operation).)

86. We find that these sanctions continue to be the appropriate methods to encourage stations to meet their DTV construction deadlines and to ensure that all stations are constructed and operating with their full, authorized post-transition DTV facilities at the end of the DTV transition. We note that approximately 100 stations have been placed in the DTV remedial program since its adoption in 2003. All but one station completed construction and began operating their DTV facilities within six months of enrollment in the program, thus eliminating the need for further sanctions. Therefore, with one slight modification, we find that continued use of the DTV construction remedial program will ensure that non-complying stations are able to quickly bring their stations into compliance with their DTV construction obligations.

87. Currently, stations placed in the remedial program are initially admonished and are provided with a six-month period to complete construction of their DTV facilities in order to avoid further sanctions such as the imposition of forfeiture. As we are nearing the completion of the DTV transition, we find that it is appropriate to accelerate our remedial procedures and require stations to complete construction of their DTV facilities in a shorter period of time in order to avoid further sanctions. Therefore, we modify the first stage in our remedial program and provide stations with three months to complete construction of their DTV facilities in order to avoid the imposition of further sanctions. By requiring compliance in a three-month period, we seek to ensure that non-compliant stations will come into compliance with our DTV construction rule and be ready for the final DTV transition.

7. Phased Transition Provisions for Regulatory Relief

88. We adopt two provisions for a ''phased transition'' in an effort to offer broadcasters regulatory flexibility in meeting their post-transition construction deadlines without disappointing viewer expectations after the transition date. (As discussed above, stations whose post-transition channel is different from their pre-transition DTV channel must build their full, authorized post-transition (digital) facilities no later than February 17, 2009. Stations whose post-transition channel is the same as their pre-transition DTV channel must build their full, authorized facilities no later than the expiration date of their current construction permit, which date was extended until November 18, 2007 for stations whose applications for extensions of time to construct DTV facilities and/or ''use or lose'' waivers were addressed in either the *Construction Deadline Extension Order*, or *Use or Lose Order*.) First, we will permit qualifying stations to temporarily remain on their pre-transition DTV channel; and, second, we will permit qualifying stations to build less than their full, authorized facilities by their construction deadline. To qualify for these provisions, stations must meet a service requirement to minimize the loss of service after the transition date and also must not cause impermissible interference to other stations. Stations that are permitted to use one of the provisions for a phased transition, even though they will not serve at least the same population that receives their current analog TV and DTV service, must also comply with a viewer notification requirement (described below). Stations can seek relief under these provisions if they cannot satisfy the strict requirement for obtaining an extension of time to construct their full, authorized facilities. Because the service requirement protects consumers, we find that we can offer this relief, subject only to an engineering analysis (*i.e.*, the population and interference criteria).

89. We adopt these measures, which were discussed in the *Third DTV Periodic Review NPRM*, in response to the many comments by broadcasters advocating for regulatory flexibility to build less than their full, authorized facilities by their post-transition construction deadlines. As noted above, most commenters asked us to be as flexible as possible when establishing construction deadlines. These commenters noted that the February 17, 2009 statutory deadline was only for the termination of analog service and not expressly for completion of stations' final (*i.e.*, full, authorized) digital facilities. Accordingly, these commenters asked that stations be allowed to operate at less than full, authorized facilities for some specified time after the transition.

90. Because qualification for the regulatory relief offered by these provisions will require stations to serve all or most of the same population that receives their current television (analog and digital) service, we find that these provisions strike the right balance of offering regulatory flexibility to broadcasters while not undermining viewers' over-the-air reception expectations after the transition date. (The noise limited service contour for DTV stations covers an area that is larger than the station's community of license. Thus, a significant number of a station's viewers may reside outside of the station's community of license and outside the community of license coverage contour, but within its noise limited service area. *See* 47 CFR 73.622(e) for the definition of the DTV service areas and 47 CFR 73.625(a) for the community of license coverage requirement.) MSTV/NAB proposed that stations only be required to provide digital service to their communities of license as of the February 17, 2009 transition date, and that they should be allowed to operate at less than full, authorized facilities for one year after the transition date. MSTV/NAB would rely on broadcasters' market incentive to ''maximize their digital service'' to viewers. We disagree, however, that a coverage requirement limited to stations' communities of license would satisfy consumer expectations after the transition date. Instead, we limit these special measures for regulatory relief to stations that can serve all or most of their existing viewers. Stations that cannot build post-transition facilities that serve their existing viewers must obtain Commission approval for an extension of time to complete their facilities. We reject MSTV/NAB's argument that this service requirement is too restrictive ''in light of equipment shortages and other technical issues'' and that a community of license coverage requirement would be sufficient. We take seriously the goal of ensuring that consumers who have prepared for the transition by obtaining the necessary DTV receiver equipment are able to, at a minimum, continue to watch their current television programming after the transition date. To that end, we have taken steps to require, wherever possible, that stations complete their final, post-transition facilities by the transition date. We recognize, however, that in some situations it may be preferable for some viewers to lose television service for a limited time after the transition date if that would prevent many viewers from losing analog TV service for a significant time before the transition date.

91. *Viewer Notification.* We will require stations that will not be serving at least the same population that receives their current analog TV and

DTV service on February 18, 2009 to notify viewers on their analog channel about the station's planned delay in construction and operation of post-transition (DTV) service. Therefore, stations seeking STA approval to use one of the provisions for a phased transition must notify viewers on their analog channel about their post-transition service limitations. Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the station's termination of full, authorized analog service. These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received, or alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area; and (5) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our *DTV Consumer Education Initiative*.

a. Temporary Use of In-Core Pre-Transition DTV Channels

92. To provide flexibility to the post-transition construction deadlines established above, we adopt our proposal in the *Third DTV Periodic Review NPRM* to allow stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided:

(1) They serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; (As noted above, we recognize that after the transition there will be some changes in population served based on the service area authorized for post-transition operation consistent with the station's application, channel election, or other modifications, such as change of antenna site. To qualify for this flexibility, the station is not required to continue serving population that it will not be required to serve with its authorized facility after the transition. Stations must ensure that viewers within the station's authorized service area who have television equipment with a digital receiver, including those who obtain a digital-to-analog converter box through the NTIA program, will be capable of receiving DTV signals over-the-air post-transition. Stations that cannot satisfy this presumption, may still request Commission approval on a case-by-case basis for continued interim operations upon demonstration that they would provide digital service to a greater population than would their incomplete post-transition facility. These stations, however, must obtain Commission approval under the stricter standard for an extension of time to construct their post-transition facilities.)

(2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. We adopt our tentative conclusion that the 0.5 percent interference standard established for post-transition operations (in section F, below) would apply because such operations would occur after the transition deadline. (We also agree with MSTV/NAB that the 0.5 percent interference standard would apply when evaluating two interim stations that temporarily continue to operate on their pre-transition DTV channels after the transition date.)

The record clearly supports adoption of the temporary use of in-core pre-transition channels. We agree with commenters that some stations that are returning to their analog channel or moving to a new channel for post-transition operations may be able to temporarily remain on their in-core pre-transition DTV channel and provide adequate service after the transition date without causing impermissible interference to other stations or preventing other stations from making their transition. Moreover, we expect that this provision for regulatory relief will advance the transition by freeing scarce transition resources for those stations that cannot utilize the opportunities afforded for a phased transition.

93. Stations' authority to operate on a pre-transition channel, including their digital channel, ends on February 17, 2009. (The post-transition DTV Table, which was adopted in the *Seventh Report and Order*, became effective October 26, 2007. *See* 47 CFR 73.622(i). The current DTV Table, which is contained in 47 CFR 73.622(b), will become obsolete at the end of all authorized pre-transition DTV operations. The current NTSC Table, which is contained in 47 CFR 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease.) Therefore, stations must request STA approval for authority to remain on their pre-transition channel in accordance with our existing filing procedures. (Requests for STA, pursuant to 47 CFR 73.1635, may be submitted by informal letter or e-mail. Stations may file requests electronically through CDBS or send an e-mail to *dtvrequests@fcc.gov*.) Stations must apply for such approval no later than August 17, 2008 so that their request can receive the appropriate engineering analysis. Stations that remain on their pre-transition digital channel may not apply for expanded post-transition facilities, until they complete construction and commence operation on their post-transition channels. Stations approved for this relief may remain on their pre-transition digital channel for no longer than one year after the transition date and will receive an extension of time to construct their full, authorized post-transition facilities for the time that they remain on their pre-transition digital channel. Accordingly, these stations must begin operations on their full, authorized final, post-transition (digital) channels no later than February 18, 2010. We find that this relief offered to in-core stations is consistent with the statutory transition deadline for full power stations to end analog service and to broadcast only on in-core channels. (*See* 47 U.S.C. 309(j)(14). Because the statute prohibits full-power stations from remaining on out-of-core channels after the transition deadline, this flexibility cannot apply to DTV stations operating out-of-core (*i.e.*, TV channels 52–69).)

b. Alternative Buildout To Maintain Existing Service

94. As an additional approach to provide flexibility to the post-transition construction deadlines established above, we will consider stations' requests for STA to operate their post-transition facilities on post-transition channels at less than their full, authorized facilities (as defined by the DTV Table Appendix B). We will authorize STAs for this purpose, provided stations can demonstrate:

(1) A unique technical challenge (as defined in section V.B.5. above) and they can serve at least 85 percent of the same population that receives their current analog TV and DTV service; (For example, stations with side-mounted antenna-related issues, particularly those with towers in northern climates or at higher altitudes, face unique technical challenges that would warrant this relief. In addition, stations

returning to their analog channels and that intend to return their existing analog equipment may also face unique technical challenges that would warrant this relief. As noted above, population should be calculated on the basis of the population the station is authorized to serve both before and after the transition. Population not previously served and population that will no longer be served by the station's authorized post-transition facility should not be counted towards the 85 percent.) or

(2) A significant technical impediment to the construction of their full, authorized facilities that would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted herein and they serve at least 100 percent of the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. (As noted above, stations must ensure that consumers served pre-transition that obtain a D-to-A converter box through the NTIA program or who otherwise purchase DTV receiver equipment will be capable of receiving off-the-air DTV signals post-transition.)

Furthermore, in either case, stations must also demonstrate that the STA facility they request will not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations or prevent other stations from making their transition. Finally, stations that cannot serve at least 100 percent of the same population that receives their current analog TV and DTV service must comply with a viewer notification requirement (described in para. 91 above).

95. We sought comment on this issue in the *Third DTV Periodic Review NPRM* and we adopt this approach in response to the many comments advocating for such relief. We differentiate stations that have a significant technical impediment to construction of their full, authorized post-transition facility but that can, nevertheless, continue to serve all of their current viewers. In these circumstances, because viewers will not lose service after the transition, we will grant STAs for six months even though the station would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted herein. However, commenters have demonstrated that for some stations facing the type of unique technical challenge defined in section V.B.5., above, service to all current viewers may not be possible. For example, stations with a side-mounted digital antenna that can demonstrate that because of weather or another valid reason they would have to reduce or terminate their analog service well before the transition date (*e.g.*, Summer 2008) in order to complete construction of their final, post-transition facility may qualify for this post-transition relief for up to six months. While it is critical that we minimize the loss of television service after the transition date as much as possible, we recognize that, in such a special situation, it may be preferable to accept a limited loss of DTV service for a limited time after the transition date to prevent a significant loss of analog service many months before the transition date. Stations must demonstrate both the need for this flexibility and for the timing that they request. For example, a station could show that the weather where its tower is located generally remains dangerously cold through May.

96. Stations must request STA approval for this relief in accordance with our existing filing procedures. (Requests for STA, pursuant to 47 CFR 73.1635, may be submitted by informal letter or e-mail. Stations may file requests electronically through CDBS or e-mail courtesy copies of their STA requests to *dtvrequests@fcc.gov*.) We recognize, however, that stations will need a decision on such requests in time to make alternate transition plans should their request be denied. Therefore, stations should apply for this relief well in advance of the transition date, perhaps as early as Spring 2008, to allow sufficient time for Commission review and action. Stations must construct such intermediate facilities that would meet the service requirement by the transition date. Stations approved for this relief may remain at such intermediate facilities for no longer than six months after the transition date and will receive an extension of time to construct their full, authorized post-transition facilities for this period of time. Accordingly, these stations must begin operations on their full, authorized, final, post-transition (digital) channels no later than August 18, 2009. Stations that seek relief under this provision may only apply for expanded post-transition facilities if they will complete construction and commence operation on those facilities no later than August 18, 2009. In addition to this relief afforded stations that can serve at least 85 percent of their viewers, we will consider on a case-by-case basis affording stations STA approval for some relief even if they cannot meet the 85 percent service requirement, provided they demonstrate that their circumstances warrant this additional flexibility. Such stations, however, would be allowed to remain at such intermediate facilities for no longer than necessary, which we expect in most cases would be no more than three to four months after the transition date.

97. *Special Relief for NCE and Small Market Stations.* To provide additional regulatory relief for noncommercial educational (''NCE'') and Small Market Stations, we will consider on case-by-case basis allowing these stations a reduced service requirement if their circumstances warrant this additional flexibility. (By small market stations we mean stations that are not affiliated with a top-four network (*i.e.*, ABC, CBS, Fox and NBC) in markets 1–100. We have previously recognized that such stations may warrant additional flexibility in meeting their construction deadlines.) We have provided these stations more flexibility throughout the transition. For example, they received a later use-or-lose deadline in the *Second DTV Periodic Report and Order* and we noted in the *Fifth Report and Order* the unique financial difficulties faced by NCE stations and reiterated our view that these stations will need, and warrant, special relief to assist them in the transition to DTV. NCE stations and small broadcasters urged the Commission to be sensitive to the problems of stations serving small markets, especially in light of our proposal to impose stricter financial hardship criteria for construction deadline extensions.

C. Service Disruptions Necessitated by Construction of Post-Transition Facilities

98. In this section we provide stations with the flexibility to reduce or terminate existing analog or pre-transition digital service prior to the February 17, 2009 transition date where necessary to permit stations to finalize construction of their post-transition facilities. Commenters discussed a wide range of possible circumstances in which stations may need to reduce or terminate such existing service either temporarily or permanently in order to complete construction of final DTV facilities. For example, some stations may need to remove a top-mounted analog antenna on a tower in order to replace it with a permanent digital antenna at the top position. In other cases, a new antenna may need to be added to an existing tower, or an existing analog antenna may need to be altered for digital use. Some towers may be able to support the weight of additional antennas, while others may need to be strengthened before another antenna is installed or an existing

antenna may have to be removed to make room for a new antenna. Some stations may be the only occupants of the tower on which the antenna is located, while other stations may share the tower with other television and radio stations and will need to coordinate tower work with these other stations. In some cases, stations may need to reduce service to allow construction to proceed, while in other cases service may need to be halted altogether for some period of time. Some of the service disruptions required to permit construction of final DTV facilities may be only temporary, while in other cases stations may need or prefer to cease analog or pre-transition digital service permanently for the remainder of the transition in order to finalize their post-transition facilities.

99. In general, commenters argued that, at this stage in the transition, the Commission should provide the maximum possible flexibility to stations to permit them to finalize construction of their post-transition facilities in a manner that best suits the station's particular circumstances. Our goal in this section is to provide stations with this flexibility, while still ensuring that viewers are not deprived of existing service except where necessary or clearly beneficial to permit the maximum number of stations to accomplish the transition by February 17, 2009. We discuss below four kinds of service disruptions that may take place to facilitate construction of final DTV facilities:

(1) Temporary service disruptions (generally no more than 30 days);

(2) Permanent or extended (*i.e.*, more than 30 days) service reduction or termination of analog service before the transition date;

(3) Permanent or extended (*i.e.*, more than 30 days) service reduction or termination of pre-transition digital service before the transition date; and

(4) Permanent service reduction or termination of analog or pre-transition digital service 90 days before the transition date.

1. Temporary Service Disruptions

100. Under section 73.1615 of the Commission's rules, stations may reduce or cease service temporarily without prior Commission approval in order to modify existing facilities. We clarify that stations may use this existing provision to temporarily reduce or cease existing analog or pre-transition digital service where necessary to facilitate construction of final post-transition facilities. Because this provision does not require prior Commission authorization, and does not require licensees to justify the need for the service disruption, this provision gives stations substantial flexibility to temporarily reduce or cease analog or digital service pre-transition.

101. Section 73.1615 provides that, where the licensee of an existing television station is in the process of modifying facilities as authorized by a construction permit, the licensee may discontinue operation or operate with temporary facilities, upon notification to the Commission, for a period of 30 days, in order to continue to provide program service. (We note that, although rule 47 CFR 73.1615(a) and (c) refer to ''licensees'' permittees may also use the flexibility offered under this rule to temporarily reduce or cease television broadcast operation.) Where the station operates temporary facilities, including reduced facilities, such facilities should maintain as nearly as possible, but not exceed, the size of the presently licensed coverage area.

102. Stations must notify the Commission before commencing the temporary reduction or cessation of service, but do not need prior Commission approval. We will require that such notifications pursuant to section 73.1615, when made for purposes of facilitating the conversion to DTV, be filed electronically through the CDBS and using the Informal Application filing form. This is the form traditionally used for requests for Special Temporary Operating Authority. We emphasize that this form, when used in connection with service disruptions related to the DTV transition, must be filed electronically. Paper copies will not be accepted. There will be no fee for filing this form. All temporary service disruption notifications pursuant to sections 73.1615 must be filed electronically using the Informal Filings Menu of CDBS. (For more information on Informal Filings in CDBS, please refer to this web page: *http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq_informal.htm*. To speed processing, stations should also e-mail a courtesy copy of their temporary service disruption notifications to *dtvnotifications@fcc.gov*. The notifications should indicate clearly that they are being filed pursuant to section 73.1615, and should indicate whether the request is to temporarily reduce or cease analog or digital service.)

103. The flexibility accorded by section 73.1615 is intended for service disruptions of 30 days or less. Some stations may use this provision to reduce or cease their analog or pre-transition digital service for 30 days or less, and then return to full service on the pre-transition channel for the remainder of the transition. Other stations may choose to permanently reduce or cease pre-transition service in the 30 days immediately preceding the transition date, in order to accomplish the transition, and then commence operation on the post-transition channel on the transition date. In both cases, the stations may use the flexibility provided by section 73.1615; however, for stations in the latter situation (*i.e.*, those permanently reducing or ceasing service in the 30 days immediately preceding the transition date) we will require that they comply with a viewer notification requirement (described below). Stations that seek to permanently discontinue operation or permanently operate with reduced facilities more than 30 days before the transition date may not use section 73.1615, but should instead apply under the procedures outlined below for permanent pre-transition analog or digital service reductions or terminations. In addition, stations that anticipate at the outset that the service reduction or termination will extend for more than 30 days should use the procedures outlined below for permanent service reductions and terminations.

104. Where a licensee has filed a notification pursuant to section 73.1615 and, subsequently, determines that the reduction or termination of service must continue for a short period beyond 30 days, the licensee may make an additional informal letter request to the Commission prior to the 30th day. This second notification filed pursuant to section 73.1615 must be filed in the same manner as the initial temporary service disruption notification and must explain why the service disruption should not be considered to be a long term or permanent service disruption requiring prior Commission approval.

105. Once an informal letter request is made pursuant to section 73.1615(c)(1), the licensee may then continue the service reduction or termination until notified otherwise by the Commission. In general, we anticipate that stations will use section 73.1615(c)(1) to extend a temporary service reduction or cessation under section 73.1615 only when unexpected circumstances require a somewhat longer service disruption than initially anticipated. Stations will not be permitted to utilize the procedures set forth in section 73.1615 for service reductions or cessations that extend for a lengthy period beyond 30 days. If the service disruption continues substantially beyond 30 days, we may require the station to reapply under the procedures outlined below for permanent analog or digital service

reduction or termination. (We note that section 73.1740(a)(4) of the rules (47 CFR 73.1740(c)(4)) provides flexibility to commercial broadcast television stations when, due to causes beyond the control of a licensee, the licensee cannot adhere to the station's operating schedule. This provision applies to service disruptions beyond the control of the licensee, while section 73.1615 involves planned engineering modifications requiring disruption of service. Stations reconfiguring their analog and DTV equipment that encounter an unexpected equipment failure or some other unanticipated problem that temporarily forces them to discontinue operations may do so without prior authority pursuant to 47 CFR 73.1740. Stations are required to notify the Commission not later than the 10th day of limited or discontinued operations.)

106. *Viewer Notification.* We will require that stations filing a notification pursuant to section 73.1615 to permanently discontinue operation or permanently operate with reduced facilities within 30 days of the transition date must notify their viewers on their pre-transition channel(s) (both analog and digital) about the planned permanent service reduction or termination and inform them about how they can continue to receive the station. Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the planned permanent service reduction or termination. (Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations.) These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received, or alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area; (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our *DTV Consumer Education Initiative.*

2. Analog Service Reduction and Termination

107. For stations needing long term or permanent reduction or termination (significantly more than 30 days), we adopt streamlined procedures to provide stations with the flexibility to permanently reduce or terminate their analog service before the transition date if necessary to achieve their transition. (We will consider a reduction or termination of analog service to be ''permanent'' if the station seeks to discontinue operation on that channel for more than 30 days.) Specifically, we will permit a station to reduce or terminate its analog service before the transition date, provided the station satisfies the following two requirements:

(1) The station demonstrates that its analog service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and

(2) The station notifies viewers on its analog channel about the planned service reduction or termination and informs them about how they can continue to receive the station, as detailed below.

Stations must obtain prior Commission approval in order to reduce or terminate their analog service before the transition date. To allow the Media Bureau sufficient time to process these requests, and to afford viewers adequate time to obtain digital reception equipment, stations should file these requests for STA approval at least 90 days in advance of their planned service reduction or termination. Stations must file these requests electronically through the CDBS using the Informal Application filing form.

108. In light of the fast-approaching hard date for analog turn-off, the significant public interest in ensuring that stations meet the transition deadline now weighs in favor of permitting early reduction or termination of analog service where necessary to facilitate the transition. The procedures we adopt herein will provide stations with clear guidelines for how and when they may reduce and/or terminate their analog service early. At the same time, these procedures will ensure that viewers are informed about when they may lose analog service and what they can do to continue to view the station.

109. The record strongly favors affording stations the flexibility to permanently reduce and/or terminate their analog service before the statutory deadline if the station's technical facilities and the conditions in its market warrant such reduction or termination to complete their transition. We agree with commenters that, at this point in the DTV transition, some stations must be allowed to ''wind-down'' their analog service in order to meet the transition deadline. To be clear, we note that we are not requiring stations to reduce or terminate analog service early and expect that stations will not do so unless absolutely necessary to complete their transition.

110. *Background.* The Commission's rules require stations to continue operating their existing licensed analog facilities until the statutory analog turn-off date. Moreover, the Commission generally has not favored reductions in television service. (Proposals that would result in a loss in television service have been considered to be *prima facie* inconsistent with the public interest, and must be supported by a strong showing of countervailing public interest benefits.) The Commission, however, has recognized that losses in service may be justified to facilitate a station's transition to DTV. For example, the Commission permits the early return of out-of-core (*i.e.*, TV channels 52–69) analog channels under certain circumstances in order to facilitate the DTV transition. In the *Third DTV Periodic Review NPRM*, the Commission recognized that stations may have a legitimate need to reduce or terminate their analog operations (even on in-core channels) before the transition date because such operations may impede construction and operation of post-transition (digital) facilities. We stated in the *Third DTV Periodic Review NPRM* that such circumstances may include (but are not limited to): (1) Stations that need to reposition their digital and analog antennas before the end of the transition; (2) stations that need to add a third antenna to their tower but cannot do so without reducing or terminating analog service because the tower cannot support the weight of the additional transmission facilities; and (3) stations that are terminating analog service early as part of a voluntary band-clearing arrangement. The Commission, therefore, proposed to provide stations with the flexibility to permanently reduce and/or terminate their analog service if they satisfied certain criteria, *i.e.*, a six-factor public interest test. (The Commission proposed to establish a

presumption that any reduction in a station's analog television service would be in the public interest if six factors were met: (1) The proposed reduction is directly related to the construction and operation of post-transition facilities and would ensure that the station or another station can meet the deadline; (2) the proposed reduction in analog service is less than five percent of either the station's service area or its population served; (3) the proposed reduction does not cause the loss of an area's only top-four network or NCE TV service; (4) the proposed reduction does not result in an unreasonable reduction in the number of services available in that area; (5) the broadcast station proposing the reduction is able to deliver its signal to cable and satellite providers so that the reduced analog signal does not prevent cable and satellite carriage; and (6) the broadcast station proposing the reduction commits to on-air consumer education about the station's transition and how to continue viewing the station.)

111. Comments responding to the *Third DTV Periodic Review NPRM* discussed certain situations in which stations require the flexibility to reduce or terminate analog service early in order to complete their transition. For example, there are 49 stations with a documented side-mounted antenna problem. In order for the station to operate its top-mounted post-transition DTV facilities and accomplish its final transition, the station will have to relocate its analog antenna to another location on its tower and operate with reduced analog facilities. Other stations may have a tower at capacity preventing the installation of a third antenna on the tower. Therefore, the station will have to terminate its analog operations prior to the end of the transition in order to mount its post-transition DTV antenna. Some stations may be collocated on a shared tower and reduction or termination of analog operations may be necessary as the collocated stations coordinate the configuration of their final, post-transition facilities. Still other stations have equipment currently in use with their analog operations that they plan to use with their digital operations. This will necessitate the termination of their analog facilities prior to the transition so that the equipment can be reconfigured for use in their final, post-transition facilities. In addition, there may be other legitimate technical challenges, not anticipated at this time, which may warrant the flexibility of early analog service reduction or termination. We are persuaded by these real-world station examples of the necessity to afford stations regulatory flexibility in those types of circumstances.

112. While most commenters support giving stations the flexibility to reduce or terminate analog service before the transition date, they favor a ''bright-line'' test and streamlined approval or notification process, instead of the proposed six-factor public interest analysis. Commenters proposed a variety of different standards to permit flexible analog service reduction or termination. In their joint comments, MSTV and NAB assert that stations should be allowed to reduce analog service starting one year prior to the transition date (*i.e.*, February 17, 2008) and stations should be allowed to terminate analog service starting six months prior to the transition date (*i.e.*, August 17, 2008), provided stations notify the Commission within 15 days. Similarly, Tribune proposed allowing stations to reduce analog power temporarily by as much as 50 percent in the year leading up to February 17, 2009. LeSEA agreed with Tribune's approach provided the station is not a network affiliate. Disney proposes that the Commission presume that short term, reduced power operations are in the public interest. In other words, Disney urges the Commission to apply a rebuttable presumption to the request of any station returning to its analog channel whose proposed reduction/termination is directly related to the construction and operation of post-transition facilities and is necessary to ensure that the station can meet the transition deadline. (Disney appears most concerned with relatively short term reductions and terminations (*e.g.* 30 days or less). However, these short term actions fall under the category of temporary disruptions that, as noted above, are permitted under 47 CFR 73.1615 of our existing rules.) Hoak and Granite suggest that the Commission employ two criteria: Whether the termination/reduction (1) is directly related to the station's ability to complete construction of post-transition DTV facilities in a timely manner and (2) is as limited in nature and duration as reasonably necessary to accomplish the transition.

113. We are persuaded that our proposed six-factor test should be adjusted to provide additional flexibility at this stage in the transition. However, we disagree with the suggestion of MSTV/NAB and Tribune that we should permit all stations to elect to terminate or reduce analog service early, starting on dates suggested by these commenters, without justification. We find that stations should be granted broad flexibility to reduce or terminate analog service as needed to further a station's transition, but should not be granted blanket authority to reduce or terminate analog service without providing a legitimate reason why the action is necessary. We have an important responsibility as guardians of the public interest to ensure that stations show a legitimate need for an early analog reduction or termination. In addition, we must ensure that viewers are informed about any permanent loss of analog service. Accordingly, as discussed more fully below, we steer a middle course by adopting a procedure that provides certainty to broadcasters regarding when pre-transition analog reduction and termination will be permitted. We find that our reduced showing requirement will reduce the administrative burden on stations and eliminate the delays that can occur with a more detailed approval process during this critical time in the DTV transition.

114. *Commission Approval Process.* Stations must obtain prior Commission approval in order to reduce or terminate their analog service before the transition date. Stations must file requests for such approval as a request for STA through the CDBS using the Informal Application filing form, and must indicate whether the request is either a service reduction or termination. (Like other requests for STA, these requests to permanently reduce or terminate analog TV service before the transition date must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate public notice of these filings. For more information on Informal Filings in CDBS, please refer to this Web page: *http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq_informal.htm*. To speed processing, stations should also e-mail courtesy copies of their STA requests to *analogrequests@fcc.gov*.) Consistent with the handling of STA requests, stations will be notified of actions taken on their requests by public notice. (As Bureau actions are recorded, CDBS will automatically generate public notice of the actions taken.) We recognize that analog viewers must have adequate time to obtain digital equipment in advance of a station's early reduction or termination. We also must allow sufficient time for Commission review before stations commence notification to viewers. We believe that NTIA will process requests for coupons to subsidize the purchase of digital-to-analog converters in three weeks or less. Accordingly, stations must file requests for approval of analog reduction or

termination at least 90 days in advance of their planned service reduction or termination to ensure that they can obtain timely Commission approval for their proposed actions. As discussed below, viewer notification must commence no fewer than 60 days prior to reduction or termination of the analog signal. We caution stations that some requests may require additional processing time. In these situations, we will work with the station involved to discuss the options available to that station.

115. *Showing Required.* We will permit stations to reduce or terminate their analog service before the transition date, provided: (1) They demonstrate that the analog service reduction or termination is directly related to the construction and operation of post-transition facilities, by either the station itself or by another station, and would ensure that the station, or another station, can meet the transition deadline; and (2) They notify viewers of the upcoming analog service loss (as discussed in detail below). Stations may not be permitted to reduce or cease analog service, where, among other possible reasons, the provision of public health and safety information is seriously affected or there are other public interest considerations that require that a station provide analog service. In addition, the showing should include all relevant information, including the station location, network affiliation if any, the circumstances requiring early reduction or termination of pre-transition digital service, and the number of viewers affected. This information will enable us to properly consider the impact of the service reduction or termination on the station's viewers, including the number of current viewers that will lose digital service, satellite and cable penetration, and the number and kind (network, independent, etc.) of other digital channels available to affected viewers.

116. The following are examples of situations where the service reduction or termination would be considered to be ''directly related'' to the construction and operation of post-transition facilities: (1) Stations that need to reposition their digital and analog antennas before the end of the transition; (2) Stations that need to add a third antenna to their tower but cannot do so without reducing or terminating analog service because the tower cannot support the weight of the additional transmission facilities; (3) Stations on a collocated tower that must coordinate a reduction or termination with other stations in order to configure their final, post-transition facilities; (4) Stations with equipment currently in use with their analog operations that they plan to use with their digital operations; and (5) Stations that must terminate operation on their analog channel in order to permit another station to construct its post-transition DTV facilities on that channel. We recognize, however, that there may be other legitimate situations where stations may be able to demonstrate that their planned service reduction or termination is directly related to the construction and operation of post-transition facilities and we will also consider these requests on a case-by-case basis.

117. *Viewer Notification.* With respect to the required notification to stations' viewers, such notifications must occur every day on-air at least four times a day including at least once in primetime for the 60-day period prior to the planned service reduction or termination. (Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations.) These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received, or alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area; (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.

3. Pre-Transition Digital Service Reduction and Termination

118. In addition to the temporary disruption rules and the long term or permanent analog reduction or termination, we will also provide stations that will be returning to their analog channel or moving to a new channel for post-transition operations with the flexibility to reduce or terminate existing digital service on their pre-transition DTV channels prior to the transition date. (Stations that will be using their same digital channel for post-transition operations may not use the procedures outlined in this section.) We are hopeful that the vast majority of stations currently providing digital service to the public on pre-transition DTV channels will continue to do so, until they convert to operations on their post-transition channel. However, we recognize that, in some instances, these stations may have to reduce or terminate their pre-transition digital service in order to complete the station's post-transition facilities. Thus, we provide flexibility to stations to reduce or terminate pre-transition digital service where a station can demonstrate that doing so is necessary to complete construction of, and commence operations on, its new post-transition channel. As discussed above, a station whose pre-transition digital channel is unbuilt and/or non-operational may choose to return the construction permit for that channel to the Commission and focus its efforts on construction of its post-transition channel.

119. The following options are available for stations that need to reduce or cease operation on their pre-transition DTV channel prior to the transition date:

(1) As explained above, a station may, pursuant to section 73.1615, temporarily reduce or cease service a period of 30 days or less, upon notification to the Commission and without prior approval, when necessary to complete construction of its post-transition facility;

(2) A station may choose to transition early to its post-transition channel by terminating operation on its pre-transition DTV channel and commencing service on its post-transition channel prior to the transition date; or

(3) A station may permanently reduce or terminate their pre-transition digital service before the transition date, provided it satisfies the following two requirements:

a. First, the station must demonstrate that its service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and

b. Second, the station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station.

120. In general, our goal is to ensure the continuation of digital service that is now being provided to viewers. However, a substantial number of

commenters responding to the *Third DTV Periodic Review NPRM* stated that the Commission should provide the maximum possible flexibility to stations to permit them to accomplish the transition in the manner that best suits the station's particular circumstances. We agree with MSTV/NAB that stations generally will be reluctant to terminate their new digital services at a time when they are trying to establish a digital audience, and, therefore, stations will only take advantage of this option where necessary to finalize post-transition facilities. (MSTV/NAB note that there may be situations where, due to tower weight issues or lack of space for a new transmitter, a station will have no option but to terminate its digital service in order to complete construction on its final digital channel.) While we are concerned about reducing digital service to the public pre-transition, we recognize that doing so may be the best, or only, possible approach to achieving a successful and timely transition.

a. Termination of Digital Service on Pre-Transition Channel When Associated With Early Digital Operation on Post-Transition Channel

121. We adopt our proposal in the *Third DTV Periodic Review NPRM* to allow stations that will use a different DTV channel for post-transition operations to cease operations on their pre-transition DTV channels and begin operating on their new channels before the transition date. Specifically, a station will be permitted to transition early if the following requirements are met:

(1) The early transitioning station must not cause impermissible interference to another station; and

(2) The early transitioning station must continue to serve its existing viewers for the remainder of the transition and commence its full, authorized post-transition operations on February 18, 2009.

The record supports the allowance of early post-transition operations, although (as previously discussed above) some commenters oppose any accompanying restrictions on stations' ability to reduce or terminate pre-transition television service. (For example, MSTV/NAB and APTS/PBS argue that a station should be permitted to transition early subject only to interference concerns. NAB/MSTV comments at 14–16; APTS/PBS Comments at 20–21.) We agree that early transitions will advance and facilitate the transition by freeing engineering and construction resources for those stations building later. For example, MSTV/NAB states that early post-transition operations may advance the transition by setting in motion ''daisy-chains'' of early transitions, *i.e.*, as channels are vacated by the departing station they will be freed-up for the incoming stations. Stations interested in commencing early post-transition operations should indicate their intent to do so in their construction permit or modification applications for post-transition facilities. (Stations must follow the post-transition applications procedures in Section V.D., *infra*. We are proposing to revise FCC Forms 301 and 340 to allow stations to simultaneously apply for both pre- and post-transition facilities. *See* form changes in Appendix C.)

122. We will permit early transitioning stations to operate at facilities that are less than their full, authorized facilities until the date of their construction deadline, at which date these stations must commence their full, authorized post-transition operations. MSTV/NAB suggest that we require early transitioning stations to serve only their respective communities of license during the transition period. We disagree with MSTV/NAB that market factors alone will protect against viewer disenfranchisement and find that, absent a showing of good cause, stations must maintain current digital service to consumers, who have prepared for the transition and will expect to continue to receive such service. Broadcasters seeking to commence early post-transition operations must indicate in their applications for post-transition facilities whether such operations will result in a loss of their own analog or digital service.

123. *Interference Criteria.* We adopt our proposal in the *Third DTV Periodic Review NPRM* to require that early transitioning stations comply with both the current interference standard and the interference standard we adopt here for post-transition operations. Accordingly, early transitioning stations must not cause more than 2.0 percent interference to any authorized analog or pre-transition DTV station (with a 10 percent limit on cumulative interference) and must meet the post-transition protection standard (0.5 percent additional interference to Appendix B facilities for all stations).

b. Termination of Digital Service on Pre-Transition Channel When Associated With Flash Cut

124. For stations needing long term or permanent reduction or termination (significantly more than 30 days), we adopt streamlined procedures to provide stations with the flexibility to permanently reduce or terminate their pre-transition digital service before the transition date if necessary to complete their transition. (We will consider a reduction or termination of pre-transition digital service to be ''permanent'' if the station seeks to discontinue operation on that channel for more than 30 days. If the station intends to discontinue operation on that channel for the remainder of the transition, the station must return the pre-transition channel to the Commission and flash cut directly from operation on their analog channel to operation on their post-transition (digital) channel on or before the transition date.) The Commission has previously granted general approval for satellite stations and most stations with an out-of-core DTV channel to terminate pre-transition digital service and transition directly from their analog to their post-transition digital channel (*i.e.*, ''flash cut'' approval). We will continue to permit these stations to seek flash cut approval under those existing standards. For all other stations seeking Commission approval for reduction or termination of pre-transition digital service, we will permit a station to reduce or terminate its pre-transition digital service before the transition date in the same manner adopted for approving an analog service reduction or termination. Accordingly, we will permit a station to permanently reduce or terminate their pre-transition digital service before the transition date, provided the station satisfies the following two requirements:

(1) The station demonstrates that its pre-transition digital service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facility; and

(2) The station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station.

Stations must obtain prior Commission approval in order to reduce or terminate their pre-transition digital service before the transition date. To allow the Media Bureau sufficient time to process these requests, stations should file these requests for STA approval at least 60 days in advance of their planned service reduction or termination. Stations must file these requests electronically through the CDBS using the Informal Application filing form. We expect that stations that will reduce or terminate their pre-transition digital service will commence

early post-transition operations if possible.

125. *Background*. The *Second DTV Periodic Report and Order* permitted stations in certain situations to surrender their pre-transition DTV channel, operate in analog on their analog channel, and then flash cut to digital by the end of the transition on their post-transition channel. (In April 2007, the Media Bureau approved by public notice the flash cut requests of 32 stations based on the criteria established in the *Second DTV Periodic Report and Order*. *See Flash Cut PN*. These stations were approved to turn off or discontinue construction of their pre-transition DTV channel. In addition, the public notice invited any other station to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order*.) As the Commission noted, the potential public interest benefits of allowing stations to flash cut include freeing the station to focus its efforts on completion of its post-transition channel and the creation of opportunities for the provision of public safety and other wireless services on the pre-transition DTV channel. In the *Second DTV Periodic Report and Order*, the Commission permitted satellite stations to flash cut because of their unique status and circumstances and provided for these stations to notify the Commission of their decision to flash cut by their initial channel election deadline. The Commission stated that satellite stations opting to flash cut would retain their interference protection (defined in the proposed new DTV Table Appendix B) as if they had met the applicable replication/maximization build-out requirements. The Commission also permitted stations with out-of-core DTV channels to flash cut under certain conditions and required notification of their decision to flash cut by their initial channel election deadline. (TV satellite stations are full-power broadcast stations authorized under part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is typically commonly owned. Unlike full-service stations, satellite stations have chosen to forego or relinquish full-service status and instead retransmit the programming of a parent station because full-service operation of the satellite facility is not economically viable. Eligible satellite stations were assigned a paired DTV channel in the current DTV Table. The *Second DTV Periodic Report and Order* recognized that most satellite stations operate in small or sparsely populated areas that have an insufficient economic base to support full-service operations.) The Commission presumed that granting such requests would be in the public interest if the station demonstrated that (1) it was assigned an out-of-core DTV channel, (The Commission noted the ''greater potential for wasted expenditures in DTV facilities built in the 700 MHz band (since there will not be an opportunity to remain in that band after the transition)'' and ''the potential for earlier use of this spectrum by public safety and other 700 MHz licensees.'') and (2) grant of the request would not result in the loss of a DTV channel affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox). In the case of requests that did not meet these criteria, the Commission stated that it would consider all the relevant public interest factors in deciding whether to approve the request. These factors include the advancement of the provision of wireless and public safety services, the acceleration of the DTV transition, and the loss of broadcast service. Like satellite stations, full-service out-of-core stations that are permitted to flash cut would retain their interference protection (defined in the new DTV Table Appendix B, as adopted) as if they had met the applicable replication/maximization build-out requirements. In April 2007, the Media Bureau released the *Flash Cut PN* inviting any station to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order*.

126. In the *Third DTV Periodic Review NPRM*, the Commission invited comment on whether we should expand the range of circumstances in which we would accept new requests by stations to return their pre-transition DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) before the end of the transition and ''flash cut'' at or before the transition deadline from their current analog channel to their post-transition channel. Specifically, we sought comment on whether the following factors should be considered in evaluating flash cut requests: (1) Whether the DTV station is operating on TV channels 52–69; (2) whether the station is affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox); (The Commission also noted that the presumption is neither conclusive nor dispositive and that special circumstances raised by the resulting loss of digital broadcast service could rebut the presumption.) (3) whether the station's pre-transition DTV channel is allotted to another station for post-transition use and the station's return of the channel will facilitate the other station's construction of its post-transition digital facility; and (4) the station's financial hardship.

127. Commenters responding to the *Third DTV Periodic Review NPRM* generally argued that, at this point in the transition, we should provide flexibility to stations that want to return their pre-transition DTV channel and flash cut directly from analog to digital operation on the post-transition channel. NAB/MSTV argued that the flash cut option should be made available to all stations during the last six months of the DTV transition, provided the station notifies the Commission within 15 days of terminating service. NAB/MSTV also argued that the Commission should not establish a ''complicated factor test'' for approving flash cuts. While we agree that the flash-cut option should be made available to more stations, as our approach adopted herein does, we disagree with NAB/MSTV that any station should be permitted to flash cut six months prior to the transition deadline. A station that seeks to flash cut seeks to terminate its pre-transition digital service. While there may be situations where stations must cease service on a pre-transition channel in order to complete post-transition service, we are not prepared to permit stations (other than satellite or operating out-of-core) to terminate pre-transition digital service absent a compelling reason. As the transition deadline nears, viewers should—and will—become increasingly reliant on receiving digital service. Permitting stations to cease digital service as the transition nears, absent compelling circumstances, could undermine viewer expectations and the success of the transition itself.

128. *Existing Flash Cut Authority for Satellite Stations and Stations With An Out-of-Core DTV Channel*. As we stated in the *Third DTV Periodic Review NPRM*, stations may continue to seek flash cut approval pursuant to the *Second DTV Periodic Report and Order* and *Flash Cut PN*. Thus, satellite stations may still flash cut upon simple notification to the Commission. (Consistent with rules 47 CFR 73.1750, 73.3580 and 73.1750 (termination of service), 73.1690(b) (modification of license or authorization), stations may declare their intent to flash cut by sending a letter to the Video Division of the Media Bureau and an e-mail to *flashcut@fcc.gov*.) Stations with an out-of-core DTV channel may either take advantage of our existing flash cut approval for these stations, as adopted in the *Second DTV Periodic Report and*

Order and *Flash Cut PN*, or may seek approval under the new test described herein that applies to all non-satellite stations. (For stations with an out-of-core DTV channel, we will continue to presume that a flash cut request is in the public interest if the station is not affiliated with a top-four network. For out-of-core stations with a top four network affiliation that seek to flash cut, this expanded flash cut option offers additional flexibility for these stations.)

129. In an effort to provide additional flexibility to out-of-core stations, we adopt our proposal to extend the current band-clearing ''rebuttable presumption'' favoring band-clearing arrangements for stations on TV channels 59–69 to cover the requests of all out-of-core stations (*i.e.*, TV channels 52–69). The comments addressing this issue support adoption of our proposal. The Commission established policies to facilitate voluntary ''band-clearing'' of the 700 MHz bands to allow for the introduction of new public safety and other wireless services and to promote the transition of out-of-core analog TV licensees to DTV service inside the core TV spectrum. Generally speaking, these policies provide that the Commission will approve voluntary agreements between incumbent broadcasters and new licensees to clear the 700 MHz band early if consistent with the public interest. The Commission has approved several such requests to return out-of-core channels in accordance with this band-clearing policy. Previously, the Commission's 700 MHz band-clearing policies have differed somewhat depending on whether a station is located on TV channels 59–69, which might affect use of the upper portion of the band, or on TV channels 52–58, which would only affect use of the lower portion of the band. (Envisioning the early recovery of TV channels 60–69, the Commission established a ''rebuttable presumption'' favoring requests for voluntary band-clearing involving channels 59–69. In contrast, the Commission did not anticipate recovery of TV channels 52–59 until after the DTV transition was complete and, as a result, decided to consider requests for voluntary band-clearing involving those channels on a case-by-case basis.) We find that this disparate band-clearing treatment with respect to stations in the lower 700 MHz band (*i.e.*, TV channels 52–58) is no longer appropriate. We agree with MSTV/NAB that the presumptive standard currently applied to band clearing arrangements on channels 59–69 should be applied immediately to all band-clearing proposals. The hard deadline applies equally to both portions of the 700 MHz band. (DTV Act Section 3003 unified the timing of auctions for the assignment of remaining spectrum from TV Channels 52–69. The Communications Act now requires the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008 and deposit the proceeds of such auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. 47 U.S.C. Section 309(j)(15)(C)(v).) In addition, Congress has mandated that the Commission begin the auction of recovered analog broadcast spectrum in the 700 MHz band no later than January 28, 2008. (The Commission is required to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008 and deposit the proceeds of such auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. 47 U.S.C. Section 309(j)(15)(C)(v).) We find that extension of the band-clearing policy is appropriate to facilitate the clearing of the 700 MHz band in anticipation of the Commission's upcoming auction of licenses for services in the 700 MHz band (698–806 MHz) scheduled to begin on January 24, 2008. We will apply the same ''rebuttable presumption'' standard to voluntary agreements for clearing TV channels 52–58 as now applies to such agreements for clearing TV channels 59–69. As requested by MSTV/NAB, we clarify that, to the extent a station seeks to terminate analog service on its out-of-core channel in accordance with the procedures established above, the station will not also be required to make a showing regarding the ''rebuttable presumption'' applicable to band-clearing arrangements.

130. *Commission Approval Process*. Stations must obtain prior Commission approval in order to reduce or terminate their pre-transition digital service before the transition date. Stations must file requests for such approval as a request for STA through the CDBS using the Informal Application filing form, and must indicate whether the request is either a service reduction or termination. (Like other requests for STA, these requests to permanently reduce or terminate pre-transition DTV service before the transition date must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate public notice of these filings. For more information on Informal Filings in CDBS, please refer to this web page: *http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq_informal.htm*. To speed processing, stations should also e-mail courtesy copies of their STA requests to *dtvrequests@fcc.gov*.) Consistent with the handling of STA requests, stations will be notified of actions taken on their requests by public notice. We encourage stations to file these requests at least 60 days in advance of their planned service reduction or termination to ensure that they can obtain timely Commission approval for their proposed actions. We caution stations that some requests may require more than 60 days of processing time. In these situations, we will work with the station involved to discuss the options available to that station.

131. *Showing Required*. For stations not otherwise eligible for flash-cut approval, we will permit stations to reduce or terminate their pre-transition digital service before the transition date, provided: (1) They demonstrate that the pre-transition digital reduction or termination is directly related to the construction and operation of post-transition facilities, by either the station itself or by another station, and would ensure that the station, or another station, can meet the transition deadline; and (2) They notify viewers of the upcoming pre-transition digital loss (as discussed in detail below). Stations may not be permitted to reduce or terminate their pre-transition digital service, where, among other possible reasons, the provision of public health and safety information is seriously affected or there are other public interest considerations that require that a station provide analog service. In addition, the showing should include all relevant information, including the station location, network affiliation if any, the circumstances requiring early reduction or termination of pre-transition digital service, and the number of viewers affected. This information will enable us to properly consider the impact of the service reduction or termination on the station's viewers, including the number of current viewers that will lose digital service, satellite and cable penetration, and the number and kind (network, independent, etc.) of other digital channels available to affected viewers. In addition, stations must explain why they cannot commence digital operation early on their post-transition channel (early transition) in order to continue to provide digital service to viewers.

132. *Viewer Notification*. With respect to the required notification to stations' viewers, such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-day period prior to the planned

service reduction or termination. (Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations.) These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's post-transition digital signal can be received, or alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area; and (5) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our *DTV Consumer Education Initiative*.

4. Service Reductions or Terminations 90 Days Before the Transition Date

133. As an exception to the approval process described above for permanent service reductions and terminations, we instead adopt a streamlined notification procedure for stations planning a permanent service reduction or termination (analog or digital) within 90 days of the February 17, 2009, transition date (*i.e.*, beginning on or after November 19, 2008). We find that a more relaxed notification procedure is more appropriate than the approval process established above to provide stations with additional flexibility as we approach the transition date. As discussed in detail above, the record amply favors affording stations this additional flexibility so close to the end of the transition. Therefore, we will permit a station to reduce or terminate its analog or digital service within 90 days before the transition date by filing a notification with the Commission. The notification must be filed 30 days in advance of the planned service reduction or termination and must include a showing that the service reduction or termination is necessary for purposes of the transition. Although we will not require prior Commission approval, stations must notify their viewers on their pre-transition channel(s) (analog and digital) about the planned service reduction or termination and inform them about how they can continue to receive the station. Like the section 73.1615 notifications, stations must file these notifications electronically through the CDBS using the Informal Application filing form.

134. *Viewer Notification*. We will require stations filing a notification with the Commission regarding permanent reduction or termination within 90 days of the transition date to notify their viewers on their pre-transition channel(s) (both analog and digital) about the early service reduction or termination and inform them about how they can continue to receive the station. (Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations.) Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-day period prior to the planned service reduction or termination. These notifications must include: (1) The station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or pre-transition digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received, or alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area; (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our *DTV Consumer Education Initiative*.

D. Applications To Construct or Modify DTV Facilities

135. As we stated in the *Third DTV Periodic Review NPRM*, stations that need to request authority to construct or modify their post-transition facilities must file construction permit (CP) or modification applications. Commercial stations that need to construct or modify their post-transition facilities must file FCC Form 301 for a minor modification and submit the appropriate fee. (Applications to construct or modify post-transition facilities specified in the final DTV Table Appendix B involve a minor change in facilities and we will process them accordingly. 74 CFR 73.3572(a)(1) of the Commission's rules defines a major change in a television station's facilities as any change in frequency or community of license. Several stations may be changing channels as a result of the channel election process; however, these stations will be applying for the frequency and community of license assigned to them in the new DTV Table that was adopted in the *Seventh Report and Order* in MB Docket No. 87–268, and accordingly we will treat their applications as not involving a change in frequency. We believe this treatment will speed processing. We also note that this is consistent with our implementation of the initial DTV Table in 1998.) Noncommercial educational (NCE) stations must file FCC Form 340. We received no comments on our proposed revised FCC Forms 301 and 340, and we adopt those revised forms as proposed. These forms will be available following their approval by the Office of Management and Budget (OMB).

136. *Stations Whose Post-Transition Channel is Different From Their Pre-Transition DTV Channel.* Stations whose pre- and post-transition DTV channels are different may begin filing their applications for a CP on the final DTV channel following the effective date of this Report and Order. As discussed below, these stations may qualify for expedited processing of their CP applications.

137. *Stations Whose Post-Transition Channel is the Same as Their Pre-Transition DTV Channel.* Stations whose pre- and post-transition DTV channels are the same fall into three categories. First, some of these stations may not have a licensed DTV facility or CP to construct a facility that matches the final DTV Table Appendix B and the station wants to construct the facility listed in Appendix B for that station's post-transition operation. Such stations must file an application to modify their authority on their current DTV channel, and we encourage these stations to file immediately. (Stations are reminded that applications filed at this time must not request an expansion of service area that would violate the filing freeze.) As these stations already have a CP for their final post-transition channel, they do not need to wait for the effective date of this Report and Order or the rules adopted herein to file a modification application, and will get more rapid processing if we receive their applications before stations that are changing channels file their

applications. (Following are examples of situations in which a station that is staying on the same DTV channel for post-transition operation may have to file an application for modification of its CP. A station that intends to operate its post-transition facility pursuant to an existing STA operation must file an application to modify its CP to match its STA facility. Also, some of these stations may need to apply to increase power or otherwise adjust their facilities because they are now operating under STA at reduced power and they are unable to construct their authorized CP facilities, but intend to operate with more than their current STA facilities (for example, they intend to raise their transmitting antenna to a higher height on their tower, but are unable to mount it at the authorized height). Other stations may need to apply to modify their licensed or CP facilities in order to match their DTV Table Appendix B coverage if such coverage was based on a certification that differs from their current license or CP.)

138. Second, some stations whose pre- and post-transition DTV channels are the same may want to request changes to Appendix B as adopted in the *Seventh Report and Order* to match their existing facility. In such circumstances, we expect that these stations should have a petition for reconsideration of the *Seventh Report and Order* pending, which we will address in a separate proceeding. (Approximately 123 Petitions for Reconsideration of the *Seventh Report and Order* were filed by October 26, 2007, the close of the pleading cycle.) If a station has completed construction of the facility it intends to operate after the transition, it does not need to file an application at this time. (If there are minor differences between the station's completed or CP facility and the facility described in Appendix B for that station, such station may continue operating its licensed facility or continue constructing its CP facilities. If major differences exist between a station's completed or CP facility and the facility specified in Appendix B for that station, and the station has not filed a petition for reconsideration and fails to promptly seek changes to Appendix B according to the procedures set forth above in paragraph 9, the station may be subject to enforcement action.)

139. Third, there are some stations that already have a license to operate or a CP to construct their post-transition channel that matches the facility specified in the new DTV Table Appendix B for that station. These stations do not need to file any additional CP applications. These stations are building their post-transition facilities on the CPs granted for pre-transition operation. Once these stations have completed construction and have begun operating pursuant to program test authority, they must file an application for a license to cover (FCC Form 302).

1. Expedited Processing

140. As we stated in the *Third DTV Periodic Review NPRM,* it is each station's responsibility to ensure that it can begin operations on its post-transition channel upon expiration of the deadline for the transition on February 17, 2009. To ensure that they meet this deadline, stations should file their applications as soon as possible in order to have the maximum time to order equipment and build their facilities. In order to provide further incentive for stations to timely file applications for their post-transition facilities, we hereby adopt our proposal to provide expedited processing for certain stations that timely apply for a construction permit to build their post-transition channel. Specifically, we will provide expedited processing (generally within 10 days) to a station whose application demonstrates all three of the following requirements:

(1) The application does not seek to expand the station's facilities beyond its final post-transition DTV Table Appendix B facilities; (Applications for such expanded facilities will be processed as quickly as possible after processing is completed for stations eligible for expedited processing.)

(2) The application specifies facilities that match or closely approximate the DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that are no more than five percent smaller than its facility specified in Appendix B facilities with respect to predicted population); and

(3) The application is filed within 45 days of the effective date of this Report and Order, pending OMB approval.

141. In general, the commenters agreed that expedited processing of applications is important to ensure that stations can meet the transition deadline. We find that setting an application filing deadline for expedited processing of 45 days after the effective date of this Report and Order will give stations time to prepare for these filings. (We expect that the 45-day application deadline will coincide with final OMB approval for revised FCC Forms 301 and 340. The Media Bureau will issue a public notice announcing that the forms have been approved and are ready for use, as well as the date by which applications must be filed to take advantage of expedited processing.) We anticipate that we will be able to process qualified applications expeditiously, generally within 10 days of filing. We remind stations that expedited processing does not necessarily mean that the application will be granted. (The application still must satisfy the criteria on Form 301 (or 340 for NCEs), as revised in this proceeding. Stations that do not qualify for expedited processing will not necessarily have their applications denied; rather, their applications simply will not be processed on an expedited basis.) Applications that receive expedited review but that are not readily grantable by the Commission will require further action by the station. (To be eligible for grant, the applicant must certify in the application that the proposed facility: (1) Will not have a significant environmental impact; (2) will serve the principal community of license; (3) will provide necessary protection to radio astronomy installations and FCC monitoring stations; and (4) has had its tower approved by FAA, if necessary. *See* 47 CFR 73.622(f)(2) (checklist criteria). These criteria must be met by all applications on FCC Form 301 and 340, including both those eligible for expedited processing as well as those not eligible for expedited processing.)

142. Some commenters proposed that we designate additional categories of stations that would be eligible for expedited processing. Specifically, APTS argues that we should provide expedited processing to stations with Congressionally-authorized funding that is contingent upon the receipt of a construction permit. In addition, West Virginia Media Holdings suggests that we provide expedited processing to stations moving to a different post-transition channel. We note that the criteria and procedures we adopt today encompass a broader group of stations than the categories identified by APTS and West Virginia Media Holdings and will provide relief both to these stations as well as others that may need expedited application processing.

143. A number of stations proposed that we further streamline our procedures by adopting a one-step application process for certain stations. For example, MSTV/NAB propose that, where the proposed facilities conform to Appendix B, the Commission should not require a construction permit application but instead should only require an application for license. MSTV/NAB maintain that this proposal would streamline the current ''two-

step'' construction permit/license process and would minimize administrative burdens. Norwell Television LLC also proposes a ''one-step'' licensing process for stations whose post-transition DTV facilities are identical (in channel, location, height, and power) to those specified in Appendix B. APTS proposes a similar measure. APTS suggests that, for stations whose signal does not reach beyond the service contour specified in Appendix B, the station should not be required to file a modification application even if its facilities do not precisely match those in Appendix B. APTS states that this procedure would permit the Commission to focus its efforts on the needs of stations changing channels and those that do not yet have construction permits or licenses, and would prevent stations from expending scarce resources to make unnecessary changes.

144. Upon careful consideration, we find that the procedures suggested by MSTV/NAB, Norwell, and APTS pose more potential risk than might be warranted by the potential benefit. Under these suggested approaches, a station could make modifications to its final DTV facility and begin operating that facility without prior authorization from the Commission and then report the changes on its license application. We continue to believe that the best policy is for a station to first obtain approval of its modified facilities prior to initiating operation. Otherwise, a station could modify its facility, begin operating without prior approval, and cause harmful interference to existing broadcast stations, stations in other services such as mobile operations, and to medical devices. (Certain very minor changes to television facilities may be reported on a license application but none of the more complicated changes proposed by MSTV/NAB.) Although, as MSTV/NAB reminds us, Congress amended section 319 to provide the Commission with the discretion to allow for one-step licensing, we have exercised this discretion and allowed this procedure only in cases where the potential for interference was much smaller. For example, we permitted one-step licensing for FM stations that were proposing to reduce their power from a level previously authorized. Similarly, we permitted one-step licensing in the Instructional Television Fixed Service where the power levels involved were much lower and the potential for interference much smaller. We do not find such factors in this case. Furthermore, departing from our long-standing ''two-step'' process is not necessary in this case as it will not help to greatly expedite the final DTV transition. If a station completes its final DTV facilities pursuant to a previously-issued construction permit and finds that it needs to make last-minute changes, that station may avail itself of our expedited processing procedures and expect a quick evaluation of its application. We find that the procedures we adopt today will provide stations that need to make changes to their facilities more than enough time to complete their final DTV facilities even if last-minute corrective filings are necessary.

145. In response to the comments of Broadcasting Company of Sarasota, we note that the Commission currently accepts electronically-filed requests for STA through our CDBS database and will continue to do so. (Like other requests for STA, these requests must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate public notice of these filings. For more information on Informal Filings in CDBS, please refer to this web page: *http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq_informal.htm.*) Generally, the Commission has notified stations of action on their STA requests by mail; however, to speed the process as suggested by Broadcast Company of Sarasota, we may also contact stations by telephone or e-mail, with confirmation of Commission action via entries in the station's CDBS records.

146. Finally, a number of commenters suggested that the Commission expedite application processing by approving applications where the proposed service contour does not exceed the contour predicted by the Appendix B facility by more than a certain amount.

2. Program Tests/License To Cover CP

147. As we stated in the *Third DTV Periodic Review NPRM,* stations must not commence program tests on their post-transition channels until they are ready to begin post-transition operations under program test authority. Stations that want to conduct program tests on their post-transition facilities must comply with the Commission's rules and coordinate with any affected stations prior to the time of testing. Each station is responsible for determining which other stations may be affected and coordinate accordingly. We expect that stations will work together cooperatively to facilitate testing. Upon completion of the construction of a television facility as authorized by a CP, a station may commence program tests upon notification to the Commission, provided that an application for a license to cover the CP for the post-transition facility, on FCC Form 302, is filed within 10 days, along with the appropriate fee. (Stations must comply with the terms of their CP as well as the technical provisions of the application, or rules and regulations, and the applicable engineering standards. We remind stations that will be using Channel 14 for post-transition operations that they must take special precautions to avoid interference to adjacent spectrum land mobile radio service facilities before commencing program testing. Where a TV station is authorized and operating prior to the authorization and operation of the land mobile facility, a Channel 14 station must attenuate its emissions within the frequency range 467 to 470 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees. 47 CFR 73.687(e)(3). A licensee on channel 14 may not commence program test authority without specific Commission approval. *See* 47 CFR 73.687(e)(4)(ii) (stating that such licensees must submit evidence that there will be no interference to land mobile stations before the station will be permitted to transmit programming on the new facilities).)

E. Expanding Facilities

148. We announce our intent to lift the freeze on the filing of maximization applications on August 17, 2008, the date by which we expect to have completed processing stations' applications to build their post-transition facilities. Until this date, we will maintain the freeze and will not accept maximization applications to expand facilities. We will, nevertheless, consider requests to waive the freeze before August 17, 2008 in certain specified situations to provide for minimally expanded facilities where necessary to ensure that stations can serve their existing television viewers with their post-transition facilities, thereby meeting viewers' over-the-air reception expectations after the transition date.

149. During the channel election process, stations defined their post-transition facilities, deciding whether they would (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility. Stations, however, were not allowed to seek facilities that would expand their coverage areas beyond that provided by their allotted facilities or authorized by a license, CP or STA. The filing freeze precluded such expansion to provide a stable database for developing the post-transition DTV Table.

150. *Maximization Applications.* We adopt our tentative conclusion in the *Third DTV Periodic Review NPRM* to not accept maximization applications until we have processed all stations' post-transition applications, as authorized by the post-transition DTV Table. We find that we must first ensure that all stations can at least provide digital service to their analog viewers by the transition date before considering new maximization applications. Several commenters have urged us to lift the freeze immediately and express concern about investing in equipment without knowing if and when they can maximize. In addition, they say that retrofitting their equipment later to maximize could be prohibitively expensive, thereby potentially limiting service to the public, particularly by public stations if they cannot afford to maximize later. We find, however, that processing maximization applications at this time would slow the resolution of stations' applications to construct final DTV facilities. For example, such applications could be mutually exclusive, which would result in a delay of several weeks or months. This delay would prevent us from resolving applications needed for stations to build their post-transition facilities. In addition, we find that allowing stations that are filing applications to construct post-transition facilities to propose expanded facilities would also be unfair to stations that have completed building their post-transition facilities and, therefore, are not filing applications now but might also want to expand their existing facilities. Therefore, before we consider maximization requests, which may cause interference to viewers accustomed to receiving service from particular stations, we conclude that we must first establish the initial DTV landscape and preserve existing service patterns to the extent possible.

151. *Filing Freeze Waiver Policy.* We adopt a waiver policy, based on a proposal by MSTV/NAB (MSTV/NAB proposed that the Commission allow stations returning to their analog channels to use their current antenna pattern, provided the pattern does not exceed DTV Table Appendix B coverage by 5 miles or cause more than 2.0 percent interference to surrounding stations. MSTV proposed for stations to have 12 months after February 17, 2009 to comply with the 0.5 percent interference standard above DTV Table Appendix B levels.), that will permit rapid approval of minor expansion applications filed by stations that are not using their pre-transition DTV channel for post-transition operation, provided the station demonstrates that such expansion:

(1) Would allow the station to use its analog antenna or a new antenna to avoid a significant reduction in post-transition service from its analog service area;

(2) Would be no more than five miles larger in any direction than their authorized service area, as defined by the post-transition DTV Table Appendix B; and

(3) Would not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations.

Many commenters requested this relief, arguing that such relief was necessary to avoid a significant service loss to existing viewers. We agree with MSTV/NAB that we should generally permit stations to expand up to five miles in any direction beyond their authorized service area. While we generally will not permit more than 0.5 percent new interference, we will consider on a case-by-case basis allowing stations to cause additional new interference if stations can demonstrate that they need this additional flexibility to serve their analog viewers. Consistent with our existing rules, we will also consider on a case-by-case basis stations' negotiated interference agreements provided these agreements are consistent with the public interest.

152. We find that this waiver policy will allow added flexibility for stations that wish to use their existing analog channel antenna, which provides benefits for the successful completion of the transition by reducing the demands on equipment suppliers and installation crews during a critical time as the transition date nears. This waiver policy addresses the concerns of those stations returning to their analog channel that may face significantly reduced facilities if some minimal expansion is not permitted. For example, Tribune and Allbritton argue that many stations returning to their analog channels for post-transition operation plan to use their analog antennas but face the prospect of significant service losses because the ''unbuildable, theoretical pattern'' in Appendix B does not match the analog antenna pattern. As previously discussed, several stations that faced this problem filed comments in our DTV Table proceeding. In the *Seventh Report and Order,* we permitted these stations to change their 2004 certifications and, thus, revised these stations' post-transition DTV Table Appendix B facilities to reflect their constructed final DTV facilities. Many more stations have since filed petitions for reconsideration of the *Seventh Report and Order* to obtain this same relief. We expect that we can provide the same relief to most of these stations as well. For those stations that cannot be fully accommodated with a change to their post-transition DTV Table Appendix B facilities (*e.g.*, stations that failed to request reconsideration of their post-transition DTV Table Appendix B facilities), we expect that this waiver policy should address their situations. In addition, this waiver policy should address many of the other concerns raised by commenters in seeking exemption from the freeze. Applications filed to maximize facilities pursuant to this waiver policy will not receive expedited processing, but these applications will be processed before the freeze is lifted and new maximization applications are accepted.

153. *Filing Freeze to be Lifted August 17, 2008.* We adopt the proposal of MSTV/NAB and others to set a date certain that is before the end of the transition for when we will lift the filing freeze and begin accepting stations' applications to maximize post-transition facilities and serve more viewers. Accordingly, we establish August 17, 2008 as that date. (We recognize that we cannot predict with absolute certainty the date by which we will complete processing stations' initial applications to build facilities authorized by the post-transition DTV Table. While we believe this date represents a reasonable estimate concerning the time it should take us to process all the applications to permit stations to construct their final facilities, we may adjust this date, earlier or later, as we get closer to completing the processing of these applications. The Media Bureau will announce the exact date the freeze will be lifted and the associated terms and filing procedures.) By this date, we expect to have completed processing all stations' applications for post transition facilities and, therefore find that we could then provide this opportunity for stations to expand their facilities and serve more viewers, possibly before the transition date. We agree with MSTV/NAB that establishing a date certain for lifting the freeze will assist stations in their post-transition plans. It is clear from the comments that many stations are eager to expand their facilities (beyond those specified in the post-transition DTV Table Appendix B) to serve more viewers. Stations' new channel assignments present them with new opportunities to offer expanded DTV coverage, either because the stations may be moving to a new channel that does not have the same interference restrictions or because

other stations on adjacent channels may be moving away, thus eliminating prior interference conflicts. We expect that lifting the freeze six months before the transition date will enable many stations to conserve resources by purchasing equipment that anticipates the maximization of their facilities. Nevertheless, we will not accept future maximization as an excuse from stations not to file applications now nor to delay construction of their full, authorized facilities by their construction deadline. No commenter objected to the proposals to set a date to lift the freeze prior to the end of the transition.

154. *Processing of Maximization Applications.* Maximization applications will be processed in accordance with our existing rules. (We remind stations that applications for maximization filed before the freeze is lifted will not be accepted for filing.) While we will accept maximization applications after the freeze is lifted, such applications may not be processed in time for stations to build these new maximized facilities by their construction deadline. Stations with a pending maximization application on file are warned that such filing will not be considered a legitimate excuse for failing to build their full, authorized post-transition (DTV Table Appendix B) facilities by their construction deadline.

F. Post-Transition Interference Standards and Analysis Methodology

155. We are generally adopting the interference standards as proposed in the *Third DTV Periodic Review NPRM*, with adjustments based on the record. In brief, we adopt the following standards for evaluating post-transition interference:

- We will permit stations a limit of 0.5 percent new interference in addition to that in the DTV Table Appendix B. We will evaluate stations' applications to construct post-transition facilities using an engineering criteria based requirement (limiting the predicted interference that a station may cause to a protected station's service population) instead of using a geographic spacing requirement.
- We will discontinue the 10 percent cap on total interference.
- We will continue to evaluate requests for new DTV allotments using the DTV-to-DTV geographic spacing requirements contained in section 73.623(d).
- For approximately a year after lifting the filing freeze, we will protect all stations' DTV Table Appendix B facilities, after which we will protect each station's new DTV Table Appendix B facilities' coverage only until the station has a CP or license for its post-transition operation, at which time we will limit its interference protection to its authorized coverage area.
- We will revise the OET 69 interference analysis methodology to make the results more accurate and ensure consistent methodology. Specifically, we adopt the use of 2000 census data for use in all applications and we adopt a limited set of cell sizes, which include 2 km, 1 km, and 0.5 km.
- We will eliminate the 1 dB power reduction requirement for UHF stations that use more than 1 degree of antenna beamtilt.

156. *Interference Criteria for Applications.* Commenters generally agreed with our proposal to use engineering criteria instead of geographic spacing for cases involving applications; however there was widespread difference of opinion over how strict the criteria should be. In the *Third DTV Periodic Review NPRM*, we proposed an absolute 0.5 percent interference standard for requests to modify post-transition facilities. In the proposal, stations whose Appendix B allotments are already predicted to cause more than 0.5 percent interference to another station would not be allowed to expand beyond the amount of interference that would be caused by their allotment.

157. A study by du Triel, Lundin & Rackley, Inc (dLR) found that 50 percent of all VHF allotments already cause more than 0.5 percent interference and 40 percent of all VHF allotments already cause more than 1.0 percent interference, so that an absolute 0.5 percent limit would prevent many stations from expanding at all. MSTV/NAB noted that a number of commenters argue that the FCC should apply the proposed 0.5 percent standard by using the DTV Table Appendix B facilities as a baseline so that stations would be permitted to create no more than 0.5 percent additional interference beyond the level authorized in the DTV Table Appendix B. MSTV/NAB support this approach on the grounds that it will ensure that stations have sufficient flexibility to expand or modify facilities, but will prevent substantial increases in interference between stations. Several other commenters wrote that the proposed 0.5 percent interference standard may be too strict and proposed alternate standards. Upper Cumberland Broadcast Council (UCBC) would permit up to 2 percent interference. Multicultural Television Broadcasting (MTB) supports a limit of 1 percent with no rounding and the masking of other stations taken into account and asks that we permit minor modifications where the increase in existing interference is less than or equal to 0.1 percent. Khanna & Guill Inc. proposed an alternative that would limit interference to small service areas to no more than 1,000 people and to large service areas to no more than 50,000 people.

158. For purposes of the channel election process, the Commission generally applied the 0.1 percent interference standard to minimize as much as possible any interference as a result of a station moving to its analog channel for post-transition operation, rather than remaining on its pre-transition digital channel for post-transition service. For stations that had to change channels for post-transition operation, *e.g.*, because their digital channel was out-of-core, we allowed up to 2.0 percent interference. We conclude that after the transition, the stringent 0.1 percent standard for interference protection used to facilitate the development of the post-transition DTV Table will no longer be needed. In the post-transition environment, all stations will have channels that will allow them to adequately serve their viewers. We also find that it is now reasonable and desirable to afford stations opportunities to modify their service areas to improve service to viewers. We further recognize that in order to provide such opportunities, stations will need the flexibility to cause a small amount of new interference to neighboring stations. The interference standard we proposed and are adopting in this Report and Order will allow stations to request modifications to improve their service areas that would cause a small amount of new interference to other stations. We find that the benefits of improving station service in such cases will outweigh the very small amount of additional interference that will be permitted under the 0.5 percent standard.

159. In addition, we agree with the majority of commenters that new interference under the 0.5 percent standard should be evaluated using the DTV Table Appendix B allotments as a baseline in interference calculations. In contrast, as indicated by the dLR study, an absolute interference limit would preclude many stations from having the flexibility to modify their facilities. Even increasing the absolute interference limit to 1.0 percent as suggested by UCBC would still preclude 40 percent of VHF stations from having such flexibility, and using a higher interference limit would potentially subject stations to large amounts of new interference. Therefore, to provide an opportunity for at least modest modifications, we will allow stations to

cause up to 0.5 percent new interference, in addition to interference reflected in the DTV Table Appendix B. Applying 0.5 percent to this baseline of existing interference will provide the flexibility and expansion sought by commenters that suggested allowing higher interference levels. It would also effectively control the amount of new interference that could be experienced by any one station. We find this approach provides a reasonable balance between having sufficient flexibility to expand and modify facilities while preventing substantial disruption for viewers due to interference between stations. We therefore adopt the 0.5 percent interference standard and will apply it using the DTV Table Appendix B facilities as a baseline. (We will neither amend nor replace the existing interference rules in 47 CFR 73.623, which will remain in effect to apply to any applications for pre-transition digital facilities. Petitions for rule making and applications for facilities that will operate after the end of the DTV transition must comply with section 73.616, with respect to post-transition operations, as well as with section 73.623, to the extent they will be in operation prior to the transition. We will consider whether to amend or eliminate the rule sections pertaining only to pre-transition digital facilities in a later proceeding.)

160. We also proposed to discontinue the 10 percent cap on total interference to a station from all sources, and instead proposed to limit the total interference any station would receive from all sources by requiring that stations already predicted to cause more than 0.5 percent interference to another station would not be allowed to increase the interference they are authorized to cause to that station. MTB concurs with this proposal. MSTV/NAB also submits that removing the cap would contribute to making the interference standard ''simpler to administer than the 2 percent/10 percent rule (which requires consideration of the total amount of interference a station is receiving from all sources).'' Since we are adopting the 0.5 percent interference standard, which is significantly more protection than the previous 2.0 percent standard, we find that the amount of new interference that will be accumulated by any one station is minimal. Removing the cap would also help those few stations in situations that exceed the 10 percent interference level share the flexibility to expand or modify their facilities. Therefore, as proposed, we will discontinue the 10 percent cap on total interference.

161. *Interference Criteria for New Allotments.* As proposed, we will use geographic spacing requirements as the standards for determining the technical acceptability of channel use in evaluating rulemaking petitions seeking new DTV channel allotments. While MSTV/NAB outlined in their comments that changes to the table should be analyzed under the 0.5 percent interference standard, as we said in the *Third DTV Periodic Review NPRM*, information about actual transmitter site locations and facilities are generally not available in rulemaking proceedings. Without such information, valuations based on minimum acceptable allotment facilities and the methodology for the analysis of a petition using an engineering criteria standard would not reflect the operation of an actual station and therefore would generally not be meaningful. For these reasons we will continue to use the DTV-to-DTV geographic separation requirements contained in section 73.623(d) of the rules. After a new DTV allotment has been approved, we will regulate the extent of interference by requiring applications for these DTV allotments to comply with the same engineering criteria standards we are proposing for all other DTV applications. (A new station would be allowed to create no more than 0.5 percent new interference to any station beyond the level of interference authorized by the allotment.)

162. *Protection of DTV Table Appendix B facilities.* As proposed in the *Third DTV Periodic Review NPRM*, we will only protect stations' DTV Table Appendix B facilities until stations have their CP or license for their post-transition facility, at which time we will limit interference protection to stations' authorized coverage area. (DTV Table Appendix B has been used to provide all stations with post-transition facilities. When a station applies for a CP to build the post-transition facility authorized by Appendix B, or applies for its license to cover the authorized post-transition facility it has already built, then it will no longer be necessary or appropriate to protect the Appendix B facility. As noted above , for many stations, DTV Table Appendix B represents the hypothetical facility that produces its certified service area. When a station applies for the construction permit to build its facility, it may need to vary the parameters listed on Appendix B to construct the actual facility, for example to reflect an achievable directional antenna pattern or to locate the antenna at a height on the tower where mounting is possible. In addition, in some cases, we will allow stations to expand their facilities beyond Appendix B. Thus, over time, many stations' facilities will no longer match the DTV Table Appendix B facility.) However, to avoid penalizing stations that apply for reduced facilities so as to not violate the freeze, we will continue to protect the DTV Table Appendix B facilities of stations until roughly one year after the date we intend to lift the filing freeze. (The Media Bureau will issue a public notice establishing the exact date, which may be earlier if appropriate.) We received very few comments directly on this point, but MSTV/NAB mentioned that it is appropriate for the Commission to give stations one year to complete their final facilities, and that during that year we should provide protection to stations' allotted facilities. New allotments as discussed in the previous paragraph will only be protected until a CP is granted for the new station. When applying the 0.5 percent new interference standard described above, we will continue to rely on the applicant's Appendix B or new allotment facility as a baseline for determining how much new interference the station may cause and avoiding cumulative applications of the 0.5 percent standard. When determining the amount of interference an applicant causes to other stations, we will use the protected stations' service areas based on their construction permits, licenses or new allotments as described in this paragraph.

163. *Changes to Interference Analysis Methodology.* We will adopt changes to our DTV interference analysis methodology to make the results more accurate and ensure consistent methodology. In the *Third DTV Periodic Review NPRM*, we proposed to evaluate compliance with the interference standard using the Office of Engineering and Technology's OET Bulletin No. 69 (''OET 69'') methodology, but using 2000 census data as was done during the channel election process. We sought comment on whether other changes to the OET 69 methodology were necessary. As an example, we proposed allowing the use of specific ''cell'' sizes smaller than the 2 kilometers per side cell size specified as the default in OET 69. We also sought comment on a proposal to use variable desired-to-undesired (''D/U'') interference ratios to better analyze situations where adjacent-channel transmitters are to be located inside a desired station's noise-limited service contour. Commenters also raised questions about the use of real vertical antenna patterns and beamtilting.

164. As proposed, we adopt the use of 2000 census data for use in all

applications. Few commented on the issue, but those commenters that did were supportive of the proposal. This will result in more accurate modeling of the current population covered by DTV stations.

165. We also adopt use of specific smaller cell sizes for the Longley-Rice analysis as described in OET 69. Commenters were divided on the issue of the use of smaller cell sizes. As we explained in the *Third DTV Periodic Review NPRM*, we have generally allowed applicants to specify analysis based on cells that are smaller because such analysis is arguably more accurate. We understood that some applications had been based on evaluating many possible smaller cell sizes until the desired result was obtained. Such ''shopping'' for advantageous cell sizes does not improve the accuracy of the evaluation. (For example, if an application would fail based on 1.0 km cells but passes based on 1.5 km cells, the applicant would request evaluation based on the 1.5 km cell size.) dLR, for example, would permit the use of any cell size. Others, like MSTV/NAB and Khanna, would allow the use of some smaller cell sizes, but establish constraints as to what sizes are allowed. Khanna proposed a uniform use of 1 kilometer per side cells, which would avoid disputes over differing methodology. Establishing a minimum cell size of 1 kilometer per side, according to MSTV/NAB, would ''discourage shopping for advantageous cell sizes.'' While we recognize the concerns about shopping for advantageous cell size, we also would prefer to preserve the option to use alternative cell sizes that has been available over the course of the DTV transition. In this regard, our experience is that this option has generally not been abused. We do, however, find that it would simplify the process to specify a limited set of cell sizes; this would seem to better limit any size ''shopping'' that might occur. Therefore, we adopt a limited set of cell sizes: 2 km, 1 km, and 0.5 km. Adopting this method will allow for more accurate showings of DTV coverage based on smaller cell sizes, while discouraging the practice of ''shopping'' for cell sizes, which doesn't contribute to improved accuracy.

166. *Vertical Patterns.* We will retain the existing OET 69 vertical antenna pattern and not make changes in the vertical patterns at this time. Vertical antenna radiation patterns are descriptions of antenna gain at various angles above and below the horizon. Several commenters asked us to modify the way in which vertical antenna patterns are considered. Currently, OET 69 specifies a standard vertical antenna pattern that is used for each station, regardless of the actual characteristics of the station's antenna. Some commenters noted that allowing the use of actual vertical patterns would result in more accurate modeling of station coverage, and possibly more efficient use of the TV spectrum. Meredith Corporation notes that stations are required to submit vertical pattern information when applying for a CP, but that the data is not used when calculating the service area of the application. AFCCE recommends that actual vertical patterns and beamtilt be considered for modifications and new authorizations when calculating outgoing interference. Changing the interference analysis at this time would demand time and resources when we must process and grant a large number of applications as quickly as possible. Therefore, we will continue to rely on the existing OET 69 standard vertical antenna pattern for applications filed now for post-transition facilities. We expect, however, to revisit this issue in the future.

167. *Beamtilting Penalty.* We are eliminating the 1 dB power reduction requirement for UHF stations that use more than 1 degree of antenna beamtilt. This rule was introduced in February 1998, when we initially limited maximization requests by UHF stations to 200 kW ERP. The rule allowed UHF stations to increase power up to a maximum of 1000 kW provided beamtilting techniques were employed so that the field strengths at the outer edge of the stations service area were no greater than would exist if the station were operating at its assigned DTV power. The rule also required that the field strengths at the edge of the service area be calculated assuming 1 dB of additional antenna gain over the pattern specified by the manufacturer. Later that year, we ruled that all UHF stations could request an increase in power up to 1000 kW ERP provided they met the *de minimis* rules in section 73.623(c)(2) of the rules, and did not require beamtilting be employed. AFCCE suggested that the 1 dB penalty be rescinded to permit stations to employ large beamtilts and higher ERPs. Tribune states that ''once the 200 kW power cap was effectively eliminated * * * there was no need for the 1 dB penalty to discourage stations from using the beamtilting exception to evade the 200 kW power cap.'' We agree and find that the rules under 73.622(f)(4) are outdated and should be amended. We note that stations may use section 73.622(f)(8) to increase their power above 200 kW. Sections 73.625(b)(2) and 73.625(c)(1) address how beamtilting can be used. Through the use of these rules, the effect of 73.622(f)(4) can be accomplished without the 1 dB penalty. We will, therefore, amend section 73.622(f)(4).

168. *Variable D/U Ratios.* In the *Third DTV Periodic Review NPRM*, we sought comment on whether to adopt variable desired-to-undesired (D/U) interference ratios in situations where adjacent-channel transmitters are proposed to be located inside a desired station's noise-limited service contour. MSTV/NAB submitted that consideration of this issue would be best addressed in our DTS proceeding. We find that the comments submitted in this record do not provide an adequate basis on which to make a decision to retain the current D/U ratios or to change them. We can address this topic in a future proceeding if parties submit data and arguments demonstrating a need for revising our current rules.

169. *Channel 51.* In *ex parte* comments, Cohen, Dippell and Everist, P.C. request the Commission to clarify the extent to which any Wireless Communications Services (''WCS'') that will operate in the spectrum currently designated as TV/DTV Channel 52 will offer interference protection to future DTV services offered on Channel 51. (The commenters cited to 47 CFR 27.60 as the basis for their comment. This rule states that ''transmitters in the 698–794 MHz and 776–794 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to the public reception of the signals of existing TV and DTV broadcast stations transmitting on TV channels 51 through 68.'' They point out that the ''existing'' language implies, or might lead any future WCS auction winner to expect, that a WCS would not have to protect any future channel 51 station that was not ''existing'' as of the date of the DTV transition. We note that Section 27.60 applies to transitional operations, prior to the completion of the digital transition on February 18, 2009. There will be no such television broadcast stations operational on Channels 52 through 68 after the transition.) In the *Second DTV Periodic Report and Order* we stated that wireless and other operators on channel 52 must provide the interference protection prescribed in the *Lower 700 MHz Report and Order* to all broadcasters on channel 51, including any that may commence operation after the auction of adjacent channels in the 52–58 band, and we further stated that use of channel 51 for broadcast purposes should not be

restricted in order to protect operations on channel 52, even if those operations predate the commencement of operations on channel 51. We reiterate and emphasize that this policy has not changed, and we will ensure that expanded operations by current channel 51 licensees and new channel 51 allotments will remain protected.

G. Coordination With Cable Operators, Satellite Systems, and Other MVPD Providers

170. We establish no new rules governing the coordination of broadcasters and MVPDs, but remind all parties of their existing obligations, and observe that some coordination issues must be resolved in other dockets. As we recognized in the *Third DTV Periodic Review NPRM*, the transition to digital television necessarily involves coordination with Multichannel Video Programming Distributors (''MVPDs''). No commenter disagreed, and indeed few commenters spoke to these coordination issues. Those who did generally assured the Commission that both coordination and the actual transition to digital signal reception are underway. Therefore, as a general matter, Cox Broadcasting's suggestion that the parties will coordinate independently is well taken. There remain, however, a few coordination issues that we need to specifically address.

1. Transition Status Filings

171. As discussed above, we adopt the requirement that broadcasters file a Transition Status Report (Form 387) with the Commission no later than February 18, 2008, and we will make the information from those forms publicly available. Broadcasters may also report their coordination efforts with MVPDs in their transition status reports. This information collection and availability is in line with that supported by a number of commenters, including NCTA. NCTA argues that a wide range of information must be available to ''provide adequate lead time for cable operators to make technical modifications at cable headends, conduct tests, and provide timely notice to customers of channel changes and any other changes in their service.'' These reports will provide a base of common information that broadcasters and MVPDs can look to in their voluntary coordination efforts, and will allow time for the resolution of those efforts. Reports filed with the Commission are, however, no substitute for direct communication between broadcasters and MVPDs and we strongly encourage active coordination between them.

172. Although NAB and MSTV propose that MVPDs themselves file Transition Status Reports similar to Form 387, they do not elaborate on this proposal. We find insufficient support in the record for imposing this filing because it would provide information that is already generally available. NAB and MSTV also propose that MVPDs be required to register their headends and contact information, such that it will be available to broadcasters who wish to coordinate carriage issues. As noted above, we strongly support active coordination between the parties, and urge broadcasters to directly contact the MVPDs that carry their stations if they require specific information from MVPDs to ensure a successful transition. We also remind cable operators in particular of their existing requirement to notify all stations carried pursuant to must carry at least 60 days prior to any change in the designation of their principal headend. Furthermore, contact information for cable operators is already widely and publicly available through the FCC Cable Operations and Licensing System (''COALS''). Broadcasters can access this information online at any time. (COALS is a publicly accessible online database that contains extensive information about cable operators. Cable operators are required to maintain updated contact information with the Commission. *See* 47 CFR 76.1610. This information can be found online at: *http://www.fcc.gov/coals*. Contact information for a group of operators can be most easily accessed by selecting ''Cable Search'' from the bar on the left, choosing the relevant state from the ''Community State'' drop down box, and choosing ''Community Registration'' from the ''Type of Filing'' drop down box. The search can be narrowed by entering additional information, such as the name of the community in which the cable system is located or the name of the cable system.) We are unaware of any problem broadcasters have had in contacting MVPDs, and NAB and MSTV do not provide any such examples. Therefore, we decline to adopt an MVPD transition status report requirement at this time. We do urge broadcasters and MVPDs to report to the Media Bureau any specific difficulties with their coordination efforts, and we will take appropriate action against any party that consistently declines to actively coordinate on transition issues.

2. Cable Coordination

a. Timing of Transition

173. The Commission's primary concern in this process is to ensure that the entire viewing public, those who watch broadcast stations on cable as well as those who watch them over the air, is able to view these signals as easily on February 18, 2009 as they can today. We remind cable operators that they have an obligation to carry digital must-carry signals, and to have reception equipment operational to receive those digital signals that go on the air on February 18, 2009. Furthermore, we remind them of their carriage obligations regarding digital-only stations established in the *First DTV Must Carry Order*. Stations that currently broadcast only a digital signal or that turn off their analog signal prior to February 17, 2009, in accordance with the policies and procedures adopted in this Report and Order are entitled to mandatory carriage on cable systems. Similarly, we remind broadcasters that they are obliged to provide the cable operator with a good quality signal and, if they choose not to rely on over the air transmission, it is their obligation to contact the operator and resolve any issues necessary to provide the signal in an alternative manner. (The signal may be provided in any manner chosen by the broadcaster, so long as its cost is borne by the broadcaster.)

b. Signal Quality Standard

174. The Commission has previously established that, for cable companies, a ''good quality digital signal'' is one that provides a signal strength at the headend equal to −61 dBm. For purposes of clarity, we find that it is now advisable to adjust section 76.55 of our rules to conform to these requirements established in 2001. Two broadcast commenters expressed concerns that stations could lose carriage rights for a full election cycle because of a temporary reduction in signal strength or area during their digital build-out. UNC proposes that the Commission impose an interim quality standard, presumably requiring lower signal strength to qualify. Norwell suggests that, where the predicted digital signal strength is at least as high as the analog signal it is replacing, the MVPD be required to carry the digital signal. We decline to adopt these proposals. When the Commission adopted the −61 dBm standard for cable carriage, analysis indicated that it was the strength ''necessary to provide a good quality digital television signal at a cable system's principal headend.''

Neither commenter provided evidence to refute that finding. If a broadcast signal is not delivered in good quality, it can not be carried in good quality, and carriage of a low quality signal mars the viewing experience, which in turn discourages viewership, and is thus harmful to the broadcaster by reducing advertising revenue. It may also be harmful to the MVPD by undermining subscribers' perception of the quality of the programming offered by the operator and by increasing complaint calls and the likelihood that a customer will seek alternatives to their current MVPD. Broadcasters, MVPDs, and viewers, therefore, all benefit from delivery and carriage of clear, high quality signals. We also acknowledge the concerns of these broadcasters, and remind MVPDs that they are responsible for carriage as soon as a good quality signal is delivered.

3. DBS Coordination

175. We reiterate that MVPDs must work with broadcasters to ensure a smooth transition, and direct the parties to the DBS Carriage proceeding, MB Docket No. 00–96, where the final rules governing satellite carriage of digital broadcast signals will be adopted. (Although signal strength requirements for the delivery of digital signals to satellite receive facilities have not been finalized, we remind DBS providers of their obligation to carry local broadcast stations that provide a ''good quality signal.'' *See* 47 CFR 76.66(g).) Both DIRECTV and EchoStar filed comments regarding the timing of the transition. DIRECTV states that it is already carrying a number of stations' digital signals, and offers to work with any broadcaster that is currently providing and will continue to provide a good quality digital signal to its local receive facility, even if that station is not currently being carried by DIRECTV. We note that 95 percent of stations are currently on the air with a digital signal. Nevertheless, a number of stations may not provide their post-transition digital signal to headends and receive facilities until the conclusion of the transition. We remind broadcasters of their obligation to provide a good quality signal, and therefore their obligation to coordinate the delivery of that signal, for example by coordinating with DBS and other MVPD operators during program test periods prior to February 17, 2009. EchoStar proposes that, for any station that does not make its digital signal available prior to February, 2009, MVPDs be given additional time to incorporate that signal into their system. We decline to adopt EchoStar's proposal.

4. Private Cable Operators and Master Antenna System Providers

176. In the *Third DTV Periodic Review NPRM,* we asked for comments from private cable operators (''PCOs'') (also known as Satellite Master Antenna Television or ''SMATV'' providers) and master antenna system providers regarding steps they are taking to ensure that their subscribers and residents will continue to receive local broadcast stations after the termination of over-the-air analog broadcast signals from full power stations. We received comments from the Independent Multi-Family Communications Council (IMCC), the PCO trade association, and agree with IMCC that it may be necessary for these operators to update their systems prior to the 2009 transition date. We support IMCC's proposed efforts to educate PCOs nationwide, and appreciate their efforts to keep their membership fully informed on this important issue. We note that viewers who rely on PCOs or master antenna systems will also need to be informed of the equipment they will need to continue viewing broadcast television after February 17, 2009.

177. PCOs provide cable service on private property, and do not cross public rights of way. Typically they serve multiple dwelling units (''MDUs'') and private residential communities, such as condominiums and homeowner associations. PCOs generally provide local TV broadcast signals to the residents/subscribers via one of four methods. The first alternative is to contract with a DBS provider that is providing local-into-local service, set up a DBS dish in a central location (*e.g.*, the roof), and then remodulate the digital satellite signal into analog for distribution to residents/subscribers. The second alternative is for PCOs to set up satellite receivers for each local broadcaster, with an analog RF modulator for each program, and then combine the modulator outputs into a single cable for residents/subscribers. The third alternative is to provide a local digital broadcast package to residents/subscribers via a digital headend signal processor. Finally, the PCO can set up one or more over-the-air receive antennas and either simply pass the signal along to residents/subscribers or, more commonly, run it through an analog processor to provide a constant signal strength for residents/subscribers. Operators of master antenna systems (*e.g.*, a landlord or condo association) provide one or more receive antennas and deliver local over-the-air television signals free of charge to residents, and generally also have an analog processor to ensure a constant signal strength.

178. After the digital transition, PCOs who rely on the first or second alternatives will not need to make any changes. The satellite signal or signals will continue to be received in digital and can continue to be remodulated into analog for the residents/subscribers. If this alternative is used, however, there will be no digital signals, including high definition signals, available to the residents/subscribers, although they will all continue to receive television service without buying new equipment. PCOs under option three are already relying on an all-digital headend and distribution network, and will face no changes after the transition because all equipment on the system, including residents/subscribers' television receivers, is already capable of receiving, conveying, and displaying digital signals. PCOs who rely on local receive antennas will have two options, the same as those confronting operators of master antenna systems. First, they could use a digital-to-analog converter on all over-the-air signals to convert the digital broadcast signal to analog before being retransmitted to residents/subscribers, who will therefore be able to continue to rely on their existing television equipment. This solution results in the same problem faced by DBS subscribers, however; all residents/subscribers will receive television programming, but none will receive a standard or high definition digital signal. The other alternative is to retransmit the signal in digital format. In this case, residents/subscribers have access to the full benefits of the digital transition, but only if they have digital equipment. We recognize that some residents/subscribers may think of themselves as ''cable subscribers,'' and therefore expect that the DTV transition will have no impact on their service, based on the Commission's recent decision ensuring continued viewability of stations carried on cable. This problem can be largely ameliorated by proper education efforts by PCOs and MATV operators. In addition the OTA digital signal provided by PCOs will be processed, but not remodulated; therefore, off-the-shelf digital-to-analog converters, including those that will be available as part of the NTIA converter box coupon program, can be used by residents/subscribers with analog equipment to view the signal.

H. Other Issues

1. DTV Transmission Standard (ATSC A/53)

179. We adopt our proposal in the *Third DTV Periodic Review NPRM* to update section 73.682(d) of the rules to reflect the latest revisions to the ATSC DTV transmission standard, A/53, since the *Second DTV Periodic Report and Order.* Accordingly, we will incorporate into section 73.682(d) by reference the latest version of the DTV transmission standard A/53: ATSC Digital Television Standard, Part 1–6:2007 (''A/53:2007''). We will continue to encourage further improvements to the DTV standards and conduct additional rulemakings, as appropriate, to incorporate future updates of the ATSC DTV transmission standard into our rules.

180. We find that it is desirable and appropriate to update section 73.682(d) of the rules to specify the use of the latest version of this ATSC DTV transmission standard, A/53:2007. All commenters on this issue support the adoption of the latest version of the standard into our rules. The ATSC notes that it has made further changes to its DTV transmission standard since the release of the *Third DTV Periodic Review NPRM.* Specifically, ATSC partitioned the standard into six parts to facilitate future ''changes and enhancements'' and encourages the Commission to adopt the newest version into the rules. We note that the A/53:2007 version of the standard does not differ from the A/53–E version that was mentioned in the *Third DTV Periodic Review NPRM,* other than these organizational changes.

181. The A/53:2007 version of the standard differs from the previously used standard, A/53-B, in several respects. First, A/53:2007 includes the specifications for, but does not require, Enhanced 8–VSB (''E8–VSB'') for terrestrial broadcast. E8–VSB enables Enhanced Services, which allow broadcasters to allocate the base 19.39 Mbps data rate between Main Service data and Enhanced Services data. Enhanced Services data is designed to have higher immunity to certain channel impairments than Main Service data, but Enhanced Services data is delivered at a reduced information rate selected by the broadcaster from the specified options. A/53:2007 further describes the coding constraints that apply to the use of the MPEG–2 systems specification in the DTV system, including mandatory main and optional enhanced services. It also improves the Active Format Description (''AFD'') specifications by revising and clarifying the relevant standards.

182. Given these advantages, we find that updating the rules with the latest version of the ATSC DTV transmission standard today will benefit both broadcasters and consumers by allowing broadcasters the flexibility to offer new technological services. We cannot, however, establish Harris' proposed streamlined approach to automatically update our rules when ATSC updates its standards.

2. Active Format Description (AFD)

183. We will not require broadcasters to use AFD. Broadcasters that choose to use AFD, however, must adhere to the ATSC DTV transmission standard A/53:2007. Although the latest ATSC DTV transmission standard does not require the use of AFD, we sought comment in the *Third DTV Periodic Review NPRM* on whether to require AFD when the active video portion picture does not completely fill the coded picture. All commenters on this issue agree that AFD should remain voluntary.

184. We agree with commenters that it would be premature to require mandatory broadcaster use of AFD, given that the standard is relatively new and has not yet been required through the ATSC standard. We do, however, encourage television manufacturers to implement the SMPTE standard and CEA–CEB16 into their TV sets, which will better allow broadcasters to take advantage of tools such as AFD to ensure that viewers receive a signal that is optimized for their TV set. We find that these voluntary, industry driven efforts are sufficient and, thus, will not require broadcasters to use AFD until such time that AFD data can be consistently deployed by manufacturers and content providers, and received by the public. For example, we recognize that not all content providers now uniformly provide AFD data to broadcasters. Moreover, not all consumers are equipped to obtain the benefits of AFD. We will monitor and may revisit it when more content providers provide AFD data to broadcasters and when more consumers obtain DTV receiving equipment that could pass through the AFD data to them. We expect that broadcasters will have an incentive to use AFD to make their programming attractive to viewers when they are ready and able to do so. We note that we will address the issue raised in comments concerning requirements that certain MVPDs pass through AFD data to their subscribers. This issue is raised in the *Third Further Notice of Proposed Rule Making* in the *DTV Must Carry* proceeding.

3. Program System and Information Protocol (''PSIP'') Standard

185. We adopt our proposal in the *Third DTV Periodic Review NPRM* to update section 73.682(d) to reflect the latest revisions to the ATSC PSIP standard since the *Second DTV Periodic Report and Order.* Accordingly, we will incorporate into section 73.682(d) by reference the latest version of the ATSC PSIP standard A/65C into our rules. The record supports updating our rules to reflect the latest version of the ATSC PSIP standard, which includes additional benefits such as updated Event Information Tables (''EITs''). We find that the updated ATSC PSIP standard enhances consumers' viewing experience by providing detailed information about digital channels and programs, such as how to find a program's closed captions, multiple streams and V-chip information. We agree with the commenters that the benefits of the updated ATSC PSIP standard to both broadcasters and consumers outweighs any additional burden placed on broadcasters. (Notably, we received no comments to our inquiry about the potential burden that compliance with the updated PSIP standard would place on broadcasters, and in particular small broadcasters.) We recognize, however, that it may take time for broadcasters to implement the new ATSC PSIP standard. Therefore, in order to give broadcasters adequate time to come into compliance, this requirement will take effect 120 days after publication in the **Federal Register**.

186. PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast. PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the ''major'' channel number), thereby making it easy for viewers to tune to the station's DTV channel even if they only know the station's major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things.

187. The updated ATSC PSIP standard further enhances the PSIP standard and support for delivery of data. This latest revision requires

broadcasters to populate the EITs with accurate information about each event and to update the EIT if more accurate information becomes available. Under the previous version of the standard, A/65–B, many broadcasters provide only general information in the EIT. For example, a network affiliate may provide nothing more informative than ''network programming'' as the descriptor for the majority of its program offerings.

188. We expect broadcasters to fully implement PSIP to the extent that ATSC A/65C requires, once the revised section 73.682(d) becomes effective. We remind broadcasters of the need to be consistent at all times and locations. For example, if a broadcaster transmits a program in standard definition, the PSIP information should state that the programming is being broadcast in standard definition, as opposed to High Definition. In addition, the Transport Stream Identifier (''TSID'') information should be consistent in the Terrestrial Virtual Channel Table (''TVCT''), Program Association Table (''PAT''). Moreover, when a program goes overtime, the station should update the EIT. Proper implementation of the standard requires broadcasters to populate the required tables and descriptors with the correct information to help receivers assemble functioning guides. Adoption of this standard also mandates completing tables and descriptors that require one time setup to be set correctly, including TSID, Short Channel Names, Service Type, Modulation Mode Source ID and Service Location Descriptor. Also, broadcasters must accurately fill the contents of the fields and the descriptors of each event descriptor loop with the known information about each event at the time the event is created and shall update each field if more accurate information becomes available. The Commission will continue to monitor these issues and act accordingly.

189. Finally, a couple of comments noted, in response to our inquiry in the *Third DTV Periodic Review NPRM,* that PSIP information may not be passed through to cable and satellite subscribers. (Digital cable systems with activated channel capacity of 750 MHz or greater are required to include in-band PSIP when available from the provider. 47 CFR 76.640(b)(1)(iv).) We will address such program-related PSIP issues in our *DTV Must Carry* proceeding.

190. *DTV Tuner Requirement.* We take this opportunity to correct a ministerial error to our rules regarding the DTV Tuner requirements for television receivers and receiving devices. As noted above, the Commission required in the 2005 DTV Tuner Order that ''responsible parties equip television receivers with screens less than 13'' that are imported into this country or shipped in interstate commerce on and after March 1, 2007, with the capability to receive broadcast digital television signals'' because we concluded that ''it would benefit consumers and the purposes of the broadcast television service and its transition to digital operation to require that receivers with screens less than 13'' are able to receive digital signals on the same schedule as other TV receiver products.'' We adopted these requirements through the appropriate notice and comment procedures, and modified the relevant section of our rules to show March 1, 2007, as the accelerated deadline, but we inadvertently omitted to delete the exception created by section 15.117(i)(2) for ''units with integrated tuners/displays that have screen sizes measuring less than 7.8 inches vertically, *i.e.*, the vertical measurement of a screen in the 4:3 aspect ratio that measures 13' [sic] diagonally across the picture viewing area.'' Accordingly, we shall correct section 15.117(i)(2) by striking the inappropriate language.

191. *V-Chip Requirements:* We also take this opportunity to conform the V-Chip rule codified in the Code of Federal Regulations to the modification of that rule adopted in the *Second DTV Periodic Report and Order.* Section 15.120(b) of the Commission's rules requires that all TV broadcast receivers with picture screens 13 inches or larger in diameter comply with the V-Chip requirements. The codified rule provides:

15.120 Program blocking technology requirements for television receivers.

(b) Effective January 1, 2000, all TV broadcast receivers as defined in section 15.3(w) of this chapter, including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger in diameter shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

192. In 2004, the *Second DTV Periodic Report and Order* extended the V-Chip requirements to DTV tuners, which are sold without an associated display device, such as analog-to-digital converter boxes, DVD recorders, and other nondisplay devices with DTV tuners. In addition, the *Second DTV Periodic Report and Order* adopted measurement criteria associated with the 16:9 aspect ratio for devices that include a display. Specifically, the *Second DTV Periodic Report and Order* provided:

> Additionally, we are adopting our proposal to apply v-chip rules to digital television receivers with displays in the 16:9 aspect ratio that are 7.8 inches or greater in height. Furthermore, we are requiring that v-chip technology be included in all digital television receivers with integrated 4:3 displays measuring at least 13 inches diagonally. *Similar to our requirements for closed caption capabilities in digital television receivers, the rules will also be applicable to DTV tuners which are sold without an associated display device.*

193. The Commission, however, did not make the corresponding revisions to section 15.120(b) as codified in the CFR to reflect these changes. We now make this adjustment to the codified rule to reflect the revision adopted in 2004. We also correct the rule reference to ''diameter,'' which should have been ''measured diagonally'' in the rules to conform with the description adopted in the *V-Chip Order* (Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 FR 20131, April 23, 1998.)

194. These changes are permitted because they simply conform the codified rule to the rule amendment adopted by the Commission in the *Second DTV Periodic Report and Order* after notice and comment. Therefore, we find ''good cause'' under section 553 of the APA for making this conforming change because additional notice and comment is unnecessary.

4. Fees for Ancillary and Supplementary Services

195. We hereby revise section 73.624(g) to include permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions that earn revenue from feeable ancillary and supplementary services. As currently written, this rule refers to the payment of such fees only by ''DTV licensees.'' In the *Third DTV Periodic Review NPRM*, we sought comment on section 73.624(g) of the Commission's rules, which requires DTV licensees to report whether they have provided ancillary and supplementary services and, if so, pay a fee of five percent of gross revenues derived from certain of those services. We asked whether the Commission can and should revise its rules to require that all DTV broadcasters should be subject to the provisions of section 73.624(g). We did not receive any comments on this issue.

196. The Telecommunications Act of 1996 (''1996 Act'') established the framework for licensing DTV spectrum

to existing broadcasters and authorized the Commission to permit broadcasters the opportunity to offer ancillary or supplementary services consistent with the public interest. The 1996 Act also required the Commission to establish a program to assess and collect fees for certain ancillary or supplementary services. In 1999, the Commission adopted rules implementing this provision. Section 73.624(g) of the Commission's rules requires all ''[c]ommercial and noncommercial DTV licensees'' to remit annually to the Commission a fee of five percent of the gross revenues derived from feeable ancillary or supplementary services. The Commission created FCC Form 317 to be filed annually by DTV licensees to report whether they have provided ancillary or supplementary services in the previous year and whether any of the services provided were subject to a fee. (If a licensee has provided feeable services during the 12 month period ending on September 30, the licensee is required to remit the fee for such services by December 1 of that year on FCC Form 159. 47 CFR 73.624(g)(2)(ii).)

197. The Commission has allowed some DTV stations to provide DTV service pursuant to an STA. Because the Commission's rules apply the fee requirement to ''licensees,'' however, stations operating pursuant to an STA have not been filing Form 317 or paying fees on any feeable services they might be providing.

198. Section 336(e) of the Act uses the term ''licensees'' in directing the Commission to collect fees for ancillary or supplementary use of a frequency. However, neither the statute nor the legislative history suggest that the use of the term ''licensee'' was intended to create a limited identifiable class of DTV broadcasters that would be subject to the fee provisions of section 336(e). In addition, we note that a primary goal of the legislation is: ''(i) To recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource.'' (We revise FCC Form 317, accordingly.) The statute is silent on the precise issue at hand, i.e., whether DTV broadcasters that are operating pursuant to STA or other FCC authorization should similarly be required to pay fees on revenues received in connection with feeable ancillary or supplementary services. However, we conclude that the current system, by excluding some broadcasters, limits the public's recovery and thus unfairly advantages those who fall outside the scope of the current rule. Accordingly, we will widen the class of broadcasters included in Section 73.624(g) to better carry out our obligation under Section 336(e) to ensure that the public recovers a portion of the value of the public spectrum resource made available for commercial use and avoid unjust enrichment of broadcasters that use that resource.

5. Station Identification

199. We revise our rules regarding station identification requirements for digital stations in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station, or another programming source. In these situations, we will not require that the source of the programming be identified by the station whose multicast stream is being used to carry the programming. (Thus, if Station WYYY–DT is using one of its multicast streams to carry the programming of WXXX, WYYY–DT is not required to identify WXXX as the source of this programming. However, both WYYY and WXXX must otherwise comply with the station identification requirements in 47 CFR 73.1201 and must air station identification announcements for programming being transmitted by the station. Thus, for example, WXXX must air announcements with respect to its transmissions in its local market.) However, if the station whose multicast stream is being used to carry the programming chooses to identify the station that is the source of the programming, we will require that the following format be used:

Station WYYY–DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming).

200. We invited comment in the *Third DTV Periodic Review NPRM* on whether our current station identification rules for digital stations provide sufficient clarity to broadcasters and viewers. We specifically invited comment on whether the current rules provide for appropriate identification of multicast channels, particularly in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station. While we received no comment on this issue, we find that it is appropriate to revise our rules to enable stations that are sharing their broadcast streams with other licensees to provide clear identification of both the programming source (the station providing the programming) and the station on whose multicast stream the programming is transmitted. (Station identification is required only for licensees and permittees. Other programming providers need not be identified except as required by the sponsorship identification rules. *See* 47 CFR 73.1212.) We are aware that stations are increasingly sharing spectrum with other licensees and the Media Bureau receives numerous informal requests for guidance regarding station identification requirements in these circumstances. We find that the approach we adopt today will provide for clear identification of stations in situations in which a multicast station carrying programming provided by another station chooses to identify that station as the source of the programming. As stations transition to digital format and provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming viewers are watching becomes increasingly important, both for the viewers and for stations themselves.

201. *Background.* In 2004, the Commission established rules generally requiring DTV stations to follow the same rules for station identification as analog stations. Specifically, digital stations are required to make station identification announcements, either visually or aurally, at the beginning and end of each time of operation as well as hourly. The identification must consist of the station's call letters followed by the community or communities specified in the station's license as the station's location. Stations may insert between the call letters and the station's community of license the station's frequency, channel number, name of the licensee, and/or the name of the network, at their discretion.

202. A station choosing to include its channel number in its station identification must use the major (analog) channel number. (Thus, a broadcaster who operates an NTSC service on channel ''26'' and a DTV service on channel ''27'' would use the major channel ''26'' in station identification announcements.) The Commission adopted the ATSC A/65B standard and noted that PSIP, which is part of that standard, allows viewers to see a broadcaster's major channel number regardless of the broadcaster's allotted frequency for its digital broadcast channel. (This allows broadcasters to keep their existing channel number in the digital world,

thereby assisting viewers who have come to identify these numbers with particular broadcasters and preserving the investment broadcasters have made in marketing these numbers.) The Commission permitted stations choosing to multicast to include additional information in their station announcements identifying each of the station's program streams. (Thus, a station with major channel number 26 might have channel 26.0 (NTSC program stream), channel 26.1 (HDTV), and 26.2 (SDTV). Stations may provide information in the station announcement identifying the network affiliation of the program service (*e.g.*, ''WXXX–DT, channel 26.1, YYY (community of license), your QQ network channel''). Stations simulcasting their analog programming on their digital channel are permitted to make station identification announcements simultaneously for both stations as long as the identification includes both call signs (*e.g.*, ''WXXX–TV and WXXX–DT'') if it is intended to serve as the identification for both program streams. Stations simulcasting the analog stream on the digital channel may also do a shortened identification for both streams (*e.g.*, ''WXXX–TV/DT'').

203. *Discussion.* We hereby revise our station identification rules for those stations that broadcast a multicast stream that airs programming provided by another broadcast station and that choose to identify the station that is the source of the programming. When a station chooses to make such identification, we will require that the following format be used: ''Station WYYY–DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming).'' The transmitting station may insert between its call letters and its community of license the following information: The frequency of the transmitting station, the channel number of the transmitting station, the name of the licensee of the transmitting station and the name of the licensee providing the programming, and/or the name of the network affiliation for either station. Where a multicast station is carrying the programming of another station and is identifying that station as the source of the programming, using the mandatory format described above, to avoid confusion the identification should not include the frequency or channel number of the program source.

VI. Final Regulatory Flexibility Analysis

204. As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.* has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, Title II, 110 Stat. 847 (1996).), as amended (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was included in the Notice of Proposed Rulemaking to this proceeding (''*Third DTV Periodic Review NPRM*''). The Commission sought written public comment on the proposals in the *Third DTV Periodic Review NPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

205. This Report and Order in the third periodic review of the Commission's rules and policies affecting the conversion of the nation's broadcast television system to digital television (''DTV'') resolves issues necessary to complete this transition from analog to DTV. The Commission conducts these periodic reviews in order to assess the progress of the DTV transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. In 2005, Congress mandated that, after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.

206. With the DTV transition deadline less than 14 months away, our focus is now on overseeing broadcasters' construction of facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog. Specifically, this Report and Order adopts rules to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels upon expiration of the February 17, 2009 transition deadline. The Commission wants to ensure that no consumers are left behind in the DTV transition. The Commission recognizes that the transition is a complex undertaking presenting many challenges to the broadcast industry, and that some disruption of television service may be unavoidable leading up to the analog turn-off. Therefore, the Commission adopts rules to offer broadcasters regulatory flexibility, while at the same time requiring broadcasters to maintain the best possible television service to the public and meet viewers' over-the-air reception expectations after the transition date.

207. The purpose of this Report and Order, generally, is to (1) provide a progress report on the transition; (2) describe the status and readiness of full-power television broadcast stations to complete their transition; (3) adopt procedures and rule changes necessary to ensure that broadcasters meet the statutory transition deadline and complete construction of their final, post-transition facilities while maintaining the best possible television service to their viewers; and (4) address other issues related to the transition. Stations face many challenges in order to be ready to make their transition by the February 17, 2009 statutory transition deadline. Stations must focus their full attention on constructing their final digital facilities before they must cease analog operations.

208. The primary objective of this Report and Order is to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, DTV facility. In addition, the Report and Order offers broadcasters to the extent possible regulatory flexibility to meet these goals.

209. *Mandatory Termination of Analog Television Broadcasting.* By statute, after the February 17, 2009 transition date, all full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. (Congress established February 17, 2009 as the hard deadline for the end of analog transmissions by full-power television broadcast stations. 47 U.S.C. 309(j)(14)(A). Congress has directed the Commission to ''take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, * * * all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).'') This statutory mandate affords the Commission no discretion to offer any regulatory flexibility to small television broadcasters concerning the mandatory analog turn-off. Rather, to implement this statutory mandate, the Commission must ensure that all full-power

television broadcast stations cease analog broadcasting as of the February 17, 2009 transition date.

210. *Construction Deadlines for DTV Facilities.* The Report and Order sets deadlines for all full-power television broadcast stations to complete construction of their final, post-transition (DTV) facility in order to ensure that DTV stations will be providing service on their final, post-transition channels by the February 17, 2009 transition date. The Report and Order sets construction deadlines based on a station's channel assignment for pre- and post-transition operation, and other circumstances affecting the station's ability to complete final, post-transition facilities. The Report and Order establishes the following deadlines for full-power television broadcast stations to construct their full, authorized post-transition (digital) facilities (as defined in the post-transition DTV Table Appendix B): (1) May 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities; (2) August 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but do not have a license or construction permit that matches their post-transition (DTV Table Appendix B) facilities; (3) February 17, 2009 will be the construction deadline for: (a) stations building digital facilities based on a new channel allotment in the post-transition DTV Table, *i.e.*, stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations; and (b) stations demonstrating that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities.

211. The Report and Order also adopts rules and policies to limit the situations in which stations may obtain more time to satisfy the construction deadlines adopted for completion of final, post-transition facilities. Stations with a construction deadline on or before February 17, 2009 must comply with the revised rule section 73.624(d). Specifically, the revised rule section 73.624(d) no longer grants stations additional time to construct because of equipment delays, absent extraordinary circumstances. (The proposed rule would continue to allow extension requests based on stations' inability to construct because of delays in obtaining zoning or FAA approvals, or similar constraints. 47 CFR 73.624(d)(3)(ii)(A).) The revised rule also requires a stronger demonstration of financial hardship than is now required. The revised financial hardship standard requires the licensee or permittee of a station to show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. Stations seeking an extension based upon financial considerations under this new rule would either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations must submit a schedule of when they expect to complete construction. As previously required, stations making such requests must electronically file FCC Form 337. Stations with a construction deadline occurring February 18, 2009 or later may only obtain more time to meet their construction deadline under the tolling standard set forth in section 73.3598(b) of the rules, which now applies to DTV singletons, analog TV, and other broadcast services. Stations must file a notification to inform the Commission of the circumstances that it believes should toll its construction period. Stations filing such notifications must do so electronically through the CDBS using the Informal Application filing form (The proposed rule would continue to allow extension requests based on stations' inability to construct because of delays in obtaining zoning or FAA approvals, or similar constraints. 47 CFR 73.624(d)(3)(ii)(A)).

B. Summary of Significant Issues Raised By Public Comments in Response to the IRFA

212. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

213. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. (Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).) A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. (Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.)

214. We adopt our tentative conclusion in the *Third DTV Periodic Review NPRM* and find that only full-power television broadcast stations will be directly and primarily affected by rules adopted in this Report and Order. Although we also find that the rules adopted will not directly affect Class A TV stations, low power television (''LPTV'') stations and TV translator stations, it is still possible that these entities may be affected by the rules adopted. We find, however, that no other types of entities will be directly affected by the rules adopted. (As noted in note 5 of the Report and Order, the statutory transition deadline applies only to full-power stations. *See* 47 U.S.C. 309(j)(14) and 337(e). The transition timing for LPTV, translator and Class A stations will be addressed in a separate proceeding.) Therefore, in this FRFA, we consider the impact of the rules adopted on small television broadcast stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

1. Entities Directly Affected By Proposed Rules

215. *Television Broadcasting.* The rules and policies adopted herein apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' (This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit

visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.) The Commission has estimated the number of licensed commercial television stations to be 1,376. According to Commission review of the BIA Financial Network, MAPro Television Database (''BIA'') on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or about 72 percent) have revenues of $13.0 million or less and thus qualify as small entities under the SBA definition. (We recognize that this total differs slightly from that contained in *Broadcast Station Totals.* However, we are using BIA's estimate for purposes of this revenue comparison.) The Commission has estimated the number of licensed NCE television stations to be 380. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. (''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).) Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

216. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

217. *Class A TV, LPTV, and TV Translator Stations.* The rules and policies adopted herein may also apply to licensees of Class A TV stations, low power television (''LPTV'') stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

2. Entities Not Directly Affected By Rules

218. We adopt our tentative conclusion that the rules adopted herein will not directly affect any other types of entities other than full-power television broadcast station licensees and permittees. In the *Third DTV Periodic Review NPRM,* we invited comment on this tentative conclusion and, in particular, out of an abundance of caution, we invited comment from any small cable operators, small multichannel video programming distributors (''MVPDs''), or small electronics equipment manufacturers who believed they might be directly affected by the proposed rules. (MVPDs include such entities as Direct Broadcast Satellite (DBS) providers, private cable operators (PCOs), also known as satellite master antenna television (SMATV) systems, home satellite dish (HSD) services, multipoint distribution services (MDS)/multichannel multipoint distribution service (MMDS), Instructional Television Fixed Service (ITFS), local multipoint distribution service (LMDS) and open video systems (OVS).) We did not receive comments on this issue. Because the rules adopted herein pertain only to full-power television broadcast licensees and potential licensees of television service, we find that these rules will not directly affect small cable operators, small MVPDs, or small electronics equipment manufacturers. We, thus, adopt our tentative conclusion that these entities fall outside the scope of this FRFA. Accordingly, we do not discuss these entities, which were listed in the IRFA.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

219. The rules and policies adopted by this Report and Order will impose mandatory compliance and reporting requirements on full-power television broadcast stations, including requiring that such stations: (1) Must file a form with the Commission no later than February 18, 2008 detailing their current transition status and their plans for completing their transitions by the statutory deadline, and must file updates to these forms as necessary—and at a minimum by October 20, 2008—until they report the completion of their transition; (2) must file an application for a new or modified construction permit for their final, post-transition (DTV) facility, if the station does not have an existing construction permit for such facility; (3) must file an application for a license to cover their final, post-transition (DTV) facility, if the station does not have an existing license for such facility; (4) must populate, and update as necessary, the Event Information Tables (''EITs'') in PSIP data with accurate information about each event, in accordance with the current version of the ATSC PSIP standard, A/65–C (PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast); (5) must follow a specific format if choosing to identify a licensee that it is transmitting on one of its multicast streams; and (6) must file a notification to document their status as a station facing a ''unique technical challenge'' (warranting a February 17, 2009 construction deadline), if they do not file, or do not include such

information in, an application for post-transition facilities (Forms 301 or 340).

220. In addition, the rules and policies adopted in this Report and Order will impose additional compliance and reporting requirements on full-power television broadcast stations that choose to take advantage of voluntary opportunities for regulatory flexibility offered by this Report and Order. Because these voluntary requirements may afford small television broadcast stations the opportunity for regulatory flexibility and reduced burdens, they are discussed in section E. of this FRFA. (To request various opportunities for regulatory flexibility, stations would have to file applications with the Commission. *See, e.g.*, section V.I.B. of the Report and Order (listing proposed information collections contained in the Report and Order).)

221. *Transition Status Form.* The Report and Order will require that every full-power television broadcast station must file a form with the Commission no later than February 18, 2008 that details (1) the current status of the station's digital transition; (2) the additional steps, if any, the station needs to take to be prepared for the transition deadline; and (3) their timeline to meet the transition deadline. These filings will be posted on the Commission's Web site. Stations must update the form as events warrant and by October 20, 2008 if they have reported the completion of their transition. These forms will assist the Commission, industry, and the public in assessing progress and making plans for the transition date. The form will provide information on the status of each station's construction of final, DTV facilities, allowing the Commission, industry, and the public to track the progress of the DTV transition.

222. *Applications for New or Modified Construction Permits.* Under the current rules, stations that need to construct or modify DTV facilities must file construction permit or modification applications. Commercial stations must file FCC Form 301 and NCE stations must file FCC Form 340. Stations may file an application to modify their authority on their current DTV channel at any time, provided they do not violate the terms of the Commission's filing freeze. According to the Report and Order, 634 stations will not be using their currently authorized DTV channel for post-transition operations and will, therefore, need to file an application to construct their final, DTV facility. In addition, if any of the 1,178 stations that will use their currently authorized DTV channel for post-transition operations need to change their DTV facilities, *e.g.*, because if they do not have an authorization for their intended operations, then such stations will need to file a modification application. Thus, both these groups of stations will need to file applications for their final, post-transition facility. In addition, stations that file such applications will also need to file applications for a license to cover their final, post-transition facility.

223. *Program System and Information Protocol (''PSIP'') Standard.* The Report and Order revises rule section 73.682(d) to reflect the revisions to the ATSC Program System and Information Protocol (''PSIP'') standard since the Second DTV Periodic Report and Order. The current version of the ATSC PSIP standard is A/65–C. PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast. PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the ''major'' channel number), thereby making it easy for viewers to tune to the station's DTV channel even if they only know the station's major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers. This new revision to the ATSC standard further enhances the PSIP standard and support for delivery of data. The updated ATSC PSIP standard now requires broadcasters to populate the EITs with accurate information about each event and to update the EIT if more accurate information becomes available. Currently, many broadcasters provide only general information in the EIT tables. For example, a network affiliate may provide ''network programming'' as the descriptor for the majority of its program offerings.

224. *Station Identification Requirement.* The Report and Order revises rule section 73.1201 of the rules, regarding station identification requirements for DTV stations in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station or another programming source. In these situations, the rules do not require that the source of the programming be identified by the station whose multicast stream is being used to carry the programming. However, if the station whose multicast stream is being used to carry the programming chooses to identify the station that is the source of the programming, the rules are revised to require that the following format be used in making that station identification: ''Station WYYY–DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming).''

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

225. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

226. As previously noted, the Commission has no discretion to offer any regulatory flexibility to small television broadcasters concerning the mandatory analog turn-off on the February 17, 2009 transition date. Rather, to implement this statutory mandate, the Commission must ensure that all full-power television broadcast stations, including small stations, cease analog broadcasting as of the February 17, 2009 transition date.

227. The Report and Order, however, does offer stations opportunities for regulatory flexibility with respect to the other mandatory compliance requirements, most specifically to the post-transition construction deadlines. In formulating these opportunities for regulatory flexibility, the Commission considered the benefits of such regulatory relief to small stations, particularly to NCE stations and small market stations (*i.e.*, stations which are not a top-four network in markets 1–100). To qualify for, and benefit from, some of these opportunities, however,

stations must satisfy additional compliance or reporting requirements.

228. Such opportunities for regulatory flexibility adopted by this Report and Order that will benefit small stations include the following: (1) Stations may qualify for expedited processing of their applications to build post-transition facilities to speed their receipt of construction permits for such facilities; (2) Stations that will not use their pre-transition DTV channel for post-transition operations may forego further construction of their pre-transition DTV channel to the extent that such a facility has been partially built in order to focus their efforts on constructing their final DTV facility on their post-transition channel; (3) Stations may seek STA for one of two provisions for a ''phased transition'' that would afford qualifying stations regulatory relief in meeting their post-transition construction deadlines without disappointing viewer expectations after the transition date; and (4) Stations may request Commission approval to reduce or terminate analog TV or pre-transition DTV service before the transition date if doing so would facilitate their transition, provided they satisfy a viewer notification requirement.

229. *Expedited Processing.* The Report and Order adopts rules and policies to offer expedited processing of stations' applications to build their post-transition facilities that may well benefit smaller stations. Stations may obtain expedited processing provided that their application: (1) Does not seek to expand the station's facilities beyond its final DTV Table Appendix B facilities; (2) specifies facilities that are no more than five percent smaller than those specified in the post-transition DTV Table Appendix B (with respect to predicted population); and (3) is filed within 45 days of the effective date of this Report and Order. It is each station's responsibility to ensure that it can begin operations on its post-transition channel no later than the deadline for the transition on February 17, 2009. Stations also have the responsibility to file their applications in sufficient time before the deadline so that they may be granted by the Commission.

230. *Minor Expansion Applications.* The Report and Order also adopts a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that will not use their pre-transition DTV channel for post-transition operation. This policy will allow added flexibility for stations that wish to use their existing analog channel antenna, which provides benefits for the successful completion of the transition by reducing the demands on equipment suppliers and installation crews during a critical time as the transition date nears.

231. *Regulatory Relief in Meeting Construction Deadlines.* With respect to the construction deadlines established for stations to build final, post-transition facilities, the Report and Order offers a variety of opportunities for regulatory flexibility if it would facilitate the transition and ensure that all full-power stations meet the February 17, 2009 statutory transition date. Small stations, including NCE stations and small market stations (*i.e.*, stations which are not a top-four network in markets 1–100) may particularly benefit from these opportunities for regulatory relief because of the unique challenges they may face in completing their transition.

232. While establishing a stricter standard for requests for extension of time to construct DTV facilities, the Report and Order eliminates the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel. This will help many small stations facing financial challenges to complete construction of DTV facilities while also ensuring that broadcasters continue to focus on the timely construction of the facilities necessary to transition away from analog transmission by the transition date. The Report and Order also allows stations to operate on newly allotted post-transition facilities before the transition deadline provided they would not interfere with existing, pre-transition service.

233. *Provisions for a Phased Transition.* The Report and Order permits stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided: (1) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. The Report and Order also permits stations to operate their post-transition facilities, pursuant to STA, at less than their full, authorized facilities, provided: (1) They demonstrate a legitimate impediment to the construction of such facilities; (2) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (3) They do not cause impermissible interference to other stations or prevent other stations from making their transition. To provide additional regulatory relief for NCE and small market stations (*i.e.*, stations which are not a top-four network in markets 1–100), the Commission will consider on case-by-case basis allowing these stations a reduced service requirement if their circumstances warrant it.

234. *Permanent Reduction or Termination of Analog TV or Pre-Transition DTV Service.* To facilitate the construction of, and commencement of operations on, post-transition facilities, the Report and Order provides stations with the flexibility to permanently reduce or terminate their analog or pre-transition digital service before the transition date, provided the station satisfies the following two requirements: (1) The station demonstrates that its service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and (2) The station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station. In addition, stations may file only a notification to permanently reduce or terminate analog or pre-transition DTV service within 90 days of the transition date, subject only to a viewer notification requirement. These opportunities may provide financial relief to small stations by freeing them to focus their efforts on completion of their final, post-transition facility. Stations must file these requests electronically through the CDBS using the Informal Application filing form.

235. *Temporary Service Disruptions of Less Than 30 Days.* The Report and Order also clarifies that section 73.1615 of the Commission's rules permits stations to reduce or cease service temporarily without prior Commission approval in order to modify existing facilities. Stations may use this existing provision to temporarily reduce or cease existing analog or pre-transition digital service where necessary to facilitate construction of final post-transition facilities. Because this provision does not require prior Commission authorization, and does not require licensees to justify the need for the service disruption, this provision gives stations substantial flexibility to temporarily reduce or cease analog or digital service pre-transition. Stations must notify the Commission before commencing the temporary reduction or cessation of service, but do not need

prior Commission approval. The flexibility accorded by section 73.1615 is intended for service disruptions of 30 days or less. Stations must file these notifications (pursuant to section 73.1615) electronically through the CDBS using the Informal Application filing form.

236. *Other Alternatives Considered.* The *Third DTV Periodic Review NPRM* sought comment on whether small broadcasters would be particularly impacted by updating section 73.682(d) to reflect the new revisions to the ATSC PSIP standard. No comments were received on this issue. The Report and Order determines that the value of EITs to consumers outweighs the burdens of this requirement. The *Third DTV Periodic Review NPRM* also encouraged broadcasters to suggest alternative proposals that would avoid the imposition of significant and unreasonable burdens on small TV broadcasters, consistent with the statutory mandate for full-power TV broadcast stations to cease analog broadcasting by February 17, 2009, as well as with broadcasters' obligation to provide and maintain the best possible TV service to the public. No comments were received on this issue.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

237. None.

G. Report to Congress

238. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VII. Ordering Clauses

239. *It is ordered* that, pursuant to the authority contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337, this Report and Order *is adopted* and the Commission's rules *are hereby amended* as set forth in Appendix B. We find good cause for the rules, forms and procedures adopted in this Report and Order to be effective upon publication of the summary of the Report and Order in the **Federal Register** to ensure that full power television stations can meet the statutory deadline for transitioning to all digital service, except for rule sections 47 CFR 73.682(d), 73.8000(b) and 73.9000(k), provided, however, that the rules, forms and procedures described in the PRA section, above, contain information collection requirements subject to the PRA and are not effective until approved by the OMB. (*See* 5 U.S.C. 553(d)(3) (''The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' *See also* 47 CFR 1.103(a), 1.427(b).) As described in this Report and Order, full power television stations must complete their transition from analog to digital service by February 17, 2009. For stations that must apply for a construction permit to build their post-transition facilities, it is essential that the rules, forms and procedures adopted in this Report and Order be effective upon publication in the **Federal Register**, so that the forms are available for filing (subject to OMB approval by that date) to afford stations adequate time for ordering equipment and scheduling construction in time to meet this deadline and also to report on their transition status (via FCC Form 387) one year in advance of the transition date. Because FCC Forms 301, 337, 340, and 387 have previously been submitted to OMB and because any delay can result in harm to television stations, and, in turn, to their viewers, we find that there is good cause to expedite the effective date of the rules, forms and procedures adopted in this Report and Order. For these reasons, we are also requesting emergency PRA approval from OMB for the FCC Forms 301, 337, 340, and 387.) The Commission will publish a notice in the **Federal Register** announcing when OMB approval for these rules and forms has been received. Rule sections 47 CFR 73.682(d), 73.8000(b), and 73.9000(k) shall become effective 120 days after publication in the **Federal Register**, subject to OMB approval by this date. The Commission will publish a notice in the **Federal Register** announcing when OMB approval for these rule sections has been received and when these rules will take effect.

240. *It is further ordered* that, pursuant to 47 U.S.C. 155(c), the Chief, Media Bureau, is *granted delegated authority* to make revisions where necessary and to establish filing deadlines for the electronic forms adopted in this Report and Order.

241. *It is further ordered* that the filing deadline for FCC Form 387 is February 18, 2008, subject to OMB approval by this date, for all television licensees and permittees.

242. *It is further ordered* that, pursuant to 47 U.S.C. 155(c), the Chief, Media Bureau, is *granted delegated authority* to conduct expedited rulemaking proceedings to amend the DTV Table of Allotments and Appendix B to the DTV Table of Allotments as needed up to the full power transition deadline, including, as appropriate, proceeding without notice and comment for changes that do not adversely affect other stations' post-transition operations.

243. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

244. *It is further ordered* that the Commission *shall send* a copy of this Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 15

Communications equipment, Digital Television, and Digital Television Equipment.

47 CFR Part 73

Digital Television, incorporation by reference, Reporting and recordkeeping requirements, and Television.

47 CFR Part 76

Cable Television and Digital Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 15, 73 and 76 as follows.

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

■ 2. Amend § 15.117 by revising paragraph (i)(2) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(i) * * *

(2) For purposes of this implementation schedule, screen sizes are to be measured diagonally across the picture viewing area.

* * * * *

■ 3. Amend § 15.120 by revising paragraph (b) to read as follows:

§ 15.120 Program blocking technology requirements for television receivers.

* * * * *

(b) Effective January 1, 2000, all TV broadcast receivers as defined in § 15.3(w), including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger in diameter or with displays in the 16:9 aspect ratio that are 19.8 cm (7.8 in) or greater in height and digital television receivers without an associated display device shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 4. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

■ 5. Add a new § 73.616 to read as follows:

§ 73.616 Post-transition DTV station interference protection.

(a) Applications seeking facilities that will operate prior to the end of the DTV transition must also comply with § 73.623.

(b) A petition to add a new channel to the post-transition DTV Table of Allotments contained in § 73.622(i) of this subpart will not be accepted unless it meets: the DTV-to-DTV geographic spacing requirements of § 73.623(d) with respect to all existing DTV allotments in the post-transition DTV Table; the principle community coverage requirements of § 73.625(a); the Class A TV and digital Class A TV protection requirements in paragraph (f) of this section; the land mobile protection requirements of § 73.623(e); and the FM radio protection requirement of § 73.623(f).

(c) The reference coordinates of a post-transition DTV allotment shall be the authorized transmitter site, or, where such a transmitter site is not available for use as a reference point, the coordinates as designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(d) The protected facilities of a post-transition DTV allotment shall be the facilities (effective radiated power, antenna height and antenna directional radiation pattern, if any) authorized by a construction permit or license, or, where such an authorization is not available for establishing reference facilities, the facilities designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(e) An application will not be accepted if it is predicted to cause interference to more than an additional 0.5 percent of the population served by another post-transition DTV station. For this purpose, the population served by the station receiving additional interference does not include portions of the population within the noise-limited service contour of that station that are predicted to receive interference from the post-transition DTV allotment facilities of the applicant or portions of that population receiving masking interference from any other station.

(1) For evaluating compliance with the requirements of this paragraph, interference to populations served is to be predicted based on the 2000 census population data and otherwise according to the procedure set forth in OET Bulletin No. 69: ''Longley-Rice Methodology for Evaluating TV Coverage and Interference'' (February 6, 2004) (incorporated by reference, see § 73.8000), including population served within service areas determined in accordance with § 73.622(e), consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Applicants may request the use of a cell size other than the default of 2.0 km per side, but only requests for cell sizes of 1.0 km per side or 0.5 km per side will be considered. The threshold levels at which interference is considered to occur are:

(i) For co-channel stations, the D/U ratio is +15 dB. This value is only valid at locations where the signal-to-noise ratio is 28 dB or greater. At the edge of the noise-limited service area, where the signal-to-noise (S/N) ratio is 16 dB, this value is +23 dB. At locations where the S/N ratio is greater than 16 dB but less than 28 dB, D/U values are computed from the following formula:

$$D/U = 15+10\log_{10}[1.0/(1.0-10^{-x/10})]$$

Where x = S/N–15.19 (minimum signal to noise ratio)

(ii) For interference from a lower first-adjacent channel, the D/U ratio is −28 dB.

(iii) For interference from an upper first-adjacent channel, the D/U ratio is −26 dB.

(2) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in this section shall not be applicable to these pairs of channels (see § 73.603(a)).

(f) A petition to add a new channel to the post-transition DTV Table or a post-transition DTV station application that proposes to expand its allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A TV station or to a digital Class A TV station authorized pursuant to subpart J of this part, within the protected contour defined in § 73.6010.

(1) Interference is predicted to occur if the ratio in dB of the field strength of a Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699) fails to meet the D/U signal ratios for ''DTV-into-analog TV'' specified in § 73.623(c)(2).

(2) Interference is predicted to occur if the ratio in dB of the field strength of a digital Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699) fails to meet the D/U signal ratios specified in paragraph (e) of this section.

(3) In support of a request for waiver of the interference protection requirements of this section, an applicant for a post-transition DTV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice methodology is provided in OET Bulletin No. 69, which is available through the Internet at *http://www.fcc.gov/oet/info/documents/bulletins/#69*.

Note to § 73.616: When this rule was adopted, the filing freeze announced in an August 2004 public notice (19 FCC Rcd 14810 (MB 2004)) remained in effect. For a short period of time after the filing freeze is lifted, until a date to be announced by a Media Bureau public notice, applicants must protect Appendix B facilities in addition to

any authorized facilities required to be protected pursuant to this rule section.

■ 6. Amend § 73.622 by revising paragraph (f)(4) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(f) * * *

(4) UHF DTV stations may request an increase in power, up to a maximum of 1000 kW ERP, to enhance service within their authorized service area.

* * * * *

■ 7. Amend § 73.623 by revising paragraph (a) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

(a) *General.* This section contains the technical criteria for evaluating applications requesting DTV facilities that do not conform to the provisions of § 73.622 and petitions for rule making to amend the pre-transition DTV Table of Allotments (§ 73.622(b)). Petitions to amend the DTV Table (other than those also expressly requesting amendment of this section) and applications for new DTV broadcast stations or for changes in authorized DTV stations filed pursuant to this section will not be accepted for filing if they fail to comply with the requirements of this section. Petitions for rule making and applications seeking facilities that will operate after the end of the DTV transition must also comply with § 73.616.

* * * * *

■ 8. Amend § 73.624 by adding paragraphs (d)(1)(v) through (vii), revising paragraph (d)(3) and revising paragraphs (g) introductory text and (g)(2) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(d) * * *

(1)* * *

(v) May 18, 2008 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations that will use the same channel used for pre-transition operation for post-transition operation and that, as of December 31, 2007, have a construction permit for facilities that conform to the facilities defined by the new DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87–268 and codified at 47 CFR 73.622(i).

(vi) August 18, 2008 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations that will use the same channel used for pre-transition operation for post-transition operation but which, as of December 31, 2007, do not have a construction permit for facilities that conform to the facilities defined by the new DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87–268 and codified at 47 CFR 73.622(i).

(vii) February 17, 2009 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations whose post-transition digital channel is different from their pre-transition digital channel and for those stations whose post-transition channel is the same as their pre-transition channel but that are subject to a unique technical challenge that has been specifically recognized as such by the Commission.

* * * * *

(3) *Authority delegated.* (i) Authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(ii) For construction deadlines occurring prior to February 18, 2009, the following circumstances may include, but shall not be limited to:

(A) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; or

(B) Where the licensee or permittee is currently the subject of a bankruptcy or receivership proceeding, or is experiencing severe financial hardship as defined by negative cash flow for the past three years.

(iii) For construction deadlines occurring after February 17, 2009, the tolling provisions of § 73.3598 shall apply.

(iv) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

(v) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

* * * * *

(g) Commercial and noncommercial DTV licensees and permittees must annually remit a fee of five percent of the gross revenues derived from all ancillary or supplementary services, as defined by paragraph (b) of this section, which are *feeable*, as defined in paragraphs (g)(2)(i) through (ii) of this section.

* * * * *

(2) Payment of fees. (i) Each December 1, all commercial and noncommercial DTV licensees and permittees will electronically report whether they provided ancillary or supplementary services in the 12-month period ending on the preceding September 30. Licensees and permittees will further report, for the applicable period:

(A) A brief description of the services provided;

(B) Which services were feeable ancillary or supplementary services;

(C) Whether any ancillary or supplementary services provided were not subject to a fee;

(D) Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

(E) The amount of bitstream used to provide ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.

(ii) If a commercial or noncommercial DTV licensee or permittee has provided feeable ancillary or supplementary services at any point during a 12-month period ending on September 30, the licensee or permittee must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12-month period and will remit the payment of the required fee.

(iii) The Commission reserves the right to audit each licensee's or permittee's records which support the calculation of the amount specified on line 23A of Form 159. Each licensee or permittee, therefore, is required to retain such records for three years from the date of remittance of fees.

■ 9. Amend § 73.682 by revising paragraph (d) to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(d) Digital broadcast television transmission standard. Effective May 29, 2008 transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: ''ATSC Standard Digital Audio Compression (AC–3)'' (incorporated by reference, see § 73.8000), ATSC A/53, Parts 1–6: 2007 ''ATSC Digital Television Standard,'' (January 3, 2007), except for section 6.1.2 (''Compression Format Constraints'') of A/53 Part 4: 2007 (''MPEG–2 Video Systems Characteristics'') and the phrase ''see Table 6.2'' in section 6.1.1 Table 6.1 and section 6.1.3 Table 6.3 (incorporated by reference, see § 73.8000), and ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006,'' (January 2, 2006) (incorporated by reference, see § 73.8000). Although not incorporated by reference, licensees may also consult ATSC A/54A: ''Recommended Practice: Guide to Use of the ATSC Digital Television Standard, including Corrigendum No. 1,'' (December 4, 2003, Corrigendum No. 1 dated December 20, 2006, and ATSC A/69: ''Recommended Practice PSIP Implementation Guidelines for Broadcasters,'' (June 25, 2002) (Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303)). ATSC A/54A and ATSC A/69 are available from Advanced Television Systems Committee (ATSC), 1750 K Street, NW., Suite 1200, Washington, DC 20006, or at the ATSC Web site: *http://www.atsc.org/standards.html*.

■ 10. Amend § 73.1201 by revising paragraph (b)(1) to read as follows:

§ 73.1201 Station identification.

* * * * *

(b) *Content.* (1) Official station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location; Provided, That the name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. DTV stations, or DAB Stations, choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a DTV station with major channel number 26 may use 26.1 to identify an HDTV program service and 26.2 to identify an SDTV program service. A DTV station that is devoting one of its multicast streams to transmit the programming of another television licensee must identify itself and may also identify the licensee that it is transmitting. If a DTV station in this situation chooses to identify the station that is the source of the programming it is transmitting, it must use the following format: Station WYYY–DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming). The transmitting station may insert between its call letters and its community of license the following information: the frequency of the transmitting station, the channel number of the transmitting station, the name of the licensee of the transmitting station and the licensee providing the programming, and/or the name of the network of either station. Where a multicast station is carrying the programming of another station and is identifying that station as the source of the programming, using the format described above, the identification may not include the frequency or channel number of the program source. A radio station operating in DAB hybrid mode or extended hybrid mode shall identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

* * * * *

■ 11. Amend § 73.3598 by revising paragraphs (a) and (b) to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV (including full-power DTV), AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

(1) Construction is prevented due to an act of God, defined in terms of natural disasters (*e.g.*, floods, tornados, hurricanes, or earthquakes);

(2) The grant of the permit is the subject of administrative or judicial review (*i.e.*, petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement; or

(3) A request for international coordination, with respect to an original construction permit for a new DTV station, has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received, or the licensee or permittee is challenging the response from Canada or Mexico on the grounds that the facility as approved would not permit the station to serve the population that is both approved by the Commission and served by the station's TV (analog) facility to be vacated by February 17, 2009.

* * * * *

■ 12. Revise § 73.8000 to read as follows:

§ 73.8000 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at the Federal Communications Commission (FCC), 445 12th St., SW., Reference Information Center, Room CY–A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of this

material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) The following materials are available from Advanced Television Systems Committee (ATSC), 1750 K Street, NW., Suite 1200, Washington, DC 20006, or at the ATSC Web site: *http://www.atsc.org/standards.html*.

(1) ATSC A/52: ''ATSC Standard Digital Audio Compression (AC–3),'' 1995, IBR approved for § 73.682.

(2) ATSC A/53 Parts 1–6: 2007 ''ATSC Digital Television Standard,'' (January 3, 2007) as listed below:

(i) A/53, Part 1:2007, ''Digital Television System'' (January 3, 2007), IBR approved for § 73.682.

(ii) A/53, Part 2:2007, ''RF/Transmission System Characteristics'' (January 3, 2007), IBR approved for § 73.682.

(iii) A/53, Part 3:2007, ''Service Multiplex and Transport Subsystem Characteristics'' (January 3, 2007), IBR approved for § 73.682.

(iv) A/53, Part 4:2007, ''MPEG–2 Video System Characteristics'' (January 3, 2007), IBR approved for § 73.682, except for § 6.1.2 of A/53 Part 4: 2007, and the phrase ''see Table 6.2'' in section 6.1.1 Table 6.1 and section 6.1.3 Table 6.3.

(v) A/53, Part 5:2007, ''AC–3 Audio System Characteristics'' (January 3, 2007), IBR approved for § 73.682.

(vi) A/53, Part 6:2007, ''Enhanced AC–3 Audio System Characteristics'' (January 3, 2007), IBR approved for § 73.682.

(3) ATSC A/65B: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,'' (Revision B) March 18, 2003, and IBR approved for §§ 73.9000 and 73.9001.

(4) ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006,'' (January 2, 2006), IBR approved for §§ 73.682 and 73.9000.

(c) The following materials are available for purchase from American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036 or at the ANSI Web site: *http://www.webstore.ansi.org/ansidocstore/default.asp*.

(1) International Standard ISO/IEC 13818–1:2000(E); ''Information Technology Generic Coding of Moving Pictures and Associated Audio Information: Systems,'' 2000, IBR approved for § 73.9000.

(2) [Reserved]

(d) The following materials are available at the FCC, 445 12th St., SW., Reference Information Center, Room CY–A257, Washington, DC 20554, or at the FCC's Office of Engineering and Technology (OET) Web site: *http://www.fcc.gov/oet/info/documents/bulletins/*.

(1) OET Bulletin No. 69: ''Longley-Rice Methodology for Evaluating TV Coverage and Interference'' (February 6, 2004), IBR approved for § 73.616.

(2) [Reserved]

■ 13. Amend § 73.9000 by revising paragraph (k) to read as follows:

§ 73.9000 Definitions.

* * * * *

(k) EIT means Event Information Table as defined in ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006,'' (January 2, 2006), (incorporated by reference, see § 73.8000).

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

14. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 15. Amend § 76.55 by revising paragraph (c)(3) to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

* * * * *

(c) * * *

(3) A television broadcast station that does not deliver to the principal headend, as defined in § 76.5(pp), of a cable system a signal level of −45dBm for analog UHF signals, −49dBm for analog VHF signals, or −61dBm for digital signals at the input terminals of the signal processing equipment, *i.e.*, the input to the first active component of the signal processing equipment relevant to the signal at issue, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

* * * * *

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A: List of Commenters

Comments

1. 54 Broadcasting, Inc. (''54 Broadcasting'') (filed 8/15/07)
2. Advanced Television Systems Committee, Inc. (''ATSC'') (filed 8/7/07)
3. Agape Church, Inc. ''(Agape'') (filed 8/3/07)
4. Allbritton Communications Company (''Allbritton'') (filed 8/16/07)
5. Anderson WFBC–TV Licensee, Inc. (''Anderson'') (filed 8/15/07)
6. Arkansas Educational Television Commission (filed 8/15/07)
7. Association for Maximum Service Television, Inc. and The National Association of Broadcasters, Joint Comments (''MSTV/NAB'') (filed 8/15/07)
8. Association of Federal Communications Consulting Engineers (''AFCCE'') (filed 8/15/07)
9. Association of Public Television Stations and the Public Broadcasting Service (''APTS/PBS'') (filed 8/15/07)
10. Bahakel Communications (''Bahakel'') (filed 8/15/07)
11. Banks Boise, Inc (filed 8/15/07)
12. Barrington Broadcasting Group, LLC (''Barrington'') (filed 8/15/07)
13. Benton Foundation (''Benton.'')[1] (filed 8/15/07)
14. Board of Governors of Missouri State University (filed 8/14/07)
15. Byron W. St. Clair (''St. Clair'') (filed 8/15/07)
16. Calipatria Broadcasting Company, LLC (''Calipatria'') (filed 8/15/07)
17. Capitol Broadcasting Company, Inc.(''Capitol'') (filed 8/15/07)
18. CBS Corporation (''CBS'') (filed 8/15/07)
19. Central Michigan University (filed 8/13/07)
20. Chelsey Broadcasting Company of Youngstown, LLC (''Chelsey'') (filed 8/15/07)
21. Christian Faith Broadcast, Inc. (''CFB'') (filed 8/15/07)
22. Christian Television Network, Inc, Christian Television Network of Iowa, Inc. and Volunteer Christian Television, Inc. (''Christian Network'') (filed 8/15/07)
23. Coalition of Organizations for Accessible Technology (''COAT'') (filed 8/9/07)
24. Cox Broadcasting (''Cox'') (filed 8/15/07)
25. Cohen, Dippell and Everist, P.C. (''Cohen, Dippell and Everist'') (filed 8/15/07)
26. Community Television of Southern California (filed 8/15/07)
27. Consumer Electronics Association (''CEA'') (filed 8/15/07)

[1] The complete list of commenters jointly filing with the Benton Foundation in this pleading include: The Campaign Legal Center, Free Press, Communication Service for the Deaf, Hearing Loss Association of America—New York State, Northern Virginia Center for Deaf and Hard of Hearing Persons, United States Conference of Catholic Bishops, National Hispanic Media Coalition, Democracy Now, Consumer Action, Common Cause Citizen Advocacy Center, Common Cause Illinois, Common Cause Michigan, Common Cause Ohio, Common Cause Wisconsin, Illinois Campaign for Political Reform, Illinois PIRG, League of Women Voters of Minnesota, League of Women Voters of Wisconsin, Ohio Citizen Action Education Fund, Sunshine Project—University of Illinois at Springfield, Take Action Minnesota, Wisconsin Democracy Campaign, Michigan Campaign Finance Network, The Alliance for Community Media, The Center for Digital Democracy, Chicago Media Action.

28. DIRECTV (filed 8/30/07)
29. Du Treil, Lundin & Rackley (''dLR'') (filed 8/14/07)
30. Educational Broadcast Corporation (''EBC'') (filed 8/15/07)
31. Entravision Holdings (''Entravision'') (filed 8/15/07)
32. Esteem License Holdings, Inc. (''Esteem'') (filed 8/15/07)
33. Georgia Public Telecommunications Commission (filed 8/15/07)
34. Glendive Broadcasting Corporation (''Glendive'') (filed 8/15/07)
35. Granite Broadcasting Corporation (''Granite'') (filed 8/15/07)
36. Gray Television, Inc.(''Gray Television'') (filed 8/15/07)
37. Greater Dayton Public Television, Inc. (''Greater Dayton'') (filed 8/15/07)
38. Griffin Communications, LLC (''Griffin'') (filed 8/15/07)
39. Hammett and Edison, Inc. (''Hammett and Edison'') (filed 8/10/07)
40. Harris Corporation (''Harris'')(filed 8/10/07)
41. Hawaii Public Television Foundation (''Hawaii PTV Foundation'') (filed 8/14/07)
42. Hoak Media, LLC (''Hoak'') (filed 8/15/07)
43. Hubbard Broadcasting, Inc. (''Hubbard'') (filed 8/15/07)
44. Independence Television Company (''Independence'') (filed 8/15/07)
45. Independent Communications, Inc. (''Independent, KTTM'') (filed 10/26/07)
46. Independent Communications, Inc. (''Independent, KTTW'') (filed 10/26/07)
47. Independent Multifamily Communications Council (''IMCC'') (filed 11/28/07)
48. Iowa Public Broadcasting Board dba Iowa Public Television (filed 8/15/07)
49. Joseph M. Davis, P.E. (''Davis'') (filed 8/15/07)
50. KCTS Television (filed 8/13/07)
51. Khanna & Guill, Inc.—Consulting Engineers (''Khanna'') (filed 8/29/07)
52. Khanna and Guill (''Khanna 8/8/07'') (filed 8/8/07)
53. KJLA (filed 8/15/07)
54. KRCA License, LLC (''KRCA'') (filed 8/15/07)
55. KSLS, Inc (''KSLS'') (filed 8/15/07)
56. Lambert Broadcasting of Burlington, LLC (''Lambert'') (filed 8/15/07)
57. LeSEA Broadcasting Corporation (''LeSEA'') (filed 8/15/07)
58. LATV Networks (''LATV'') (filed 8/15/07)
59. LG Electronics USA, Inc. (''LG'') (filed 8/15/07)
60. LIN Television Corporation (''LIN'') (filed 8/15/07)
61. Long Communications, LLC (''Long'') (filed 8/15/07)
62. Maranatha Broadcasting Company, Inc. (''Maranatha'') (filed 8/15/07)
63. Meredith Corporation (''Meredith'') (filed 8/15/07)
64. Metropolitan Television Alliance, LLC (filed 8/15/07)
65. Mid-South Public Communications Foundation (''Mid-South'') (filed 8/15/07)
66. Montecito Hawaii License, LLC (''Montecito Hawaii'') (filed 8/15/07)
67. Montecito Television License Corporation of Wichita (''Montecito of Wichita'') (filed 8/15/07)
68. Multicultural Television Broadcasting, LLC (''Multicultural'') (filed 8/15/07)
69. National Cable and Telecommunications Association (''NCTA'') (filed 8/15/07)
70. Native American Public Telecommunications (''NAPT'') (filed 8/15/07)
71. Nebraska Educational Telecommunications Commission and the University of Nebraska (''Nebraska PTV Licensees'') (filed 8/14/07)
72. Nexstar Broadcasting, Inc. (''Nexstar'') (filed 8/15/07)
73. Northeastern Educational Television of Ohio, Inc. (filed 8/15/07)
74. Norwell Television, LLC (''Norwell'') (filed 8/15/07)
75. Oklahoma Educational Television Authority (filed 8/15/07)
76. Pappas Telecasting Companies (''Pappas'') (filed 8/15/07)
77. Parker Broadcasting (''Parker'') (filed 8/15/07)
78. Pennsylvania State University (''Penn State'') (filed 8/15/07)
79. Permian Basin Public Telecommunications, Inc. (''Permian Basin'') (filed 8/15/07)
80. Post-Newsweek Stations, Inc. (''Post-Newsweek'') (filed 8/15/07)
81. Public Broadcasting of Northwest Pennsylvania (''PBNP'') (filed 8/13/07)
82. Quincy Newspapers, Inc. (''Quincy'') (filed 8/15/07)
83. Raycom Media, Inc. (''Raycom'') (filed 8/15/07)
84. River Broadcast Co., LLC (''Red River'') (filed 8/15/07)
85. Rocky Mountain Public Broadcasting Network, Inc. (''Rocky Mountain'') (filed 8/13/07)
86. Saga Quad States Communications, LLC (''Saga'') (filed 8/15/07)
87. School Board of Miami Dade County, Florida (filed 8/3/07)
88. Scripps Howard Broadcasting Company (''Scripps-Howard'') (filed 8/15/07)
89. Scripps Howard Broadcasting—Engineering Statement by John F.X. Browne (''Scripps'') (filed 8/15/07)
90. Shenandoah Valley Educational Television Corporation (''SVETC Stations'') (filed 8/15/07)
91. Sinclair Broadcast Group, Inc. (''Sinclair'') (filed 8/15/07)
92. Sistema Universitario Ana G. Mendez, Inc. (filed 8/14/07)
93. Sky Television, LLC (''Sky'') (filed 8/15/07)
94. Smoky Hills Public Television Corporation (''Smoky Hills'') (filed 8/13/07)
95. Sorensen Television Systems, Inc. (''Sorensen'') (filed 7/24/07)
96. South Carolina Educational Television Commission (filed 8/13/07)
97. Southeastern Media Holdings, Inc. (filed 8/15/07)
98. Southern Broadcast Company of Sarasota (''Broadcast Company of Sarasota'') (filed 8/15/07)
99. St. Louis Regional Educational and Public Television Commission (''St. Louis PTV'') (filed 8/13/07)
100. State of Wisconsin Educational Communications Board (''State of Wisconsin Board'') (filed 8/14/07)
101. Sunbelt Multimedia Co. (''Sunbelt'') (filed 8/15/07)
102. Sunflower Broadcasting, Inc. (''Sunflower'') (filed 8/15/07)
103. Thunder Bay Broadcasting Corporation (''Thunder Bay'') (filed 8/15/07)
104. Tribune Broadcasting Company (''Tribune'') (filed 8/15/07)
105. Tri-State Public Teleplex, Inc. (''Tri-State'') (filed 8/15/07)
106. Twin Cities Public Television, Inc. (''Twin Cities'') (filed 8/15/07)
107. United Communications Corp. (''United'') (filed 8/16/07)
108. University of Alaska (filed 8/15/07)
109. University of Houston System (filed 8/15/07)
110. University of Michigan (filed 8/13/07)
111. University of North Carolina (filed 8/15/07)
112. University of Utah and the Utah State Board of Regents (''Utah Stations'') (filed 8/15/07)
113. Univision (filed 8/15/07)
114. Upper Cumberland Broadcast Council (''UCBC'') (filed 8/14/07)
115. Valley Public Television, Inc. (''Valley'') (filed 8/15/07)
116. Vermont ETV, Inc. (''Vermont ETV'') (filed 8/15/07)
117. Walt Disney Company (''Disney'') (filed 8/15/07)
118. WBOC, Inc. (''WBOC'') (filed 8/15/07)
119. WDEF–TV, Inc. (''WDEF'') (filed 8/15/07)
120. West Virginia Media Holdings, LLC (''West Virginia Media Holdings'') (filed 8/15/07)
121. WGBH Educational Foundation (''WGBH'') (filed 8/15/07)
122. WKSG Public Telecommunications Council (''WKSG'') (filed 8/15/07)
123. WLNY Limited Partnership (''WLNY'') (filed 7/9/07)
124. WPSD–TV, LLC (''WPSD'') (filed 8/15/07)
125. WYFF Hearst-Argyle Television, Inc. (''Hearst-Argyle'') (filed 8/15/07)

Reply Comments

1. Ackerley Broadcasting Operations, LLC (filed 8/30/07)
2. Allbritton Communications Co. and Gannett Co., Inc. (filed 8/30/07)
3. Association of Public Television Stations and the Public Broadcasting Service (filed 8/30/07)
4. Barrington Bay City License, LLC (filed 8/30/07)
5. Belo Corp. (filed 8/30/07)
6. Capitol Broadcasting Company, Inc. (filed 8/30/07)
7. Central NY News, Inc. (filed 8/30/07)
8. Cohen, Dippell and Everist, P.C. (filed 8/30/07)
9. Corridor Television, LLP (filed 8/30/07)
10. Dispatch Broadcast Group (filed 9/4/07)
11. DuTreil, Lundin & Rackley (filed 8/30/07)
12. Echostar Satellite L.L.C. (filed 8/30/07)
13. Grant Communications (filed 8/30/07)
14. Larry E. Will, P.E. (filed 8/30/07)
15. Mid State Television, Inc. (filed 8/30/07)
16. MSTV and NAB (filed 8/30/07)
17. National Cable and Telecommunications Association (''NCTA'') (filed 8/30/07)
18. Sonshine Family Television (filed 8/29/07)

19. Sunbeam Television Corp. (filed 8/30/07)
20. Tribune Broadcasting Company (filed 8/30/07)
21. Walt Disney Company (filed 8/30/07)
22. WQED Multimedia (''WQED'') (filed 8/30/07)

Appendix B: Rule Changes [Reserved]

Note: The rules codified in this Report and Order (FCC 07–228), which were contained in Appendix B of the Report and Order, are set forth following the signature block of this document.

Appendix C: FCC Forms Changes

The Federal Communications Commission revises FCC Form 301 as set forth below:

1. Main Form Section I—General Information, Question 4.b. (Service Type) on page one is revised to allow the filer to indicate whether the application is for pre-transition DTV facilities, post-transition DTV facilities, or both. The revised question will read as follows:

''b. Service Type: ☐ AM ☐ FM ☐ TV ☐ DTV Pre-Transition ☐ DTV Post-Transition ☐ DTV Both (Pre- and Post-Transition)''

2. Instructions Section I.D. (General Information), Item 4 is revised to explain the new service types for DTV applications: (a) DTV Pre-Transition, (b) DTV Post-Transition, (c) DTV Both (Pre- and Post-Transition). Item 4 is revised to add the following new paragraph:

''DTV Service Type: The DTV Pre-Transition service type is for a station whose application relates solely to its pre-transition DTV operation on a channel that is not allotted for post-transition use by this station and will not affect its authorized post-transition operation. The DTV Post-Transition service type is for a station whose application relates solely to its post-transition operation and will not affect its authorized pre-transition operation. The DTV Both (Pre- and Post-Transition) service type is for a station whose application relates to both its pre- and post-transition operation. Only a station whose pre-transition DTV channel is the same as its post-transition channel may use the DTV Both service type.''

3. Form Section III-D—DTV Engineering on page 17 is revised by changing the two paragraphs preceding Question 1. The revised paragraphs will read as follows:

''Complete Questions 1–5, and provide all data and information for the proposed facility, as requested in Technical Specifications, Items 1–13.

''Pre-Transition Certification Checklist. An application concerning a pre-transition channel must complete questions 1(a)–(c), and 2–5. A correct answer of ''Yes'' to all of these questions will ensure an expeditious grant of a construction permit application to modify pre-transition facilities. However, if the proposed facility is located within the Canadian or Mexican borders, coordination of the proposal under the appropriate treaties may be required prior to grant of the application. An answer of ''No'' will require additional evaluation of the applicable information in this form before a construction permit can be granted.

''Post-Transition Expedited Processing. An application concerning a post-transition channel must complete questions 1(a), (d)–(e), and 2–5. A station applying for a construction permit to build its post-transition channel will receive expedited processing if its application (1) does not seek to expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87–268 establishing the new DTV Table of Allotments in 47 CFR 73.622(i) (''new DTV Table Appendix B''); (2) specifies facilities that match or closely approximate those defined in the new DTV Table Appendix B facilities; and (3) is filed within 45 days of the effective date of the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07–91.''

4. Form Section III-D—DTV Engineering, Question 1 on page 17 is revised by changing (b) and (c) and by adding (d) and (e). Revised questions (b) and (c) and new questions (d) and (e) will read as follows:

''(b) It will operate a pre-transition facility from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 CFR 73.622. ☐ Yes ☐ No

''(c) It will operate a pre-transition facility with an effective radiated power (ERP) and antenna height above average terrain (HAAT) that do not exceed the DTV reference ERP and HAAT for this station as established in 47 CFR 73.622. ☐ Yes ☐ No

''(d) It will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87–268 establishing the new DTV Table of Allotments in 47 CFR 73.622(i) (''new DTV Table Appendix B''). ☐ Yes ☐ No ☐ Don't Know''

''(e) It will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B. ☐ Yes ☐ No ☐ Don't Know

5. Instructions to Section III–D (DTV Engineering) is revised to explain that: (i) question 1(a) applies to all facility changes (and both the current and new DTV Tables in 47 CFR 73.622(b) and (i)), (ii) questions 1(b) and 1(c) apply only to applications for pre-transition facilities, and (iii) questions 1(d) and 1(e) apply only to applications for post-transition facilities. Item 1 (of Instructions Section III.H.) is revised as follows:

''Certifications Checklist. Items 1–5 set forth a series of certifications concerning the Commission's technical allotment standards and operational requirements for DTV stations.

''Item 1: The applicant must certify compliance with the digital television channel allotment and operational requirements contained in 47 CFR 73.622. Specifically, this question requires that the applicant certify that (a) the application specifies a channel and community in accordance with the Commission's Table of Television Allotments, 47 CFR 73.622(b) or (i), (b) it will operate a pre-transition facility with a transmitting antenna located within 5 kilometers of the DTV reference coordinates for the station, as referenced in Section 73.622(d) and set forth in the Sixth Report and Order in MM Docket No. 87–268, 12 FCC Rcd 14588 (1997), (c) it will operate with pre-transition facilities that do not exceed the power and antenna height maxima specified in Section 73.622(f), (d) it will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87–268 establishing the new DTV Table of Allotments in 47 CFR 73.622(i), and (e) it will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B.

''If any of items 1(a)–1(c) are answered ''No'' in an application of a pre-transition facility, the applicant must demonstrate in response to Section III–D, Item 11 that the proposal will not cause or increase interference to any other DTV broadcast application, DTV allotment, or analog TV broadcast authorization.

''Interference is to be predicted for pre-transition facilities in accordance with the procedure set forth in Appendix B of the Sixth Report and Order in MM Docket No. 87–268. See 47 CFR 73.623.

''If any of items 1(a), 1(d)–(e) are answered ''No'' in an application of a post-transition facility, the applicant will not qualify for expedited processing.

''Interference is to be predicted for post-transition facilities in accordance with the procedure set forth in the Third DTV Periodic Report and Order in MB Docket No. 07–91. See 47 CFR 73.616 and 73.623.''

6. Form Section III–D—DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Question 11, first paragraph, on page 19 is revised as follows:

''Does the proposed facility satisfy the pre-transition interference protection provisions of 47 CFR 73.623(a) (Applicable only if Certification Checklist Items 1(a), (b), or (c) are answered ''No.'') and/or the post-transition interference protection provisions of 47 CFR 73.616? ☐ Yes ☐ No''

7. Form and Instructions Section III–D—DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Questions, is revised to make non-substantive conforming edits necessary because of the other changes.

The Federal Communications Commission revises FCC Form 340 as set forth below:

8. Main Form Section I—General Information, Question 4.b. (Service Type) on page one is revised to allow the filer to indicate whether the application is for pre-transition DTV facilities, post-transition DTV facilities, or both. The revised question will read as follows:

''b. Service Type: ☐ FM ☐ TV ☐ DTV Pre-Transition ☐ DTV Post-Transition ☐ DTV Both (Pre- and Post-Transition)''

9. Instructions for Section I. (General Information), Item (Question) 4 is revised to explain the new service types for DTV applications: (a) DTV Pre-Transition, (b) DTV Post-Transition, (c) DTV Both (Pre- and Post-Transition). Item (Question) 4 is revised to add the following new paragraph:

''DTV Service Type: The DTV Pre-Transition service type is for a station whose

application relates solely to its pre-transition DTV operation and will not affect its authorized post-transition operation. The DTV Post-Transition service type is for a station whose application relates solely to its post-transition operation and will not affect its authorized pre-transition operation. The DTV Both (Pre- and Post-Transition) service type is for a station whose application relates to both its pre- and post-transition operation. Only a station whose pre-transition DTV channel is the same as its post-transition channel may use the DTV Both service type.''

10. Form Section VII–D—DTV Engineering on page 15 is revised by changing the two paragraphs preceding Question 1. The revised paragraphs will read as follows:

''Complete Questions 1–5, and provide all data and information for the proposed facility, as requested in Technical Specifications, Items 1–13.

''Pre-Transition Certification Checklist. An application concerning a pre-transition channel must complete questions 1(a)–(c), and 2–5. A correct answer of ''Yes'' to all of these questions will ensure an expeditious grant of a construction permit application to change pre-transition facilities. However, if the proposed facility is located within the Canadian or Mexican borders, coordination of the proposal under the appropriate treaties may be required prior to grant of the application. An answer of ''No'' will require additional evaluation of the applicable information in this form before a construction permit can be granted.

''Post-Transition Expedited Processing.'' An application concerning a post-transition channel must complete questions 1(a), (d)–(e), and 2–5. A station applying for a construction permit to build its post-transition channel will receive expedited processing if its application (1) does not seek to expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87–268 establishing the new DTV Table of Allotments in 47 CFR 73.622(i) (''new DTV Table Appendix B''); (2) specifies facilities that match or closely approximate those defined in the new DTV Table Appendix B facilities; and (3) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07–91.

11. Form Section VII–D—DTV Engineering, Question 1, on page 15 is revised by changing (b) and (c) and by adding (d) and (e). Revised questions (b) and (c) and new questions (d) and (e) will read as follows:

''(b) It will operate a pre-transition facility from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 CFR 73.622. ☐ Yes ☐ No

''(c) It will operate a pre-transition facility with an effective radiated power (ERP) and antenna height above average terrain (HAAT) that do not exceed the DTV reference ERP and HAAT for this station as established in 47 CFR 73.622. ☐ Yes ☐ No

''(d) It will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87–268 establishing the new DTV Table of Allotments in 47 CFR 73.622(i) (''new DTV Table Appendix B''). ☐ Yes ☐ No ☐ Don't Know

''(e) It will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B. ☐ Yes ☐ No ☐ Don't Know

12. Instructions to Section VII–D (DTV Engineering) is revised to explain that: (i) question 1(a) applies to all facility changes (see 47 CFR 73.622(a) and (i)), (ii) questions 1(b) and 1(c) apply only to applications for pre-transition facilities, and (iii) questions 1(d) and 1(e). Item 1 (of Instructions to Section VII) is revised as follows:

''Certifications Checklist. Items 1–5 set forth a series of certifications concerning the Commission's technical allotment standards and operational requirements for DTV stations.

''Item 1: The applicant must certify compliance with the digital television channel allotment and operational requirements contained in 47 CFR 73.622. Specifically, this question requires that the applicant certify that (a) the application specifies a channel and community in accordance with the Commission's Table of Television Allotments, 47 CFR 73.622(b) or (i), (b) it will operate a pre-transition facility with a transmitting antenna located within 5 kilometers of the DTV reference coordinates for the station, as referenced in Section 73.622(d) and set forth in the Sixth Report and Order in MM Docket No. 87–268, 12 FCC Rcd 14588 (1997), (c) it will operate with pre-transition facilities that do not exceed the power and antenna height maximum specified in Section 73.622(f), (d) it will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87–268 establishing the new DTV Table of Allotments in 47 CFR 73.622(i), and (e) it will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B.

''If any of items 1(a)–1(c) are answered ''No'' in an application of a pre-transition facility, the applicant must demonstrate in response to Section III–D, Item 11 that the proposal will not cause or increase interference to any other DTV broadcast application, DTV allotment, or analog TV broadcast authorization.

''Interference is to be predicted for a pre-transition facility in accordance with the procedure set forth in Appendix B of the Sixth Report and Order in MM Docket No. 87–268. See 47 CFR 73.623.

''If any of items 1(a), 1(d)–(e) are answered ''No'' in an application of a post-transition facility, the applicant will not qualify for expedited processing.

''Interference is to be predicted for a post-transition facility in accordance with the procedures set forth in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07–91. See 47 CFR 73.616 and 73.623.''

13. Form Section VII–D—DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Question 11, first paragraph, on page 17 is revised as follows:

''Does the proposed facility satisfy the pre-transition interference protection provisions of 47 CFR 73.623(a) (Applicable only if Certification Checklist Items 1(a), (b), or (c) are answered ''No.'') and/or the post-transition interference protection provisions of 47 CFR 73.616? ☐ Yes ☐ No''

14. Form and Instructions Section VII–D—DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Questions, is revised to make non-substantive conforming edits necessary because of the other changes.

The Federal Communications Commission revises FCC Form 317 as set forth below.

15. Form 317 and Instructions are revised to indicate that DTV permittees are required to file the form and report their ancillary and supplementary services.

The Federal Communications Commission revises FCC Form 337 as set forth below:

16. Main Form is revised to reflect the proposed rule revisions to 47 CFR 73.624(d) in section V.C.4. and Appendix A. Specifically, Question 5 on page 2 is revised as follows:

☐ Legal reasons beyond station's control (e.g., litigation, international coordination)
☐ Severe financial hardship (e.g., bankruptcy, negative cash flow)
☐ Other reasons (e.g., natural disasters)

17. Instructions are revised to reflect the proposed rule revisions to 47 CFR 73.624(d) in section V.C.4. and Appendix A. Specifically, Item 5 is revised to by adding a new paragraphs and deleting the last paragraph as follows:

Item 5: Reason for Delay in Construction. In the Fifth Report and Order in MM Docket No. 87–268, 12 FCC Rcd 12809 (1997), on reconsideration, 13 FCC Rcd 6860 (1998), the Commission announced its willingness to grant, on a case-by-case basis, an extension to the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. The Commission also stated that it would modify its existing policies regarding extensions, taking into account problems encountered that are unique to the DTV conversion.

In the Report and Order in MB Docket No. 07–91, [__ FCC Rcd __] (2007), the Commission adopted a stricter standard for the grant of an extension of the applicable DTV construction deadline. See 47 CFR 73.624(d)(3).

First, stations may no longer obtain an extension because of technical reasons, such as equipment delays. Second, the Commission tightened the financial showing required for an extension. While previously requiring a showing that the cost of meeting the minimum build-out requirements exceeded the station's financial resources, the Commission now requires a showing that the station is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past

three years. In order to be considered for an extension due to financial hardship, a station must: (1) Submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. In addition, the station must submit a schedule that outlines the time period for the completion of construction. To the extent that an applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. See 47 CFR 0.459.

The Commission will continue to consider extension requests where the station is facing legal obstacles, where resolution of the issue is truly beyond the control of the station. Such circumstances may include, for example, where a station is awaiting Commission action on an application for a DTV construction permit and action is delayed for reasons beyond the station's control (*e.g.*, obtaining required governmental approvals such as FAA, Canadian and Mexican clearance) or where the Commission's action on the application is the subject of a court appeal.

In addition, the Commission will continue to consider other circumstances that are either unforeseeable or beyond the station's control. Such circumstances may include, for example, acts of God, terrorism, and such natural disasters as floods, tornadoes, hurricanes, earthquakes and other calamities that are unforeseeable events warranting additional time to construct.

In responding to this question, the applicant should attest to the nature of the problem(s) preventing the timely completion of construction and provide a detailed explanation of the reason(s) requiring an additional time to construct its station's DTV facilities.

18. Form and Instructions are revised to make non-substantive changes necessary to update the form.

The Federal Communications Commission creates a new FCC Form—''FCC Form 387: DTV Transition Status Report''—as set forth below:

19. The new Form will contain the following data elements:

Note: This Form must be filed by all full-power broadcast television stations (licensees and permittees) no later than February 18, 2008. Each Licensee/Permittee is responsible for the continuing accuracy and completeness of the information furnished in this Form. Each Licensee/Permittee must update this Form, as necessary, until such Licensee/Permittee reports the completion of its transition (i.e., that it has begun operating its full, authorized facility as defined in the post-transition DTV Table, 47 CFR 73.622(i), and accompanying Appendix B). In addition, Each Licensee/Permittee that has not reported the completion of its full, authorized post-transition facility on this Form on or before October 20, 2008, must update this Form to report their current status as of that date.

SECTION I—GENERAL INFORMATION

Item 1. Licensee/Permittee Information: Legal Name of the Licensee/Permittee; Mailing Address; City; State or Country (if foreign address); ZIP Code; Telephone Number (include area code); E-Mail Address (if available).

Item 2. Contact Information (if different from licensee/permittee): Contact Representative; Firm or Company Name; Mailing Address; City; State or Country (if foreign address); ZIP Code; Telephone Number (include area code); E-Mail Address (if available).

Item 3. Station/Facility Information: (a) FCC Registration Number; Call Sign; Facility ID Number; Community of License: City, State; Network Affiliation (if applicable); (b) Currently Assigned Channels: NTSC Channel; Post-Transition DTV Channel; Pre-Transition DTV Channel (if different from Post-Transition channel); (c) Relevant FCC File No. for Post-Transition Authorization, if on file with Commission (or indicate ''Not Yet Filed''); (d) Post-Transition Construction Deadline: (i) February 17, 2009 if Pre-Transition DTV Channel is different from Post-Transition channel; (ii) Date 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07–91; (iii) February 17, 2009 if the station demonstrates that it faces a unique technical challenge (e.g., side-mounted antenna-related issue) preventing it from completing construction of its full, authorized post-transition facility; (iv) Expiration date of construction permit or pending application for an extension of time to construct a post-transition facility.

SECTION II—POST-TRANSITION FACILITY (Complete All Items Unless Otherwise Indicated)

Item 1. Operational Status: Is the Licensee/Permittee now operating its fully authorized final, DTV (post-transition) facility? ☐ Yes or ☐ No (If YES, Licensee/Permittee is finished with this Form; If NO, go to Item 2.)

Item 2. If Item 1 is NO (i.e., not fully operational), then indicate operational status of final, DTV (post-transition) facility and indicate date Licensee/Permittee expects to begin full, authorized post-transition operations: (check one)

☐ (i). Licensee/Permittee is operating its post-transition facility pursuant to program test authority; see 47 CFR 73.1620(a). If checked, indicate date Licensee/Permittee expects to file its license to cover (FCC Form 302) application.

☐ (ii). Licensee/Permittee is operating its post-transition facility pursuant to special temporary authority (STA) or at a reduced facility. If checked, indicate power level and percentage of analog population covered by reduced facility.

☐ (iii). Licensee/Permittee is not operating its post-transition facility.

Item 3. Construction Status: Has the Licensee/Permittee completed construction of its final, DTV (post-transition) facility? ☐ Yes or ☐ No (If YES, skip Items 4–5 and go to Item 6(a); If NO, go to Item 4.)

Item 4. If Item 3 is NO (i.e., not fully constructed), then indicate construction status of final, DTV (post-transition) facility and indicate date Licensee/Permittee expects to complete construction: (check all that apply)

☐ (i). Licensee/Permittee has not begun construction of its post-transition facility.

☐ (ii). Licensee/Permittee is now constructing its post-transition facility.

☐ (iii). Licensee/Permittee has constructed a reduced post-transition facility and additional construction is needed to complete Licensee/Permittee's fully authorized facility.

Item 5. Construction Permit Status: Does the Licensee/Permittee hold a license or construction permit for its final, DTV (post-transition) facility? ☐ Yes or ☐ No (If YES, then indicate relevant FCC File No. and go to Item 6(a); If NO, skip Item 6(a) and go to Item 6(b)).

Item 6(a). Does the Licensee/Permittee need to modify its license or construction permit in order to match the post-transition facilities defined for the Licensee/Permittee in the new DTV Table of Allotments, 47 CFR 73.622(i), as adopted in the Seventh Report and Order in MB Docket No. 87–268? ☐ Yes or ☐ No (If YES, go to 6(b); If NO, skip Item 6(b).)

Item 6(b). Has the Licensee/Permittee filed an application for a new or modified construction permit for its final, DTV (post-transition) facility? ☐ Yes or ☐ No (If YES, then indicate date filed and relevant FCC File No.; If NO, then indicate date Licensee/Permittee expects to file such application.) (NOTE: To qualify for expedited processing, the Licensee/Permittee must file its application within 45 days of the effective date of Section 73.616 of the rules adopted in the Third DTV Periodic Review proceeding, MB Docket No. 07–91, as well as meet other criteria described in that proceeding.)

SECTION III—NEXT STEPS (For Licensee/Permittees That Are Not Fully Constructed or Operational)

At present, Licensee/Permittee has the following needs that must be addressed before it can fully construct and operate its final, DTV (post-transition) facility: (check all that apply and for all checked responses, describe issue and estimated date of resolution.)

☐ (i). Licensee/Permittee needs to obtain FCC action on a pending application. (If checked, indicate date filed and relevant FCC File No.)

☐ (ii). Licensee/Permittee needs to obtain international government clearance for its post-transition facility.

☐ (iii). Licensee/Permittee needs to obtain FAA approval for its post-transition facility.

☐ (iv). Licensee/Permittee needs to obtain state or local governmental approval (e.g., zoning) for post-transition facility.

☐ (v). Licensee/Permittee needs to obtain, adjust and/or install equipment for its post-transition facility. (If checked, specify need below and indicate when equipment was ordered and expected delivery date.)

☐ (1). New antenna.

☐ (2). Adjust or install antenna (except for side-mount issue).

☐ (3). Switch side-mounted DTV antenna with top-mounted analog antenna.

☐ (4). New transmitter.
☐ (5). Adjust or install transmitter.
☐ (6). General installation of equipment requiring hiring of a tower crew.
☐ (7). Other equipment needs. (If checked, specify.)
☐ (vi). Licensee/Permittee needs to change its tower location or construct a new tower.
☐ (vii). Licensee/Permittee needs to coordinate its transition with other broadcast stations. (If checked, specify Call Signs of those other stations.)
☐ (viii). Licensee/Permittee has other needs that must be addressed before it can fully construct and operate its post-transition facility. (If checked, specify.)

SECTION IV—ANALOG SERVICE

Item 1. Status of Analog Service. (Check one.) Note: Full-power television broadcast stations must cease broadcasting in analog as of the transition date (i.e., February 17, 2009), as required by statute; see 47 U.S.C. 309(j)(14).

☐ (i). Licensee/Permittee will continue to provide full, authorized analog service until the transition date.
☐ (ii). Licensee/Permittee has obtained FCC approval to reduce its analog service prior to the transition date. If checked, indicate relevant FCC File No., date reduced service will begin, power level and percentage of population covered by Licensee/Permittee's analog service.
☐ (iii). Licensee/Permittee has obtained FCC approval to terminate its analog service prior to the transition date. If checked, indicate relevant FCC File No. and date service will cease.
☐ (iv). Licensee/Permittee has filed an application with the FCC requesting approval to reduce its analog service prior to the transition date. If checked, indicate relevant FCC File No., proposed date reduced service would begin, proposed power level and percentage of population that would be covered by Licensee/Permittee's proposed reduced analog service.
☐ (v). Licensee/Permittee has filed an application with the FCC requesting approval to terminate its analog service prior to the transition date. If checked, indicate relevant FCC File No. and proposed date service will cease.

SECTION V—DTV TRANSITION PLAN (For Licensee/Permittees That Are Not Fully Constructed or Operational)

Licensee/Permittee must describe in detail its plans for ceasing analog broadcasting by the February 17, 2009 transition date and for completing construction of its post-transition facility by the deadline. For example, plan must include a detailed timeline of the Licensee/Permittee's plans to complete construction and any necessary testing of the Licensee/Permittee's full, authorized post-transition facility.

SECTION VI—Anti-Drug Abuse Act Certification and Licensee/Permittee's Signature

Note: this Form will be posted on *www.fcc.gov* and *www.dtv.gov.*

20. The Instructions to the new Form will explain the data elements noted above.

Appendix D.—List of Stations Identified as Ready To Commence Post-Transition DTV Operations

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
10173	KTUU–TV	ANCHORAGE	AK	2	10	10
804	KAKM	ANCHORAGE	AK	7	8	8
49632	KTVA	ANCHORAGE	AK	11	28	28
13813	KATN	FAIRBANKS	AK	2	18	18
8651	KTOO	JUNEAU	AK	3	10	10
13814	KJUD	JUNEAU	AK	8	11	11
71325	WDBB	BESSEMER	AL	17	18	18
16820	WABM	BIRMINGHAM	AL	68	36	36
720	WIIQ	DEMOPOLIS	AL	41	19	19
65128	WHDF	FLORENCE	AL	15	14	14
73312	WPXH	GADSDEN	AL	44	45	45
1002	WTJP–TV	GADSDEN	AL	60	26	26
74138	WTTO	HOMEWOOD	AL	21	28	28
57292	WAAY	HUNTSVILLE	AL	31	32	32
591	WAFF	HUNTSVILLE	AL	48	49	49
28119	WZDX	HUNTSVILLE	AL	54	41	41
710	WGIQ	LOUISVILLE	AL	43	44	44
4143	WALA–TV	MOBILE	AL	10	9	9
60827	WMPV–TV	MOBILE	AL	21	20	20
721	WEIQ	MOBILE	AL	42	41	41
60829	WMCF–TV	MONTGOMERY	AL	45	46	46
32851	WDFX–TV	OZARK	AL	34	33	33
84802	WBIH	SELMA	AL	29	29	29
2768	KETG	ARKADELPHIA	AR	9	13	13
35692	KTVE	EL DORADO	AR	10	27	27
2767	KAFT	FAYETTEVILLE	AR	13	9	9
60354	KHOG–TV	FAYETTEVILLE	AR	29	15	15
66469	KFSM–TV	FORT SMITH	AR	5	18	18
29560	KFTA–TV	FORT SMITH	AR	24	27	27
60353	KHBS	FORT SMITH	AR	40	21	21
2769	KTEJ	JONESBORO	AR	19	20	20
33440	KARK	LITTLE ROCK	AR	4	32	32
33543	KATV	LITTLE ROCK	AR	7	22	22
2787	KTHV	LITTLE ROCK	AR	11	12	12
11951	KLRT–TV	LITTLE ROCK	AR	16	30	30
2777	KEMV	MOUNTAIN VIEW	AR	6	13	13
607	KVTN	PINE BLUFF	AR	25	24	24
41212	KASN	PINE BLUFF	AR	38	39	39
29557	KNWA–TV	ROGERS	AR	51	50	50
67347	KSBN–TV	SPRINGDALE	AR	57	39	39
35104	KCFG	FLAGSTAFF	AZ	9	32	32
40993	KTVK	PHOENIX	AZ	3	24	24
41223	KPHO–TV	PHOENIX	AZ	5	17	17
67868	KPAZ–TV	PHOENIX	AZ	21	20	20

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
7143	KASW	PHOENIX	AZ	61	49	49
35095	KWBA	SIERRA VISTA	AZ	58	44	44
25735	KVOA	TUCSON	AZ	4	23	23
2731	KUAT–TV	TUCSON	AZ	6	30	30
44052	KMSB–TV	TUCSON	AZ	11	25	25
48663	KOLD–TV	TUCSON	AZ	13	32	32
11908	KTTU–TV	TUCSON	AZ	18	19	19
2722	KUAS–TV	TUCSON	AZ	27	28	28
24518	KDOC–TV	ANAHEIM	CA	56	32	32
8263	KAEF	ARCATA	CA	23	22	22
29234	KAZA–TV	AVALON	CA	54	47	47
34459	KGET–TV	BAKERSFIELD	CA	17	25	25
4148	KBAK–TV	BAKERSFIELD	CA	29	33	33
63865	KHIZ	BARSTOW	CA	64	44	44
4939	KBSV	CERES	CA	23	15	15
19783	KVEA	CORONA	CA	52	39	39
42640	KVIQ	EUREKA	CA	6	17	17
55435	KEET	EUREKA	CA	13	11	11
58618	KBVU	EUREKA	CA	29	28	28
69733	KVPT	FRESNO	CA	18	40	40
35594	KSEE	FRESNO	CA	24	38	38
56034	KGPE	FRESNO	CA	47	34	34
67494	KAIL	FRESNO	CA	53	7	7
34439	KFTV	HANFORD	CA	21	20	20
35670	KTLA–TV	LOS ANGELES	CA	5	31	31
26231	KWHY–TV	LOS ANGELES	CA	22	42	42
38430	KLCS	LOS ANGELES	CA	58	41	41
58609	KUVS–TV	MODESTO	CA	19	18	18
26249	KION–TV	MONTEREY	CA	46	32	32
35611	KSMS–TV	MONTEREY	CA	67	31	31
56384	KBEH	OXNARD	CA	63	24	24
58605	KCVU	PARADISE	CA	30	20	20
35512	KTFF–TV	PORTERVILLE	CA	61	48	48
55083	KXLA	RANCHO PALOS VERDES	CA	44	51	51
52953	KSPX	SACRAMENTO	CA	29	48	48
51499	KMAX–TV	SACRAMENTO	CA	31	21	21
14867	KCBA	SALINAS	CA	35	13	13
58795	KVCR–TV	SAN BERNARDINO	CA	24	26	26
6124	KPBS	SAN DIEGO	CA	15	30	30
35277	KNSD	SAN DIEGO	CA	39	40	40
10238	KUSI–TV	SAN DIEGO	CA	51	18	18
58827	KSWB–TV	SAN DIEGO	CA	69	19	19
33778	KDTV	SAN FRANCISCO	CA	14	51	51
51189	KBWB	SAN FRANCISCO	CA	20	19	19
37511	KTSF	SAN FRANCISCO	CA	26	27	27
71586	KCNS	SAN FRANCISCO	CA	38	39	39
69619	KBCW–TV	SAN FRANCISCO	CA	44	45	45
35280	KNTV	SAN JOSE	CA	11	12	12
64987	KSTS	SAN JOSE	CA	48	49	49
35663	KTEH	SAN JOSE	CA	54	50	50
22644	KKPX	SAN JOSE	CA	65	41	41
12930	KTAS	SAN LUIS OBISPO	CA	33	34	34
58912	KCSM–TV	SAN MATEO	CA	.....	43	43
59013	KFRE–TV	SANGER	CA	59	36	36
12144	KPMR	SANTA BARBARA	CA	38	21	21
56550	KOVR	STOCKTON	CA	13	25	25
10242	KQCA	STOCKTON	CA	58	46	46
16729	KVMD	TWENTYNINEPALMS	CA	.....	23	23
51429	KFSF–TV	VALLEJO	CA	66	34	34
14000	KJLA	VENTURA	CA	57	49	49
51488	KMPH	VISALIA	CA	26	28	28
16950	KNXT	VISALIA	CA	49	50	50
57219	KTFD–TV	BOULDER	CO	14	15	15
37101	KWHD	CASTLE ROCK	CO	53	46	46
35037	KKTV	COLORADO SPRINGS	CO	11	10	10
35991	KXRM–TV	COLORADO SPRINGS	CO	21	22	22
126	KDVR	DENVER	CO	31	32	32
20476	KRMT	DENVER	CO	41	40	40
48589	KREZ–TV	DURANGO	CO	6	15	15
84224	KRMU	DURANGO	CO	.....	20	20
125	KFCT	FORT COLLINS	CO	22	21	21
70578	KREG–TV	GLENWOOD SPRINGS	CO	3	23	23

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
31597	KFQX	GRAND JUNCTION	CO	4	15	15
70596	KREX–TV	GRAND JUNCTION	CO	5	2	2
24766	KKCO	GRAND JUNCTION	CO	11	12	12
38375	KDEN	LONGMONT	CO	25	29	29
70579	KREY–TV	MONTROSE	CO	10	13	13
59014	KOAA	PUEBLO	CO	5	42	42
70493	WSAH	BRIDGEPORT	CT	43	42	42
53115	WFSB	HARTFORD	CT	3	33	33
3072	WUVN	HARTFORD	CT	18	46	46
74170	WVIT	NEW BRITAIN	CT	30	35	35
74109	WTNH	NEW HAVEN	CT	8	10	10
33081	WCTX	NEW HAVEN	CT	59	39	39
13595	WEDY	NEW HAVEN	CT	65	6	6
13607	WEDN	NORWICH	CT	53	9	9
65670	WETA–TV	WASHINGTON	DC	26	27	27
27772	WHUT–TV	WASHINGTON	DC	32	33	33
72335	WDPB	SEAFORD	DE	64	44	44
51984	WPPX	WILMINGTON	DE	61	31	31
51349	WPPB–TV	BOCA RATON	FL	63	40	40
70649	WFTX	CAPE CORAL	FL	36	35	35
11125	WCLF	CLEARWATER	FL	22	21	21
53465	WKCF	CLERMONT	FL	18	17	17
6744	WBCC	COCOA	FL	68	30	30
25738	WESH	DAYTONA BEACH	FL	2	11	11
81669	WFBD	DESTIN	FL		48	48
22093	WINK–TV	FORT MYERS	FL	11	9	9
71085	WBBH–TV	FORT MYERS	FL	20	15	15
29715	WTCE–TV	FORT PIERCE	FL	21	38	38
69440	WUFT	GAINESVILLE	FL	5	36	36
16993	WCJB–TV	GAINESVILLE	FL	20	16	16
7727	WGFL	HIGH SPRINGS	FL	53	28	28
60536	WAMI–TV	HOLLYWOOD	FL	69	47	47
53116	WJXT	JACKSONVILLE	FL	4	42	42
65046	WTLV	JACKSONVILLE	FL	12	13	13
29712	WJWB	JACKSONVILLE	FL	17	34	34
11909	WAWS	JACKSONVILLE	FL	30	32	32
35576	WTEV–TV	JACKSONVILLE	FL	47	19	19
29719	WJEB–TV	JACKSONVILLE	FL	59	44	44
27290	WPXP	LAKE WORTH	FL	67	36	36
53819	WMOR–TV	LAKELAND	FL	32	19	19
9881	WLCB–TV	LEESBURG	FL	45	46	46
60018	WACX	LEESBURG	FL	55	40	40
22245	WFXU	LIVE OAK	FL	57	48	48
67602	WOPX	MELBOURNE	FL	56	48	48
13456	WPBT	MIAMI	FL	2	18	18
47902	WFOR–TV	MIAMI	FL	4	22	22
63154	WTVJ	MIAMI	FL	6	31	31
12497	WBFS–TV	MIAMI	FL	33	32	32
10203	WBZL	MIAMI	FL	39	19	19
10203	WSFL	MIAMI	FL	39	19	19
67971	WHFT–TV	MIAMI	FL	45	46	46
19183	WZVN–TV	NAPLES	FL	26	41	41
61504	WTVK	NAPLES	FL	46	45	45
70651	WOGX	OCALA	FL	51	31	31
11893	WJXX	ORANGE PARK	FL	25	10	10
72076	WFTV	ORLANDO	FL	9	39	39
41225	WOFL	ORLANDO	FL	35	22	22
54940	WRBW	ORLANDO	FL	65	41	41
11123	WFGC	PALM BEACH	FL	61	49	49
2942	WPGX	PANAMA CITY	FL	28	9	9
6093	WFSG	PANAMA CITY	FL	56	38	38
71363	WEAR–TV	PENSACOLA	FL	3	17	17
17611	WSRE	PENSACOLA	FL	23	31	31
10894	WHBR	PENSACOLA	FL	33	34	34
41210	WJTC	PENSACOLA	FL	44	45	45
21801	WFSU–TV	TALLAHASSEE	FL	11	32	32
82735	WTLF	TALLAHASSEE	FL		24	24
64592	WFLA–TV	TAMPA	FL	8	7	7
68569	WTVT	TAMPA	FL	13	12	12
69338	WUSF–TV	TAMPA	FL	16	34	34
64588	WFTS–TV	TAMPA	FL	28	29	29
71580	WRXY–TV	TICE	FL	49	33	33

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
16788	WVEA–TV	VENICE	FL	62	25	25
52527	WPEC	WEST PALM BEACH	FL	12	13	13
39736	WFLX	WEST PALM BEACH	FL	29	28	28
61084	WXEL–TV	WEST PALM BEACH	FL	42	27	27
70815	WFXL	ALBANY	GA	31	12	12
48813	WUVG–TV	ATHENS	GA	34	48	48
23960	WSB–TV	ATLANTA	GA	2	39	39
70689	WAGA	ATLANTA	GA	5	27	27
51163	WXIA–TV	ATLANTA	GA	11	10	10
64033	WTBS	ATLANTA	GA	17	20	20
22819	WATL	ATLANTA	GA	36	25	25
72120	WGCL–TV	ATLANTA	GA	46	19	19
13206	WATC	ATLANTA	GA	57	41	41
6900	WUPA	ATLANTA	GA	69	43	43
27140	WJBF	AUGUSTA	GA	6	42	42
70699	WAGT	AUGUSTA	GA	26	30	30
3228	WFXG	AUGUSTA	GA	54	51	51
69446	WGSA	BAXLEY	GA	34	35	35
71236	WPXC–TV	BRUNSWICK	GA	21	24	24
3359	WRBL	COLUMBUS	GA	3	15	15
12472	WXTX	COLUMBUS	GA	54	49	49
60825	WELF–TV	DALTON	GA	23	16	16
58262	WGXA	MACON	GA	24	16	16
43847	WMGT	MACON	GA	41	40	40
24618	WGNM	MACON	GA	64	45	45
68058	WHSG–TV	MONROE	GA	63	44	44
54728	WPGA–TV	PERRY	GA	58	32	32
51969	WPXA	ROME	GA	14	51	51
48662	WSAV–TV	SAVANNAH	GA	3	39	39
28155	WSWG	VALDOSTA	GA	44	43	43
34846	KHBC–TV	HILO	HI	2	22	22
37103	KWHH	HILO	HI	14	23	23
4144	KHON–TV	HONOLULU	HI	2	8	8
64548	KITV	HONOLULU	HI	4	40	40
36846	KWHE	HONOLULU	HI	14	31	31
34527	KIKU	HONOLULU	HI	20	19	19
3246	KAAH–TV	HONOLULU	HI	26	27	27
27425	KWBN	HONOLULU	HI	44	43	43
664	KLEI	KAILUA KONA	HI	6	25	25
77483	KPXO	KANEOHE	HI	66	41	41
25685	KGAN	CEDAR RAPIDS	IA	2	51	51
35336	KFXA	CEDAR RAPIDS	IA	28	27	27
21156	KPXR	CEDAR RAPIDS	IA	48	47	47
29108	KBIN–TV	COUNCIL BLUFFS	IA	32	33	33
54011	KLJB–TV	DAVENPORT	IA	18	49	49
56527	KDSM–TV	DES MOINES	IA	17	16	16
35096	KWKB	IOWA CITY	IA	20	25	25
66402	KIMT	MASON CITY	IA	3	42	42
29086	KYIN	MASON CITY	IA	24	18	18
29085	KHIN	RED OAK	IA	36	35	35
66170	KTIV	SIOUX CITY	IA	4	41	41
39665	KMEG	SIOUX CITY	IA	14	39	39
29096	KSIN–TV	SIOUX CITY	IA	27	28	28
29114	KRIN	WATERLOO	IA	32	35	35
62442	KAID	BOISE	ID	4	21	21
59363	KNIN–TV	CALDWELL	ID	9	10	10
56028	KIDK	IDAHO FALLS	ID	3	36	36
62382	KUID	MOSCOW	ID	35	12	12
1270	KPVI	POCATELLO	ID	6	23	23
5875	WYZZ–TV	BLOOMINGTON	IL	43	28	28
42124	WCIA	CHAMPAIGN	IL	3	48	48
25684	WICD	CHAMPAIGN	IL	15	41	41
25684	WICD	CHAMPAIGN	IL	15	41	41
18301	WEIU	CHARLESTON	IL	51	50	50
47905	WMAQ–TV	CHICAGO	IL	5	29	29
72115	WGN–TV	CHICAGO	IL	9	19	19
10802	WTTW	CHICAGO	IL	11	47	47
12279	WYCC	CHICAGO	IL	20	21	21
71428	WCIU–TV	CHICAGO	IL	26	27	27
22211	WFLD	CHICAGO	IL	32	31	31
10981	WCPX	CHICAGO	IL	38	43	43
70119	WSNS–TV	CHICAGO	IL	44	45	45

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
70852	WAND	DECATUR	IL	17	18	18
16363	WBUI	DECATUR	IL	23	22	22
70536	WSEC	JACKSONVILLE	IL	14	15	15
998	WWTO–TV	LASALLE	IL	35	10	10
70537	WMEC	MACOMB	IL	22	21	21
67786	WTCT	MARION	IL	27	17	17
73319	WQAD–TV	MOLINE	IL	8	38	38
5468	WQPT–TV	MOLINE	IL	24	23	23
4301	WUSI–TV	OLNEY	IL	16	19	19
42121	WMBD–TV	PEORIA	IL	31	30	30
28311	WTVP	PEORIA	IL	47	46	46
71561	WQEC	QUINCY	IL	27	34	34
72945	WTVO	ROCKFORD	IL	17	16	16
25686	WICS	SPRINGFIELD	IL	20	42	42
68939	WILL–TV	URBANA	IL	12	9	9
67787	WINM	ANGOLA	IN	63	12	12
56523	WTTV	BLOOMINGTON	IN	4	48	48
66536	WTIU	BLOOMINGTON	IN	30	14	14
10253	WIPX	BLOOMINGTON	IN	63	27	27
13991	WFIE	EVANSVILLE	IN	14	46	46
72041	WEVV	EVANSVILLE	IN	44	45	45
73905	WPTA	FORT WAYNE	IN	21	24	24
13960	WISE–TV	FORT WAYNE	IN	33	19	19
22108	WFWA	FORT WAYNE	IN	39	40	40
48772	WPWR–TV	GARY	IN	50	51	51
49803	WYIN	GARY	IN	56	17	17
32334	WJYS	HAMMOND	IN	62	36	36
40877	WRTV	INDIANAPOLIS	IN	6	25	25
39269	WISH–TV	INDIANAPOLIS	IN	8	9	9
41397	WFYI	INDIANAPOLIS	IN	20	21	21
37102	WHMB–TV	INDIANAPOLIS	IN	40	16	16
146	WXIN	INDIANAPOLIS	IN	59	45	45
73204	WLFI–TV	LAFAYETTE	IN	18	11	11
28462	WNDY–TV	MARION	IN	23	32	32
67869	WKOI–TV	RICHMOND	IN	43	39	39
34167	WFTE	SALEM	IN	58	51	51
41674	WNDU–TV	SOUTH BEND	IN	16	42	42
41671	WNIT	SOUTH BEND	IN	34	35	35
36117	WHME–TV	SOUTH BEND	IN	46	48	48
162115		COLBY	KS		19	19
79258	KDCK	DODGE CITY	KS		21	21
60675	KOOD	HAYS	KS	9	16	16
77063	KSCC	HUTCHINSON	KS	36	35	35
11912	KAAS–TV	SALINA	KS	18	17	17
72358	KSNW	WICHITA	KS	3	45	45
11911	KSAS–TV	WICHITA	KS	24	26	26
72348	KSWC	WICHITA	KS	33	31	31
34171	WKAS	ASHLAND	KY	25	26	26
27696	WLJC–TV	BEATTYVILLE	KY	65	7	7
71861	WKYU–TV	BOWLING GREEN	KY	24	18	18
61217	WNKY	BOWLING GREEN	KY	40	16	16
34177	WKGB–TV	BOWLING GREEN	KY	53	48	48
34204	WCVN–TV	COVINGTON	KY	54	24	24
64017	WDKY–TV	DANVILLE	KY	56	4	4
34181	WKZT–TV	ELIZABETHTOWN	KY	23	43	43
37809	WAGV	HARLAN	KY	44	51	51
34196	WKHA	HAZARD	KY	35	16	16
24915	WYMT–TV	HAZARD	KY	57	12	12
73203	WLEX–TV	LEXINGTON	KY	18	39	39
24914	WKYT–TV	LEXINGTON	KY	27	13	13
34207	WKLE	LEXINGTON	KY	46	42	42
34211	WKON	LEXINGTON	KY	52	44	44
13989	WAVE	LOUISVILLE	KY	3	47	47
21432	WKPC–TV	LOUISVILLE	KY	15	17	17
73692	WBNA	LOUISVILLE	KY	21	8	8
53939	WLKY–TV	LOUISVILLE	KY	32	26	26
28476	WDRB	LOUISVILLE	KY	41	49	49
34195	WKMJ–TV	LOUISVILLE	KY	68	38	38
34212	WKMA–TV	MADISONVILLE	KY	35	42	42
34202	WKMR	MOREHEAD	KY	38	15	15
23128	WUPX–TV	MOREHEAD	KY	67	21	21
34174	WKMU	MURRAY	KY	21	36	36

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
39738	WXIX–TV	NEWPORT	KY	19	29	29
34205	WKOH	OWENSBORO	KY	31	30	30
51991	WPSD–TV	PADUCAH	KY	6	32	32
65758	WKPD	PADUCAH	KY	29	41	41
34200	WKPI–TV	PIKEVILLE	KY	22	24	24
34222	WKSO–TV	SOMERSET	KY	29	14	14
38590	KLPA–TV	ALEXANDRIA	LA	25	26	26
38586	WLPB–TV	BATON ROUGE	LA	27	25	25
70021	WVLA	BATON ROUGE	LA	33	34	34
12520	WGMB	BATON ROUGE	LA	44	45	45
83945	WHMM–DT	HAMMOND	LA		42	42
33471	KATC	LAFAYETTE	LA	3	28	28
33471	KATC	LAFAYETTE	LA	3	28	28
33261	KADN	LAFAYETTE	LA	15	16	16
38588	KLPB–TV	LAFAYETTE	LA	24	23	23
38587	KLTL–TV	LAKE CHARLES	LA	18	20	20
74192	WWL–TV	NEW ORLEANS	LA	4	36	36
37106	WHNO	NEW ORLEANS	LA	20	21	21
21729	WPXL	NEW ORLEANS	LA	49	50	50
70482	KSLA–TV	SHREVEPORT	LA	12	17	17
12525	KMSS–TV	SHREVEPORT	LA	33	34	34
73706	KSHV	SHREVEPORT	LA	45	44	44
13938	WUPL	SLIDELL	LA	54	24	24
38584	KMCT–TV	WEST MONROE	LA	39	38	38
72099	WGBH–TV	BOSTON	MA	2	19	19
25456	WBZ–TV	BOSTON	MA	4	30	30
65684	WCVB–TV	BOSTON	MA	5	20	20
6463	WFXT	BOSTON	MA	25	31	31
72098	WGBX–TV	BOSTON	MA	44	43	43
7692	WBPX	BOSTON	MA	68	32	32
73238	WLVI–TV	CAMBRIDGE	MA	56	41	41
41436	WMFP	LAWRENCE	MA	62	18	18
22591	WLNE–TV	NEW BEDFORD	MA	6	49	49
3978	WLWC	NEW BEDFORD	MA	28	22	22
6868	WWLP	SPRINGFIELD	MA	22	11	11
6476	WDPX	VINEYARD HAVEN	MA	58	40	40
30577	WUNI	WORCESTER	MA	27	29	29
18783	WYDN	WORCESTER	MA	48	47	47
10758	WBFF	BALTIMORE	MD	45	46	46
7933	WNUV	BALTIMORE	MD	54	40	40
40626	WFPT	FREDERICK	MD	62	28	28
65943	WWPB	HAGERSTOWN	MD	31	44	44
71218	WBOC–TV	SALISBURY	MD	16	21	21
39656	WMEA–TV	BIDDEFORD	ME	26	45	45
39649	WMED–TV	CALAIS	ME	13	10	10
39648	WMEB–TV	ORONO	ME	12	9	9
25683	WGME–TV	PORTLAND	ME	13	38	38
53065	WPXT	PORTLAND	ME	51	43	43
16530	WDCQ–TV	BAD AXE	MI	35	15	15
10212	WOTV	BATTLE CREEK	MI	41	20	20
71871	WZPX	BATTLE CREEK	MI	43	44	44
41221	WNEM–TV	BAY CITY	MI	5	22	22
9922	WCMV	CADILLAC	MI	27	17	17
25396	WFQX–TV	CADILLAC	MI	33	47	47
21254	WTOM–TV	CHEBOYGAN	MI	4	35	35
53114	WDIV–TV	DETROIT	MI	4	45	45
74211	WMYD	DETROIT	MI	20	21	21
16817	WTVS	DETROIT	MI	56	43	43
21737	WSMH	FLINT	MI	66	16	16
36838	WOOD–TV	GRAND RAPIDS	MI	8	7	7
68433	WXMI	GRAND RAPIDS	MI	17	19	19
24784	WGVU–TV	GRAND RAPIDS	MI	35	11	11
29706	WHTV	JACKSON	MI	18	34	34
24783	WGVK	KALAMAZOO	MI	52	5	5
11033	WLLA	KALAMAZOO	MI	64	45	45
74094	WSYM–TV	LANSING	MI	47	38	38
36533	WLAJ	LANSING	MI	53	51	51
21259	WLUC–TV	MARQUETTE	MI	6	35	35
455	WADL	MOUNT CLEMENS	MI	38	39	39
67781	WTLJ	MUSKEGON	MI	54	24	24
72052	WEYI–TV	SAGINAW	MI	25	30	30
67792	WAQP	SAGINAW	MI	49	48	48

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
49579	KAWB	BRAINERD	MN	22	28	28
132606	KCGE–DT	CROOKSTON	MN		16	16
4691	KDLH	DULUTH	MN	3	33	33
35525	KQDS–TV	DULUTH	MN	21	17	17
9629	WCCO–TV	MINNEAPOLIS	MN	4	32	32
36395	KMWB	MINNEAPOLIS	MN	23	22	22
35906	KXLT–TV	ROCHESTER	MN	47	46	46
35907	KPXM	ST. CLOUD	MN	41	40	40
68594	KTCA	ST. PAUL	MN	2	34	34
71558	KSMN	WORTHINGTON	MN	20	15	15
19593	KBSI	CAPE GIRARDEAU	MO	23	22	22
41110	KRCG	JEFFERSON CITY	MO	13	12	12
48521	KNLJ	JEFFERSON CITY	MO	25	20	20
11291	WDAF–TV	KANSAS CITY	MO	4	34	34
41230	KCTV	KANSAS CITY	MO	5	24	24
53843	KCPT	KANSAS CITY	MO	19	18	18
64444	KCWE	KANSAS CITY	MO	29	31	31
59444	KSHB–TV	KANSAS CITY	MO	41	42	42
33337	KPXE	KANSAS CITY	MO	50	51	51
33336	KSMO–TV	KANSAS CITY	MO	62	47	47
21251	KTVO	KIRKSVILLE	MO	3	33	33
4326	KMOS–TV	SEDALIA	MO	6	15	15
51102	KOZK	SPRINGFIELD	MO	21	23	23
3659	KSFX–TV	SPRINGFIELD	MO	27	28	28
999	KTAJ–TV	ST. JOSEPH	MO	16	21	21
35693	KTVI	ST. LOUIS	MO	2	43	43
35417	KPLR–TV	ST. LOUIS	MO	11	26	26
48525	KNLC	ST. LOUIS	MO	24	14	14
56524	KDNL–TV	ST. LOUIS	MO	30	31	31
43197	WMAH–TV	BILOXI	MS	19	16	16
43203	WABG–TV	GREENWOOD	MS	6	32	32
60830	WBUY–TV	HOLLY SPRINGS	MS	40	41	41
21250	WDAM–TV	LAUREL	MS	7	28	28
24314	WGBC	MERIDIAN	MS	30	31	31
16539	WNTZ	NATCHEZ	MS	48	49	49
35694	KTVQ	BILLINGS	MT	2	10	10
5243	KSVI	BILLINGS	MT	6	18	18
35724	KULR–TV	BILLINGS	MT	8	11	11
35567	KRTV	GREAT FALLS	MT	3	7	7
34412	KFBB–TV	GREAT FALLS	MT	5	8	8
68717	KMTF	HELENA	MT	10	29	29
35455	KPAX–TV	MISSOULA	MT	8	7	7
69300	WUNF–TV	ASHEVILLE	NC	33	25	25
70149	WASV–TV	ASHEVILLE	NC	62	45	45
65074	WGPX	BURLINGTON	NC	16	14	14
30826	WBTV	CHARLOTTE	NC	3	23	23
74070	WSOC–TV	CHARLOTTE	NC	9	34	34
49157	WCCB	CHARLOTTE	NC	18	27	27
32326	WCNC–TV	CHARLOTTE	NC	36	22	22
10645	WTVI	CHARLOTTE	NC	42	11	11
69292	WUND–TV	EDENTON	NC	2	20	20
21245	WFPX	FAYETTEVILLE	NC	62	36	36
72064	WFMY–TV	GREENSBORO	NC	2	51	51
25544	WUPN–TV	GREENSBORO	NC	48	33	33
54452	WLXI–TV	GREENSBORO	NC	61	43	43
57838	WNCT–TV	GREENVILLE	NC	9	10	10
69149	WUNK–TV	GREENVILLE	NC	25	23	23
65919	WHKY–TV	HICKORY	NC	14	40	40
37971	WPXU–TV	JACKSONVILLE	NC	35	34	34
12793	WAXN–TV	KANNAPOLIS	NC	64	50	50
35385	WTWB–TV	LEXINGTON	NC	20	19	19
35385	WCWG	LEXINGTON	NC	20	19	19
64611	WRAZ	RALEIGH	NC	50	49	49
20590	WRPX	ROCKY MOUNT	NC	47	15	15
48666	WECT	WILMINGTON	NC	6	44	44
72871	WSFX–TV	WILMINGTON	NC	26	30	30
69332	WUNJ–TV	WILMINGTON	NC	39	29	29
10133	WRAY–TV	WILSON	NC	30	42	42
53921	WXII–TV	WINSTON–SALEM	NC	12	31	31
414	WXLV–TV	WINSTON–SALEM	NC	45	29	29
53324	KBME–TV	BISMARCK	ND	3	22	22
41427	KFYR–TV	BISMARCK	ND	5	31	31

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
55684	KXMA–TV	DICKINSON	ND	2	19	19
53315	KJRE	ELLENDALE	ND	19	20	20
22129	WDAY–TV	FARGO	ND	6	21	21
61961	KVLY–TV	FARGO	ND	11	44	44
53313	KSRE	MINOT	ND	6	40	40
49134	KXJB–TV	VALLEY CITY	ND	4	38	38
53318	KWSE	WILLISTON	ND	4	51	51
55683	KXMD–TV	WILLISTON	ND	11	14	14
47987	KHNE–TV	HASTINGS	NE	29	28	28
47975	KLNE–TV	LEXINGTON	NE	3	26	26
72362	KSNK	MCCOOK	NE	8	12	12
65528	WOWT–TV	OMAHA	NE	6	22	22
53903	KETV	OMAHA	NE	7	20	20
47974	KYNE–TV	OMAHA	NE	26	17	17
51491	KPTM	OMAHA	NE	42	43	43
17683	KDUH–TV	SCOTTSBLUFF	NE	4	7	7
48406	WPXG	CONCORD	NH	21	33	33
51864	WNEU	MERRIMACK	NH	60	34	34
23142	WWSI	ATLANTIC CITY	NJ	62	49	49
9739	WMCN–TV	ATLANTIC CITY	NJ		44	44
7623	WGTW–TV	BURLINGTON	NJ	48	27	27
48481	WNJS	CAMDEN	NJ	23	22	22
48477	WNJN	MONTCLAIR	NJ	50	51	51
43952	WMBC–TV	NEWTON	NJ	63	18	18
74215	WXTV	PATERSON	NJ	41	40	40
20818	WFME–TV	WEST MILFORD	NJ	66	29	29
61111	WMGM–TV	WILDWOOD	NJ	40	36	36
35313	KOB–TV	ALBUQUERQUE	NM	4	26	26
55528	KNME–TV	ALBUQUERQUE	NM	5	35	35
993	KNAT–TV	ALBUQUERQUE	NM	23	24	24
1151	KAZQ	ALBUQUERQUE	NM	32	17	17
55049	KASY–TV	ALBUQUERQUE	NM	50	45	45
55516	KRWG–TV	LAS CRUCES	NM	22	23	23
18338	KENW	PORTALES	NM	3	32	32
32311	KASA–TV	SANTA FE	NM	2	27	27
60793	KCHF	SANTA FE	NM	11	10	10
76268	KWBQ	SANTA FE	NM	19	29	29
84215	KNMD–TV	SANTA FE	NM		9	9
35870	KVVU–TV	HENDERSON	NV	5	9	9
69677	KVBC	LAS VEGAS	NV	3	2	2
35042	KLAS–TV	LAS VEGAS	NV	8	7	7
11683	KLVX	LAS VEGAS	NV	10	11	11
67089	KINC	LAS VEGAS	NV	15	16	16
10179	KVWB	LAS VEGAS	NV	21	22	22
10195	KFBT	LAS VEGAS	NV	33	29	29
10179	KVMY	LAS VEGAS	NV	21	22	22
10195	KVCW	LAS VEGAS	NV	33	29	29
63768	KBLR	PARADISE	NV	39	40	40
59139	KTVN	RENO	NV	2	13	13
60307	KRNV	RENO	NV	4	7	7
63331	KOLO–TV	RENO	NV	8	9	9
48360	KRXI–TV	RENO	NV	11	44	44
73363	WNYT	ALBANY	NY	13	12	12
13933	WYPX	AMSTERDAM	NY	55	50	50
23337	WBNG–TV	BINGHAMTON	NY	12	7	7
62210	WICZ	BINGHAMTON	NY	40	8	8
74034	WSKG–TV	BINGHAMTON	NY	46	42	42
64547	WGRZ–TV	BUFFALO	NY	2	33	33
7780	WIVB–TV	BUFFALO	NY	4	39	39
54176	WKBW	BUFFALO	NY	7	38	38
71905	WNLO	BUFFALO	NY	23	32	32
415	WUTV	BUFFALO	NY	29	14	14
67784	WNYO–TV	BUFFALO	NY	49	34	34
74156	WRNN–TV	KINGSTON	NY		48	48
57476	WPTZ	NORTH POLE	NY	5	14	14
46755	WCFE–TV	PLATTSBURGH	NY	57	38	38
67993	WTBY–TV	POUGHKEEPSIE	NY	54	27	27
73964	WROC	ROCHESTER	NY	8	45	45
57274	WXXI–TV	ROCHESTER	NY	21	16	16
413	WUHF	ROCHESTER	NY	31	28	28
73263	WMHT	SCHENECTADY	NY	17	34	34
73264	WCWN	SCHENECTADY	NY	45	43	43

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
60553	WFTY–TV	SMITHTOWN	NY	67	23	23
74151	WTVH	SYRACUSE	NY	5	47	47
73113	WSYR–TV	SYRACUSE	NY	9	17	17
53734	WCNY–TV	SYRACUSE	NY	24	25	25
58725	WNYS–TV	SYRACUSE	NY	43	44	44
40758	WSYT	SYRACUSE	NY	68	19	19
60654	WKTV	UTICA	NY	2	29	29
57837	WUTR	UTICA	NY	20	30	30
16747	WWTI	WATERTOWN	NY	50	21	21
49421	WEAO	AKRON	OH	49	50	50
72958	WBNX–TV	AKRON	OH	55	30	30
50147	WOUB–TV	ATHENS	OH	20	27	27
50141	WOUC–TV	CAMBRIDGE	OH	44	35	35
67893	WDLI–TV	CANTON	OH	17	39	39
43870	WOAC	CANTON	OH	67	47	47
21158	WWHO	CHILLICOTHE	OH	53	46	46
46979	WLWT	CINCINNATI	OH	5	35	35
65666	WCET	CINCINNATI	OH	48	34	34
60556	WQHS–TV	CLEVELAND	OH	61	34	34
50781	WCMH–TV	COLUMBUS	OH	4	14	14
56549	WSYX	COLUMBUS	OH	6	13	13
71217	WBNS–TV	COLUMBUS	OH	10	21	21
74137	WTTE	COLUMBUS	OH	28	36	36
66185	WOSU–TV	COLUMBUS	OH	34	38	38
65690	WDTN	DAYTON	OH	2	50	50
41458	WHIO–TV	DAYTON	OH	7	41	41
73155	WKEF	DAYTON	OH	22	51	51
411	WRGT–TV	DAYTON	OH	45	30	30
8532	WUAB	LORAIN	OH	43	28	28
41893	WMFD–TV	MANSFIELD	OH	68	12	12
11118	WSFJ–TV	NEWARK	OH	51	24	24
25065	WPTO	OXFORD	OH	14	28	28
66190	WPBO	PORTSMOUTH	OH	42	43	43
39746	WOIO	SHAKER HEIGHTS	OH	19	10	10
73354	WNWO–TV	TOLEDO	OH	24	49	49
19190	WUPW	TOLEDO	OH	36	46	46
72062	WFMJ–TV	YOUNGSTOWN	OH	21	20	20
61216	WHIZ–TV	ZANESVILLE	OH	18	40	40
35666	KTEN	ADA	OK	10	26	26
50194	KWET	CHEYENNE	OK	12	8	8
57431	KRSC–DT	CLAREMORE	OK	35	36	36
50198	KOET	EUFAULA	OK	3	31	31
35645	KSWO–TV	LAWTON	OK	7	11	11
66222	KFOR–TV	OKLAHOMA CITY	OK	4	27	27
67999	KTBO–TV	OKLAHOMA CITY	OK	14	15	15
35388	KOKH–TV	OKLAHOMA CITY	OK	25	24	24
50170	KOCB	OKLAHOMA CITY	OK	34	33	33
2566	KOPX	OKLAHOMA CITY	OK	62	50	50
7078	KTPX	OKMULGEE	OK	44	28	28
77480	KTUZ–TV	SHAWNEE	OK	30	29	29
35685	KTUL	TULSA	OK	8	10	10
11910	KOKI–TV	TULSA	OK	23	22	22
54420	KTFO	TULSA	OK	41	42	42
50588	KOAB–TV	BEND	OR	3	11	11
35183	KUCW	COOS BAY	OR	23	22	22
35189	KMTR	EUGENE	OR	16	17	17
50591	KEPB–TV	EUGENE	OR	28	29	29
8322	KLSR–TV	EUGENE	OR	34	31	31
8284	KOTI	KLAMATH FALLS	OR	2	13	13
21649	KATU	PORTLAND	OR	2	43	43
35380	KOIN	PORTLAND	OR	6	40	40
61551	KPIC	ROSEBURG	OR	4	19	19
31437	KTVC	ROSEBURG	OR	36	18	18
35187	KTWC	ROSEBURG	OR	46	45	45
10192	KWBP	SALEM	OR	32	33	33
10192	KRCW	SALEM	OR	32	33	33
39884	WFMZ–TV	ALLENTOWN	PA	69	46	46
23341	WTAJ–TV	ALTOONA	PA	10	32	32
20287	WATM–TV	ALTOONA	PA	23	24	24
60850	WBPH–TV	BETHLEHEM	PA	60	9	9
49711	WSEE–TV	ERIE	PA	35	16	16
13924	WPCB–TV	GREENSBURG	PA	40	50	50

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
73375	WOLF	HAZLETON	PA	56	45	45
73120	WJAC–TV	JOHNSTOWN	PA	6	34	34
23338	WLYH–TV	LANCASTER	PA	15	23	23
25453	KYW–TV	PHILADELPHIA	PA	3	26	26
51568	WTXF–TV	PHILADELPHIA	PA	29	42	42
12499	WPSG	PHILADELPHIA	PA	57	32	32
25454	KDKA–TV	PITTSBURGH	PA	2	25	25
65681	WTAE–TV	PITTSBURGH	PA	4	51	51
73910	WPXI	PITTSBURGH	PA	11	48	48
73907	WPMY	PITTSBURGH	PA	22	42	42
73875	WPGH–TV	PITTSBURGH	PA	53	43	43
55305	WTVE	READING	PA	51	25	25
73318	WNEP–TV	SCRANTON	PA	16	49	49
17010	WYOU	SCRANTON	PA	22	13	13
47929	WVIA–TV	SCRANTON	PA	44	41	41
64690	WQPX	SCRANTON	PA	64	32	32
71225	WBRE–TV	WILKES–BARRE	PA	28	11	11
10213	WPMT	YORK	PA	43	47	47
61573	WVEO	AGUADILLA	PR	44	17	17
54443	WRFB	CAROLINA	PR	52	51	51
18410	WIDP	GUAYAMA	PR	46	45	45
53863	WIPM–DT	MAYAGUEZ	PR	3	35	35
2175	WQTO	PONCE	PR	26	25	25
29000	WVOZ–TV	PONCE	PR	48	47	47
52073	WAPA–TV	SAN JUAN	PR	4	27	27
28954	WTCV	SAN JUAN	PR	18	32	32
58340	WJPX	SAN JUAN	PR	24	21	21
50063	WPXQ	BLOCK ISLAND	RI	69	17	17
47404	WPRI–TV	PROVIDENCE	RI	12	13	13
56092	WSBE–TV	PROVIDENCE	RI	36	21	21
61003	WEBA–TV	ALLENDALE	SC	14	33	33
61007	WJWJ–TV	BEAUFORT	SC	16	44	44
10587	WCBD–TV	CHARLESTON	SC	2	50	50
21536	WCIV	CHARLESTON	SC	4	34	34
71297	WCSC–TV	CHARLESTON	SC	5	47	47
37176	WLTX	COLUMBIA	SC	19	17	17
60963	WOLO–TV	COLUMBIA	SC	25	8	8
61013	WRLK–TV	COLUMBIA	SC	35	32	32
61004	WHMC	CONWAY	SC	23	9	9
17012	WPDE–TV	FLORENCE	SC	15	16	16
61008	WJPM–TV	FLORENCE	SC	33	45	45
61010	WNTV	GREENVILLE	SC	29	9	9
60931	WNEH	GREENWOOD	SC	38	18	18
9054	WFXB	MYRTLE BEACH	SC	43	18	18
61009	WNSC–TV	ROCK HILL	SC	30	15	15
61011	WRET–TV	SPARTANBURG	SC	49	43	43
61012	WRJA–TV	SUMTER	SC	27	28	28
40902	WKTC	SUMTER	SC	63	39	39
17686	KHSD–TV	LEAD	SD	11	10	10
48660	KPRY	PIERRE	SD	4	19	19
17688	KOTA–TV	RAPID CITY	SD	3	2	2
41969	KCLO–TV	RAPID CITY	SD	15	16	16
41964	KPLO–TV	RELIANCE	SD	6	13	13
60728	KCSD	SIOUX FALLS	SD	23	24	24
55379	KDLT–TV	SIOUX FALLS	SD	46	47	47
61072	KUSD	VERMILLION	SD	2	34	34
59137	WRCB–TV	CHATTANOOGA	TN	3	13	13
65667	WTCI	CHATTANOOGA	TN	45	29	29
71353	WDSI	CHATTANOOGA	TN	61	40	40
72060	WFLI–TV	CLEVELAND	TN	53	42	42
28468	WNPX	COOKEVILLE	TN	28	36	36
40761	WEMT	GREENEVILLE	TN	39	38	38
60820	WPGD–TV	HENDERSONVILLE	TN	50	51	51
52628	WPXK	JELLICO	TN	54	23	23
71082	WATE–TV	KNOXVILLE	TN	6	26	26
35908	WVLT–TV	KNOXVILLE	TN	8	30	30
18267	WKOP–TV	KNOXVILLE	TN	15	17	17
19200	WTNZ	KNOXVILLE	TN	43	34	34
83931	WMAK	KNOXVILLE	TN	.....	7	7
42061	WKNO	MEMPHIS	TN	10	29	29
11907	WPTY–TV	MEMPHIS	TN	24	25	25
68518	WLMT	MEMPHIS	TN	30	31	31

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
21726	WPXX–TV	MEMPHIS	TN	50	51	51
11117	WHTN	MURFREESBORO	TN	39	38	38
73188	WKRN–TV	NASHVILLE	TN	2	27	27
418	WZTV	NASHVILLE	TN	17	15	15
9971	WUXP–TV	NASHVILLE	TN	30	21	21
73310	WNAB	NASHVILLE	TN	58	23	23
18252	WETP–TV	SNEEDVILLE	TN	2	41	41
306	KRBC–TV	ABILENE	TX	9	29	29
59988	KTAB–TV	ABILENE	TX	32	24	24
60537	KFTH–TV	ALVIN	TX	67	36	36
1236	KACV–TV	AMARILLO	TX	2	8	8
68834	KPXD	ARLINGTON	TX	68	42	42
8564	KLRU	AUSTIN	TX	18	22	22
35867	KVUE	AUSTIN	TX	24	33	33
35920	KXAN–TV	AUSTIN	TX	36	21	21
33691	KEYE–TV	AUSTIN	TX	42	43	43
144	KNVA	AUSTIN	TX	54	49	49
22589	KFDM–TV	BEAUMONT	TX	6	21	21
12896	KITU–TV	BEAUMONT	TX	34	33	33
83715	KEYU	BORGER	TX		31	31
12523	KVEO	BROWNSVILLE	TX	23	24	24
58835	KPXB	CONROE	TX	49	5	5
28324	KTBU	CONROE	TX	55	42	42
10188	KIII	CORPUS CHRISTI	TX	3	8	8
25559	KRIS–DT	CORPUS CHRISTI	TX	6	13	13
64877	KORO	CORPUS CHRISTI	TX	28	27	27
49324	KERA–TV	DALLAS	TX	13	14	14
17037	KDFI	DALLAS	TX	27	36	36
22201	KDAF	DALLAS	TX	33	32	32
35994	KXTX–TV	DALLAS	TX	39	40	40
73701	KMPX	DECATUR	TX	29	30	30
49326	KDTN	DENTON	TX	2	43	43
32621	KVAW	EAGLE PASS	TX	16	18	18
33764	KDBC–TV	EL PASO	TX	4	18	18
33716	KFOX–TV	EL PASO	TX	14	15	15
51708	KINT–TV	EL PASO	TX	26	25	25
68753	KTFN	EL PASO	TX	65	51	51
51517	KTXA	FORT WORTH	TX	21	18	18
64984	KTMD	GALVESTON	TX	47	48	48
42359	KTAQ	GREENVILLE	TX	47	46	46
34457	KGBT–TV	HARLINGEN	TX	4	31	31
12913	KLUJ–TV	HARLINGEN	TX	44	34	34
56079	KMBH	HARLINGEN	TX	60	38	38
53117	KPRC–TV	HOUSTON	TX	2	35	35
12895	KETH–TV	HOUSTON	TX	14	24	24
51569	KTXH	HOUSTON	TX	20	19	19
23394	KHCW	HOUSTON	TX	39	38	38
69531	KZJL	HOUSTON	TX	61	44	44
60534	KSTR–TV	IRVING	TX	49	48	48
55643	KETK–TV	JACKSONVILLE	TX	56	22	22
51518	KRRT	KERRVILLE	TX	35	32	32
51479	KLDO–TV	LAREDO	TX	27	19	19
70917	KFXK	LONGVIEW	TX	51	31	31
65355	KTXT–TV	LUBBOCK	TX	5	39	39
55031	KJTV–TV	LUBBOCK	TX	34	35	35
69692	KNVO	MC ALLEN	TX	48	49	49
55644	KYTX	NACOGDOCHES	TX	19	18	18
12524	KPEJ	ODESSA	TX	24	23	23
27300	KHCE–TV	SAN ANTONIO	TX	23	16	16
56528	KABB	SAN ANTONIO	TX	29	30	30
64969	KVDA	SAN ANTONIO	TX	60	38	38
10245	KCEN–TV	TEMPLE	TX	6	9	9
35648	KTAL–TV	TEXARKANA	TX	6	15	15
35846	KVCT	VICTORIA	TX	19	11	11
73101	KAVU–TV	VICTORIA	TX	25	15	15
9781	KXXV	WACO	TX	25	26	26
6673	KWBU–TV	WACO	TX	34	20	20
43328	KRGV–TV	WESLACO	TX	5	13	13
69582	KUEN	OGDEN	UT	9	36	36
1136	KUWB	OGDEN	UT	30	48	48
57884	KUPX	PROVO	UT	16	29	29
82576	KUES	RICHFIELD	UT		19	19

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
35823	KUTV	SALT LAKE CITY	UT	2	34	34
68889	KTVX	SALT LAKE CITY	UT	4	40	40
6359	KSL–TV	SALT LAKE CITY	UT	5	38	38
69396	KUED	SALT LAKE CITY	UT	7	42	42
35822	KUSG	ST. GEORGE	UT	12	9	9
82585	KUEW	ST. GEORGE	UT		18	18
69532	WFDC–TV	ARLINGTON	VA	14	15	15
10897	WUPV	ASHLAND	VA	65	47	47
70309	WVIR–TV	CHARLOTTESVILLE	VA	29	32	32
9990	WHTJ	CHARLOTTESVILLE	VA	41	46	46
66378	WVPY	FRONT ROYAL	VA	42	21	21
10019	WNVT	GOLDVEIN	VA		30	30
37808	WLFG	GRUNDY	VA	68	49	49
25932	WHRO–TV	HAMPTON–NORFOLK	VA	15	16	16
5982	WMSY–TV	MARION	VA	52	42	42
47401	WTKR	NORFOLK	VA	3	40	40
67077	WPXV	NORFOLK	VA	49	46	46
5985	WSBN–TV	NORTON	VA	47	32	32
74416	WRIC–TV	PETERSBURG	VA	8	22	22
71127	WAVY–TV	PORTSMOUTH	VA	10	31	31
9762	WGNT	PORTSMOUTH	VA	27	50	50
57832	WTVR–TV	RICHMOND	VA	6	25	25
9987	WCVE–TV	RICHMOND	VA	23	42	42
412	WRLH–TV	RICHMOND	VA	35	26	26
9989	WCVW	RICHMOND	VA	57	44	44
5981	WBRA–TV	ROANOKE	VA	15	3	3
24813	WFXR–TV	ROANOKE	VA	27	17	17
70251	WPXR	ROANOKE	VA	38	36	36
60111	WVPT	STAUNTON	VA	51	11	11
65387	WVBT	VIRGINIA BEACH	VA	43	29	29
70287	WTJX–TV	CHARLOTTE AMALIE	VI	12	44	44
83270	WZVI	CHARLOTTE AMALIE	VI		43	43
11259	WVNY	BURLINGTON	VT	22	13	13
69944	WETK	BURLINGTON	VT	33	32	32
10132	WFFF–TV	BURLINGTON	VT	44	43	43
73344	WNNE	HARTFORD	VT	31	25	25
69946	WVER	RUTLAND	VT	28	9	9
69940	WVTB	ST. JOHNSBURY	VT	20	18	18
69943	WVTA	WINDSOR	VT	41	24	24
4624	KWOG	BELLEVUE	WA	51	50	50
53586	KBCB	BELLINGHAM	WA	24	19	19
62468	KCKA	CENTRALIA	WA	15	19	19
35396	KONG–TV	EVERETT	WA	16	31	31
71023	KTNW	RICHLAND	WA	31	38	38
34847	KING–TV	SEATTLE	WA	5	48	48
66781	KIRO–TV	SEATTLE	WA	7	39	39
34868	KREM–TV	SPOKANE	WA	2	20	20
61978	KXLY–TV	SPOKANE	WA	4	13	13
61956	KSPS–TV	SPOKANE	WA	7	8	8
35606	KSKN	SPOKANE	WA	22	36	36
67950	KTBW–TV	TACOMA	WA	20	14	14
62469	KBTC–TV	TACOMA	WA	28	27	27
35419	KWDK	TACOMA	WA	56	42	42
2506	KAPP	YAKIMA	WA	35	14	14
33752	KYVE	YAKIMA	WA	47	21	21
86496	WTPX	ANTIGO	WI		46	46
77789	WYOW	EAGLE RIVER	WI	34	28	28
74417	WBAY–TV	GREEN BAY	WI	2	23	23
9635	WFRV–TV	GREEN BAY	WI	5	39	39
18798	WPNE	GREEN BAY	WI	38	42	42
26025	WBUW	JANESVILLE	WI	57	32	32
37104	WPXE	KENOSHA	WI	55	40	40
65143	WISC–TV	MADISON	WI	3	50	50
6870	WMTV	MADISON	WI	15	19	19
6096	WHA–TV	MADISON	WI	21	20	20
64545	WKOW–TV	MADISON	WI	27	26	26
10221	WMSN–TV	MADISON	WI	47	11	11
68547	WWRS–TV	MAYVILLE	WI	52	43	43
18793	WHWC–TV	MENOMONIE	WI	28	27	27
42663	WMVS	MILWAUKEE	WI	10	8	8
65680	WISN–TV	MILWAUKEE	WI	12	34	34
71278	WCGV–TV	MILWAUKEE	WI	24	25	25

Facility ID	Call sign	Community	State	Current NTSC channel	Current DTV channel	Post-transition channel
72342	WVCY–TV	MILWAUKEE	WI	30	22	22
42665	WMVT	MILWAUKEE	WI	36	35	35
71427	WDJT–TV	MILWAUKEE	WI	58	46	46
68545	WJJA	RACINE	WI	49	48	48
49699	WJFW–TV	RHINELANDER	WI	12	16	16
33658	KBJR–TV	SUPERIOR	WI	6	19	19
73042	WIWB	SURING	WI	14	21	21
73036	WHRM–TV	WAUSAU	WI	20	24	24
74176	WVVA	BLUEFIELD	WV	6	46	46
71280	WCHS–TV	CHARLESTON	WV	8	41	41
417	WVAH–TV	CHARLESTON	WV	11	19	19
73189	WLPX–TV	CHARLESTON	WV	29	39	39
74169	WVNS–TV	LEWISBURG	WV	59	8	8
23264	WWPX	MARTINSBURG	WV	60	12	12
66804	WOAY–TV	OAK HILL	WV	4	50	50
4685	WTAP–TV	PARKERSBURG	WV	15	49	49
18287	KDEV	CHEYENNE	WY	33	11	11
10036	KCWC–TV	LANDER	WY	4	8	8
17680	KSGW–TV	SHERIDAN	WY	12	13	13

Appendix E: Final Regulatory Flexibility Act Analysis [Reserved]

[**Note:** The Final Regulatory Flexibility Act Analysis, which was contained in Appendix E of the Report and Order (FCC 07–228), is set forth in Section VI. of the **SUPPLEMENTARY INFORMATION**.]

Appendix F: Stations Granted Extension Requests

Call sign	City	State	Fac Id	Prefix	File No.	Type	Deadline
KAMC–DT	Lubbock	TX	40820	BEPCDT	20071116AFH	Extension	5/18/2008
KAMC–DT	Lubbock	TX	40820			Waiver	Dismissed
KAMR–DT	Amarillo	TX	8523	BEPCDT	20071116AGE	Extension	5/18/2008
KAMR–DT	Amarillo	TX	8523			Waiver	Dismissed
KARD–DT	West Monroe	LA	3658	BEPCDT	20071116AFU	Extension	5/18/2008
KARD–DT	West Monroe	LA	3658			Waiver	Dismissed
KATV–DT	Little Rock	AR	33543			Waiver	5/18/2008
KAUZ–DT	Wichita Falls	TX	6864			Waiver	8/18/2008
KAZH–DT	Baytown	TX	70492	BEPCDT	20071116ACY	Extension	5/18/2008
KBFD–DT	Honolulu	HI	65395			Waiver	8/18/2008
KBSV–DT	Ceres	CA	4939	BEPEDT	20070711ACI	Extension	5/18/2008
KBTV–DT	Port Arthur	TX	61214	BEPCDT	20071116AFS and AFT	Extension	5/18/2008
KBTV–DT	Port Arthur	TX	61214			Waiver	Dismissed
KCEB–DT	Longview	TX	83913	BEPCDT	20071102AST	Extension	8/18/2008
KCEC–DT	Denver	CO	24514	BEPCDT	20071121ADZ	Extension	5/18/2008
KCIT–DT	Amarillo	TX	33722	BEPCDT	20071116AFI	Extension	5/18/2008
KCIT–DT	Amarillo	TX	33722			Waiver	Dismissed
KCNC–DT	Denver	CO	47903	BEPCDT	20071026ACU	Extension	5/18/2008
KCSG–DT	Cedar City	UT	59494			Waiver	8/18/2008
KCSM–DT	San Mateo	CA	58912			Waiver	5/18/2008
KDLH–DT	Duluth	MN	4691	BEPCDT	20071018BBN	Extension	8/18/2008
KDMD–DT	Anchorage	AK	25221	BEPCDT	20071119AHP	Extension	8/18/2008
KETC–DT	St. Louis	MO	62182			Waiver	8/18/2008
KEVN–DT	Rapid City	SD	34347			Waiver	2/17/2009
KFDX–DT	Wichita Falls	TX	65370	BEPCDT	20071116AFW	Extension	5/18/2008
KFDX–DT	Wichita Falls	TX	65370			Waiver	Dismissed
KFTR–DT	Ontario	CA	60549			Waiver	5/18/2008
KFXB–DT	Dubuque	IA	17625			Waiver	5/18/2008
KGCW–DT	Burlington	IA	7841			Waiver	5/18/2008
KGMB–DT	Honolulu	HI	36917	BEPCDT	20070911ABX	Extension	2/17/2009
KGMB–DT	Honolulu	HI	36917			Waiver	Dismissed
KGTF–DT	Agana	GU	25511	BEPEDT	20071031ADR	Extension	2/17/2009
KHGI–DT	Kearney	NE	21160	BEPCDT	20071116ADL	Extension	8/18/2008
KHMT–DT	Hardin	MT	47670	BEPCDT	20071116AFL	Extension	8/18/2008
KHMT–DT	Hardin	MT	47670			Waiver	Dismissed
KIDY–DT	San Angelo	TX	58560			Waiver	8/18/2008
KIMA–DT	Yakima	WA	56033	BEPCDT	20070323ABL	Extension	8/18/2008
KIMA–DT	Yakima	WA	56033			Waiver	Dismissed
KIMT–DT	Mason City	IA	66402			Waiver	5/18/2008
KJTL–DT	Wichita Falls	TX	7675	BEPCDT	20071116AFM	Extension	5/18/2008
KJTL–DT	Wichita Falls	TX	7675			Waiver	Dismissed
KLBK–DT	Lubbock	TX	3660	BEPCDT	20071116AGF	Extension	8/18/2008
KLBK–DT	Lubbock	TX	3660			Waiver	Dismissed

Call sign	City	State	Fac Id	Prefix	File No.	Type	Deadline
KLEW–DT	Lewiston	ID	56032			Waiver	5/18/2008
KLST–DT	San Angelo	TX	31114	BEPCDT	20071116AFR	Extension	8/18/2008
KLST–DT	San Angelo	TX	31114			Waiver	Dismissed
KLTJ–DT	Galveston	TX	24436	BEPCDT	20071127AGY	Extension	5/18/2008
KMCC–DT	Laughlin	NV	41237	BEPCDT	20071116ADV	Extension	5/18/2008
KMGH–DT	Denver	CO	40875			Waiver	2/17/2009
KMID–DT	Midland	TX	35131	BEPCDT	20071116AFO	Extension	5/18/2008
KMID–DT	Midland	TX	35131			Waiver	Dismissed
KMTP–DT	San Francisco	CA	43095	BEPEDT	20071210ADC	Extension	2/17/2009
KMVT–DT	Twin Falls	ID	35200			Waiver	2/17/2009
KMYQ–DT	Seattle	WA	69575			Waiver	8/18/2008
KNWS–DT	Katy	TX	31870	BEPCDT	20070430ACQ	Extension	2/17/2009
KODE–DT	Joplin	MO	18283	BEPCDT	20071117AFI	Extension	5/18/2008
KODE–DT	Joplin	MO	18283			Waiver	Dismissed
KPXC–DT	Denver	CO	68695	BEPCDT	20060330AKS	Extension	8/18/2008
KQTV–DT	St. Joseph	MO	20427	BEPCDT	20071119AGD	Extension	2/17/2009
KQTV–DT	St. Joseph	MO	20427			Waiver	Dismissed
KRCB–DT	Cotati	CA	57945	BEPEDT	20071009AJG	Extension	5/18/2008
KREN–DT	Reno	NV	51493			Waiver	5/18/2008
KRWG–DT	Las Cruces	NM	55516			Waiver	5/18/2008
KSAN–DT	San Angelo	TX	307	BEPCDT	20071116AFP	Extension	5/18/2008
KSAN–DT	San Angelo	TX	307			Waiver	Dismissed
KSBI–DT	Oklahoma City	OK	38214			Waiver	2/17/2009
KSBY–DT	San Luis Obispo	CA	19654			Waiver	5/18/2008
KSCE–DT	El Paso	TX	10202	BEPEDT	20071116ACH	Extension	8/18/2008
KSMQ–DT	Austin	MN	28510			Waiver	5/18/2008
KSNB–DT	Superior	NE	21161			Waiver	5/18/2008
KSNF–DT	Joplin	MO	67766	BEPCDT	20071116AGD	Extension	5/18/2008
KSNF–DT	Joplin	MO	67766			Waiver	Dismissed
KSPR–DT	Springfield	MO	35630	BEPCDT	20071205ABH	Extension	8/18/2008
KSVI–DT	Billings	MT	5243	BEPCDT	20071116AFZ	Extension	8/18/2008
KSVI–DT	Billings	MT	5243			Waiver	Dismissed
KSWT–DT	Yuma	AZ	33639	BEPCDT	20071116ADK	Extension	8/18/2008
KSYS–DT	Medford	OR	61350			Waiver	2/17/2009
KTBY–DT	Anchorage	AK	35655	BEPCDT	20071115ACL	Extension	2/17/2009
KTBY–DT	Anchorage	AK	35655			Waiver	Dismissed
KTDO–DT	Las Cruces	NM	36916	BEPCDT	20071116AAJ	Extension	8/18/2008
KTGF–DT	Great Falls	MT	13792			Waiver	5/18/2008
KTLM–DT	Rio Grande City	TX	62354			Waiver	8/18/2008
KTLN–DT	Novato	CA	49153	BEPCDT	20071116AEN	Extension	5/18/2008
KTNL–DT	Sitka	AK	60519	BEPCDT	20071119AHU	Extension	2/17/2009
KTRG–DT	Del Rio	TX	55762	BEPCDT	20071116ADU	Extension	5/18/2008
KTTM–DT	Huron	SD	28501	BEPCDT	20071116AFE	Extension	2/17/2009
KTTW–DT	Sioux Falls	SD	28521	BEPCDT	20071116AFF	Extension	5/18/2008
KTVD–DT	Denver	CO	68581	BEPCDT	20071029AAM	Extension	5/18/2008
KTVG–DT	Grand Island	NE	27220	BEPCDT	20071116ADW	Extension	5/18/2008
KTWO–DT	Casper	WY	18286	BEPCDT	20071119AKM	Extension	5/18/2008
KUBD–DT	Ketchikan	AK	60520	BEPCDT	20071119AHX	Extension	5/18/2008
KVHP–DT	Lake Charles	LA	35852	BEPCDT	20070822AAG	Extension	5/18/2008
KVRR–DT	Fargo	ND	55372			Waiver	5/18/2008
KVTN–DT	Pine Bluff	AR	607	BEPCDT	20071115ACP	Extension	5/18/2008
KWBF–DT	Little Rock	AR	37005	BEPCDT	20071009AAM	Extension	2/17/2009
KWES–DT	Odessa	TX	42007			Waiver	2/17/2009
KWGN–DT	Denver	CO	35883			Waiver	5/18/2008
KWNB–DT	Hayes Center	NE	21162	BEPCDT	20071116ADM	Extension	8/18/2008
KWYB–DT	Butte	MT	14674			Waiver	5/18/2008
KXGN–DT	Glendive	MT	24287	BEPCDT	20071116ABQ	Extension	8/18/2008
WACS–DT	Dawson	GA	23930	BEPEDT	20070907ABD	Extension	5/18/2008
WANE–DT	Fort Wayne	IN	39270			Waiver	5/18/2008
WAWD–DT	Fort Walton Beach	FL	54938			Waiver	8/18/2008
WAZE–DT	Madisonville	KY	74592			Waiver	5/18/2008
WBKB–DT	Alpena	MI	67048			Waiver	2/17/2009
WCFN–DT	Springfield	IL	42116	BEPCDT	20071116AFX	Extension	2/17/2009
WCFN–DT	Springfield	IL	42116			Waiver	Dismissed
WCLP–DT	Chatsworth	GA	23942	BEPEDT	20070907ABI	Extension	5/18/2008
WCVI–DT	Christiansted	VI	83304	BEPCDT	20071119AAE	Extension	8/18/2008
WDBD–DT	Jackson	MS	71326			Waiver	2/17/2009
WDHN–DT	Dothan	AL	43846	BEPCDT	20071116AGA	Extension	5/18/2008
WDHN–DT	Dothan	AL	43846			Waiver	Dismissed
WDTI–DT	Indianapolis	IN	7908	BEPCDT	20071127AIG	Extension	5/18/2008
WELU–DT	Aguadilla	PR	26602	BEPEDT	20071116ABN	Extension	5/18/2008
WEUX–DT	Chippewa Falls	WI	2709			Waiver	5/18/2008
WFFT–DT	Fort Wayne	IN	25040	BEPCDT	20071116AFY	Extension	5/18/2008
WFFT–DT	Fort Wayne	IN	25040			Waiver	Dismissed

Call sign	City	State	Fac Id	Prefix	File No.	Type	Deadline
WFGX–DT	Fort Walton Beach	FL	6554			Waiver	5/18/2008
WFTS–DT	Tampa	FL	64588	BEPCDT	20071109ACA	Extension	2/17/2009
WFXP–DT	Erie	PA	19707	BEPCDT	20071116AFN	Extension	5/18/2008
WFXP–DT	Erie	PA	19707			Waiver	Dismissed
WFXV–DT	Utica	NY	43424	BEPCDT	20071116AFV	Extension	5/18/2008
WFXV–DT	Utica	NY	43424			Waiver	Dismissed
WFXW–DT	Terre Haute	IN	65247	BEPCDT	20071116AFK	Extension	5/18/2008
WFXW–DT	Terre Haute	IN	65247			Waiver	Dismissed
WGGN–DT	Sandusky	OH	11027	BEPCDT	20071115ACW	Extension	8/18/2008
WGGN–DT	Sandusky	OH	11027			Waiver	Dismissed
WGSA–DT	Baxley	GA	89446	BEPCDT	20070905ACX	Extension	8/18/2008
WHAG–DT	Hagerstown	MD	25045	BEPCDT	20071116AFQ	Extension	2/17/2009
WHAG–DT	Hagerstown	MD	25045			Waiver	Dismissed
WJAL–DT	Hagerstown	MD	10259			Waiver	8/18/2008
WJET–DT	Erie	PA	65749	BEPCDT	20071116AGB	Extension	2/17/2009
WJET–DT	Erie	PA	65749			Waiver	Dismissed
WJSP–DT	Columbus	GA	23918	BEPEDT	20070907ABN	Extension	5/18/2008
WKBN–DT	Youngstown	OH	73153			Waiver	5/18/2008
WLAE–DT	New Orleans	LA	18819			Waiver	8/18/2008
WLAX–DT	La Crosse	WI	2710			Waiver	5/18/2008
WLRN–DT	Miami	FL	66358	BEPEDT	20071026AAA	Extension	5/18/2008
WLUC–DT	Marquette	MI	21259	BEPCDT	20071018ACV	Extension	5/18/2008
WMPN–DT	Jackson	MS	43168			Waiver	5/18/2008
WMTJ–DT	Fajardo	PR	2174	BEPCDT	20071130BDR	Extension	5/18/2008
WMUM–DT	Cochran	GA	23935	BEPEDT	20070907ABJ	Extension	5/18/2008
WMYA–DT	Anderson	SC	56548			Waiver	5/18/2008
WNBC–DT	New York	NY	47535	BEPCDT	20070917ACS	Extension	8/18/2008
WNJU–DT	Linden	NJ	73333	BEPCDT	20070917ACM	Extension	5/18/2008
WNMU–DT	Marquette	MI	4318	BEPEDT	20071113AEL	Extension	2/17/2009
WNYE–DT	New York	NY	6048	BEPEDT	20071129ADM	Extension	5/18/2008
WNYW–DT	New York	NY	22206	BEPCDT	20071113ABW	Extension	8/18/2008
WNYW–DT	New York	NY	22206			Waiver	Dismissed
WORA–DT	Mayaguez	PR	64865	BEPCDT	20071113AHB	Extension	5/18/2008
WPAN–DT	Fort Walton Beach	FL	31570	BEPCDT	20060619ABJ and 20071025ACO.	Extension	5/18/2008
WPXS–DT	Mount Vernon	IL	40861	BEPCDT	20071127AIN	Extension	5/18/2008
WQLN–DT	Erie	PA	53716			Waiver	5/18/2008
WRJM–DT	Troy	AL	62207	BEPCDT	20071206ACZ	Extension	5/18/2008
WSJU–DT	San Juan	PR	4077	BEPCDT	20071119AJO	Extension	5/18/2008
WSST–DT	Cordele	GA	63867			Waiver	5/18/2008
WSTR–DT	Cincinnati	OH	11204			Waiver	5/18/2008
WTIC–DT	Hartford	CT	147	BEPCDT	20071214AAQ	Extension	5/18/2008
WTSF–DT	Ashland	KY	67798	BEPCDT	20071127AIP	Extension	8/18/2008
WTVE–DT	Reading	PA	55305	BEPCDT	20071116ABS	Extension	5/18/2008
WTVF–DT	Nashville	TN	36504			Waiver	2/17/2009
WTWO–DT	Terre Haute	IN	20426	BEPCDT	20071116AGC	Extension	5/18/2008
WTWO–DT	Terre Haute	IN	20426			Waiver	Dismissed
WUTB–DT	Baltimore	MD	60552	BEPCDT	20071113ALI	Extension	5/18/2008
WUTB–DT	Baltimore	MD	60552			Waiver	Dismissed
WVFX–DT	Clarksburg	WV	10976			Waiver	5/18/2008
WVIZ–DT	Cleveland	OH	18753	BEPEDT	20071025ACI	Extension	2/17/2009
WVSN–DT	Humacao	PR	67190			Waiver	5/18/2008
WWAZ–DT	Fond Du Lac	WI	60571	BEPCDT	20071116ADH	Extension	5/18/2008
WWBT–DT	Richmond	VA	30833			Waiver	2/17/2009
WXOW–DT	La Crosse	WI	64549	BEPCDT	20070817ABY	Extension	2/17/2009
WYLE–DT	Florence	AL	6816	BEPCDT	20071116ADT	Extension	8/18/2008

Note: Some stations listed above sought a further ''use-or-lose'' waiver but also filed an application to extend their underlying DTV construction deadline. We hereby dismiss these ''use-or-lose'' waiver requests and we grant the corresponding DTV extension applications.

[FR Doc. E8–1515 Filed 1–29–08; 8:45 am]

BILLING CODE 6712–01–P

Reader Aids

Federal Register

Vol. 73, No. 20

Wednesday, January 30, 2008

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–388 2
389–810 3
811–1042 4
1043–1266 7
1267–1492 8
1493–1814 9
1815–1960 10
1961–2142 11
2143–2410 14
2411–2792 15
2793–3180 16
3181–3376 17
3377–3614 18
3615–3860 22
3861–4050 23
4051–4448 24
4449–4682 25
4683–5084 28
5085–5420 29
5421–5704 30

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7746 (See 8214) 1439
7747 (See 8214) 1439
8097 (See 8214) 1439
8214 1439
8215 3375
8216 3855
8217 4673

Executive Orders:
11858 (Amended by 13456) 4677
12919 (Revoked in part by 13456) 4677
12947 (See Notice of Jan. 18, 2008) 3859
13420 (Superseded by 13454) 1481
13454 1481
13455 4445
13456 4677

Administrative Orders:
Presidential Determinations:
No. 2008-6 of December 12, 2007 3849
No. 2008-7 of December 14, 2007 3851
Memorandums:
Memorandum of Dec. 17, 2007 1813

5 CFR

531 1493
1201 2143

Proposed Rules:
293 3410
532 3220
591 772

6 CFR

5 5421
37 5272

Proposed Rules:
5 5460
19 2187

7 CFR

3 1
301 5130
948 5222
987 3377

Proposed Rules:
457 3411
905 5130
1160 4762

9 CFR

93 3379
94 ..... 1043, 3379, 5424
95 3379

Proposed Rules:
2 413
3 413
93 5132

10 CFR

72 17
609 1961
707 3861

Proposed Rules:
Ch. I 826
20 ..... 3221, 3812
30 3812
40 3812
50 3812
70 3812
72 3812
73 2435
430 3653

12 CFR

229 1267
303 2143
308 2143
309 2143
558 17
563 17
564 17
567 17
574 17

Proposed Rules:
226 1672
360 2364
361 420
708a 5461
708b 5461

13 CFR

101 1962

14 CFR

23 ..... 19, 389, 3385
25 27
39 ..... 29, 394, 395, 397, 400, 1044, 1046, 1048, 1052, 1055, 1269, 1815, 1816, 1964, 1968, 2793, 2795, 2797, 2799, 2801, 2803, 3615, 3618, 3620, 3621, 3623, 3625, 3863, 4051, 4053, 4055, 4057, 4059, 4061, 4063, 4066, 4683, 5426
71 ..... 1271, 3625, 4069, 4070, 4071, 4449, 4450, 5429, 5431, 5432, 5434
95 4685
97 ..... 4071, 4073, 4075

Proposed Rules:
21 3655
23 ..... 3881, 3882, 3884, 4763

39...73, 75, 77, 80, 84, 87, 830, 833, 1556, 1558, 1842, 1844, 1846, 1848, 2190, 2192, 2195, 2197, 2200, 2204, 2206, 3417, 3419, 3422, 3425, 3428, 3656, 3885, 3887, 3889, 3891, 4121, 4123, 4125, 4127, 4129, 4497
71 .....3430, 3431, 5135

15 CFR

700.....32
730.....32
740.....32
743.....32
744.....32
745.....32
746.....32
748.....32
750.....32
752.....32
754.....32
774.....32

17 CFR

210.....934, 986
228.....934
229.....934
230.....934, 986
239.....934, 986
240 .....934, 4450, 4690
249 .....934, 986, 4690
260.....934
269.....934
275.....4690
279.....4690
Proposed Rules:
3.....4499
30.....4499

18 CFR

11.....3626
37.....2984
38.....38
40.....1770
260.....1014
284.....38, 1014
385.....1014
806.....1272
808.....1272
Proposed Rules:
41.....5136
141.....5136
284.....1116, 4131

19 CFR

351.....3634
Proposed Rules:
4.....90, 1299
12.....90, 1299
18.....90, 1299
19.....2843
101.....90, 1299
103.....90, 1299
113.....90, 1299
122.....90, 1299
123.....90, 1299
141.....90, 1299
143.....1299
144.....2843
149.....90, 1299
192.....90, 1299

20 CFR

404.....1970, 2411
405.....2411
416.....1970, 2411

21 CFR

201.....402
208.....402
209.....402
510.....4077
520.....2808, 4077
522.....2808
526.....811, 3181
558.....811
1271.....3387
Proposed Rules:
101.....4765
314.....2848
601.....2848
606.....1983
610.....1983
630.....1983
640.....1983
660.....1983
814.....2848
820.....1983
1270.....1983
1309.....3432

22 CFR

22.....3867, 5087
51 .....3867, 4077, 5435

23 CFR

Proposed Rules:
634.....268
655.....268

24 CFR

200.....1430
206.....1434
291.....1974
970.....3867

25 CFR

Proposed Rules:
502.....3223
542.....3224
543.....3224
546.....3223
547.....3224

26 CFR

1 .....2416, 3868, 4695
301.....1058
602.....3868
Proposed Rules:
1 .....421, 1131, 1850, 1851, 2436, 3441, 4131
31.....4765
301.....1131, 1851

28 CFR

0.....1493
27.....1493

29 CFR

1601.....3387
4022.....2420
4044.....2420
Proposed Rules:
1910.....1299
1926.....3893

30 CFR

Proposed Rules:
916.....3894
931.....1983

31 CFR

1.....1817
103.....1975
Proposed Rules:
210.....1560

32 CFR

Proposed Rules:
1701.....113

33 CFR

100.....4459
110.....4469
117 .....41, 1273, 1274, 1495, 4472, 5090, 5091, 5093, 5095
137.....2146
165 .....43, 1274, 1276, 1280, 3650, 4078, 4695, 5095
Proposed Rules:
117.....1565
165.....1133

34 CFR

462.....2306
Proposed Rules:
674.....1300
682.....1300
685.....1300
686.....1300

36 CFR

13.....3181
Proposed Rules:
7.....2436
294.....1135
1190.....2308
1191.....2308
1193.....4132
1194.....4132
1195.....2309

37 CFR

382.....4080
Proposed Rules:
201.....3898
384.....5466

38 CFR

3.....1075
21.....1076, 2421
Proposed Rules:
4.....428, 432

39 CFR

20.....2156
Proposed Rules:
111.....1158

40 CFR

50.....1497
51.....4420
52 .....48, 1282, 1819, 2156, 2159, 2162, 2163, 2428, 3187, 3190, 3192, 3389, 3396, 4105, 4109, 5097, 5101, 5435
60.....3568
62.....3194
63 .....226, 1738, 1916, 3568
70.....4473
72.....4312
75.....4312
81 .....2162, 2163, 3396
85.....3568
90.....3568
93.....4420
180 ...51, 52, 1503, 1508, 1512, 1517, 1976, 2809, 2812, 5104, 5439, 5450
260.....57
261.....57
271.....1077
716.....5109
1048.....3568
1065.....3568
1068.....3568
Proposed Rules:
50.....836, 1568
51.....1402
52 .....125, 836, 1162, 1175, 1570, 1851, 1853, 2209, 2210, 2436, 3224, 3225, 3226, 3446, 3447, 4133, 5152, 5471
62.....3900
63.....4136
70.....4502
81 .....1162, 1175, 3447
93.....1402
147.....5471
704.....2854
720.....2854
721.....2854
723.....2854

41 CFR

102-72.....2166
102-84.....2167

42 CFR

72.....3874
409.....2568
410.....2431, 2568
411.....2568
413.....2568
414 .....404, 2431, 2433, 2568
415.....2568
418.....2568
423.....2568
424.....2431, 2568
482.....2568
484.....2431, 2568
485.....2568
488.....3405
Proposed Rules:
412.....5342
422.....1301, 5270
423.....1301, 5270
424.....4503
441.....3546

43 CFR

Proposed Rules:
46.....126

44 CFR

64.....2816, 4697
65 .....2818, 2822, 2827
67 .....2830, 2835, 5455
Proposed Rules:
67 .....2859, 2868, 2873, 2880, 4144, 4156, 5480
206.....2187

45 CFR

1304.....1285
1306.....1285

1611 5458
Proposed Rules:
1355 2082

47 CFR

0 813
13 4475
15 5634
64 ....1297, 3197
73 ....3202, 3652, 4113, 4492, 4493, 5634
76 ....1080, 5634
80 4475
Proposed Rules:
Ch. I 546
25 2437
27 2437
61 1306
69 1306
73 ....1576, 1577, 2211, 4513
76 1195

48 CFR

Ch. 8 2712
25 3409
204 ....1822, 4113
207 ....1823, 1826, 4114
209 ....1823, 1826
212 ....1822, 4114, 4115
217 1826
222 4115
225 ....4113, 4115
232 4116
234 ....1823, 4117
235 ....1823, 4117
237 1826
239 1828
244 4113
246 1826
252 ....1822, 1823, 1828, 1830, 4115, 4116
1516 1978
1533 1978
1552 1978
Proposed Rules:
252 1853

49 CFR

171 4699
172 ....1089, 4699
173 4699
175 4699
177 4699
178 4699
180 4699
563 2168
604 2326
Proposed Rules:
192 1307
571 ....3901, 5484
574 4157

50 CFR

17 ....1525, 3146, 4720
229 ....4118, 5115
600 406
622 ....406, 3218, 5117
648 ....411, 820, 2184, 4736, 4758
660 4759
679 ....823, 1554, 1555, 1831, 3218, 3879, 4493, 4494, 4760, 5128
Proposed Rules:
17 ....1312, 1855, 3228, 4380
224 1986
300 ....140, 4514
600 4514
622 439
648 ....441, 5153
697 4514

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 30, 2008

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Change in Disease Status of Surrey County, England, Because of Foot - and - Mouth Disease; published 1-30-08

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic bluefin tuna; published 12-31-07

ENVIRONMENTAL PROTECTION AGENCY

Fluopicolide; Pesticide Tolerance; published 1-30-08

EXECUTIVE OFFICE OF THE PRESIDENT

Privacy and Civil Liberties Oversight Board

Freedom of Information Act: CFR removal; published 11-27-07

FEDERAL COMMUNICATIONS COMMISSION

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television; published 1-30-08

HOMELAND SECURITY DEPARTMENT

Privacy Act of 1974; Implementation of Exemptions; published 1-30-08

LEGAL SERVICES CORPORATION

Income Level for Individuals Eligible for Assistance; published 1-30-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Hartzell Propeller Inc.; published 12-26-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in South Florida; comments due by 2-8-08; published 12-10-07 [FR E7-23827]

Pistachios grown in California; comments due by 2-5-08; published 12-7-07 [FR 07-05989]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Mediterranean fruit fly; comments due by 2-5-08; published 12-7-07 [FR E7-23770]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Northeastern United States:

Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures; comments due by 2-5-08; published 1-29-08 [FR E8-01559]

Northeast Multispecies Fishery, Total Allowable Catches for Eastern Georges Bank Cod, etc.; comments due by 2-4-08; published 1-3-08 [FR E7-25580]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:

Government equipment lease for display or demonstration; costs allowability; comments due by 2-5-08; published 12-7-07 [FR E7-23654]

Ground and flight risk clause; comments due by 2-5-08; published 12-7-07 [FR E7-23657]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Ambient air quality standards, national—

Data handling conventions and computations; correcting amendments; comments due by 2-8-08; published 1-9-08 [FR 07-05954]

Data handling conventions and computations; correcting amendments; comments due by 2-8-08; published 1-9-08 [FR 07-05953]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NOx RACT Determinations for Merck and Co., Inc.; comments due by 2-4-08; published 1-4-08 [FR E7-25641]

Approval and Promulgation of Air Quality Implementation Plans;

Michigan; PSD Regulations; comments due by 2-8-08; published 1-9-08 [FR E8-00186]

Approval and Promulgation of Air Quality Implementation Plans:

Pennyslvania; Redesignation of the Allentown-Bethlehem-Easton 8-hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan, etc.; comments due by 2-6-08; published 1-7-08 [FR E8-00027]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes:

Nevada; Wintertime Oxygenated Gasoline Rule; Vehicle Inspection and Maintenance Program, etc.; comments due by 2-6-08; published 1-7-08 [FR E7-25636]

Pesticide programs:

Plant-incorporated protectants; procedures and requirements—

Bacillus thuringiensis Vip3Aa19 protein in cotton; tolerance requirement exemption; comments due by 2-4-08; published 12-6-07 [FR E7-23660]

Bacillus thuringiensis Vip3Aa20 protein and genetic material necessary for production in corn; tolerance requirement exemption; comments due by 2-4-08; published 12-5-07 [FR E7-23308]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Dichlorvos; comments due by 2-4-08; published 12-5-07 [FR E7-23571]

FEDERAL COMMUNICATIONS COMMISSION

Commercial Mobile Alert System; comments due by 2-4-08; published 1-3-08 [FR E7-24876]

Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments; comments due by 2-6-08; published 1-7-08 [FR E7-25214]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicaid:

Optional State plan case management services; comments due by 2-4-08; published 12-4-07 [FR 07-05903]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Security Zone:

Waters Surrounding U.S. Forces Vessel SBX-1, HI; comments due by 2-6-08; published 1-7-08 [FR E8-00019]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Underground mines—

Fire extinguishers; availability; comments due by 2-4-08; published 12-20-07 [FR E7-24747]

NUCLEAR REGULATORY COMMISSION

Transportation of Radioactive Material in Quantities of Concern; comments due by 2-8-08; published 1-4-08 [FR E7-25630]

PENSION BENEFIT GUARANTY CORPORATION

Single-employer and multiemployer plans:

Termination information disclosure; comments due by 2-4-08; published 12-5-07 [FR E7-23577]

SOCIAL SECURITY ADMINISTRATION

Organization and procedures:

Official records and information; privacy and disclosure; comments due by 2-8-08; published 12-10-07 [FR E7-23786]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Takeoff/Landing Performances Assessment Aviation Rulemaking Committee; establishment; comments due by 2-4-08; published 12-6-07 [FR E7-23740]

Airworthiness Directives:
Airbus; comments due by 2-8-08; published 1-9-08 [FR E8-00164]

Airworthiness directives:
Boeing; comments due by 2-4-08; published 12-19-07 [FR E7-24521]

Airworthiness Directives:
Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 2-4-08; published 1-4-08 [FR E7-25617]
Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), Model CL-600-2D15 (Regional Jet Series 705), etc., Airplanes; comments due by 2-4-08; published 1-4-08 [FR E7-25619]

Airworthiness directives:
Viking Air Ltd. Model (Caribou) DHC-4 and (Caribou) DHC-4A Airplanes; comments due by 2-7-08; published 1-8-08 [FR E7-25613]

Class E airspace; comments due by 2-4-08; published 12-19-07 [FR 07-06072]

TRANSPORTATION DEPARTMENT
Pipeline and Hazardous Materials Safety Administration

Pipeline Safety: Polyamide-11 (PA-11) Plastic Pipe Design Pressures; comments due by 2-7-08; published 1-8-08 [FR E8-00033]

TREASURY DEPARTMENT
Internal Revenue Service

Income taxes:
Automatic contribution arrangements; comments due by 2-6-08; published 11-8-07 [FR E7-21821]
Foreign tax credit; notification and adjustment due to foreign tax redeterminations; cross-reference; withdrawn in part; comments due by 2-5-08; published 11-7-07 [FR E7-21727]
Real estate mortgage investment conduit; commercial mortgage loans; comments due by 2-7-08; published 11-9-07 [FR E7-21987]

VETERANS AFFAIRS DEPARTMENT

Schedule for Rating Disabilities:
Evaluation of Residuals of Traumatic Brain Injury; comments due by 2-4-08; published 1-3-08 [FR E7-25522]
Evaluation of Scars; comments due by 2-4-08; published 1-3-08 [FR E7-25525]

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. 660/P.L. 110–177

Court Security Improvement Act of 2007 (Jan. 7, 2008; 121 Stat. 2534)

H.R. 3690/P.L. 110–178

U.S. Capitol Police and Library of Congress Police Merger Implementation Act of 2007 (Jan. 7, 2008; 121 Stat. 2546)

S. 863/P.L. 110–179

Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007 (Jan. 7, 2008; 121 Stat. 2556)

H.R. 2640/P.L. 110–180

NICS Improvement Amendments Act of 2007 (Jan. 8, 2008; 121 Stat. 2559)

Last List January 7, 2008

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.